

20355

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

ANDERS  
No Respondent's Brief Filed  
ORIGINAL  
NO DEFENDANT'S BRIEF  
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SC Court of Appeals

THE STATE,

RESPONDENT,

v.

NORMAN ADGER BRAGG,

APPELLANT

Appellate Case No. 2012-211547

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG ) IN THE COURT OF GENERAL SESSIONS  
  
The State, )  
-vs- ) TRANSCRIPT OF RECORD  
Norman Adger Bragg, ) 2010-GS-42-1821;1822  
Defendant. ) March 19-20, 2012  
Spartanburg, South Carolina

B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE; and a jury

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

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Linda D. Moffitt  
Circuit Court Reporter

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1 (Proceedings March 19, 2012)

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

4 THE COURT: Good morning, ladies and gentlemen of the  
5 jury panel. My name is Derham Cole. I'm one of the  
6 resident judges here in the 7th Judicial Circuit. And that  
7 of course is the circuit that you reside in. It's made up  
8 of Spartanburg and Cherokee counties.

9 We are ready to begin with jury selection in the first  
10 case that's going to require some of your participation.

11 MR. HUNTER: May we approach real quickly, Your Honor?

12 THE COURT: Okay.

13 (Bench conference held off the record.)

14 THE COURT: The first case that's going to require of  
15 your participation is the case of the State vs. Norman  
16 Adger Bragg.

17 Mr. Bragg has been charged by the prosecutor with  
18 having committed the crime of trafficking in  
19 methamphetamine.

20 When a person is charged with a crime where the  
21 jurisdiction lies in this court they are brought here by  
22 way of a document referred to as the indictment. It's like  
23 a warrant that occurs in the magistrate's court. But any  
24 case that's tried in this court is brought by way of an  
25 indictment.

1           This indictment charges Mr. Bragg with having  
2 committed the crime of trafficking in methamphetamine. And  
3 it specifically alleges that on or about November the  
4 18th of 2009 Mr. Bragg did traffic in methamphetamine in an  
5 amount of ten grams or more and that he did that by  
6 knowingly selling, manufacturing, delivering or bringing  
7 into the state, or providing financial assistance to, or  
8 did otherwise aid, abet, attempt or conspire to sell,  
9 manufacture, deliver, purchase or bring into the state, or  
10 that he did knowingly have in his actual or constructive  
11 possession the methamphetamine.

12           Now, as to those allegations and as to that charge he  
13 has entered a plea of not guilty. And a plea of not guilty  
14 places upon the state the burden of proving the allegations  
15 that they have set forth in the indictment, the burden of  
16 proving each of the essential elements that makes up the  
17 crime that they allege the defendant has committed; and  
18 therefore the burden is upon the state to establish the  
19 defendant's guilt to the satisfaction of 12 jurors beyond a  
20 reasonable doubt before any verdict of guilty could be  
21 returned.

22           So we will be selecting 13 of you, 12 primary jurors  
23 and one additional juror to serve as an alternate. And by  
24 way of your participation you're going to be called upon to  
25 listen to testimony, to consider other evidence introduced.

1           At the trial's conclusion you'll evaluate witness  
2 testimony. You'll decide based upon your view of the  
3 evidence what you believe to be the true facts as they  
4 relate to these allegations.

5           Then once you decide what those facts are you apply  
6 the law that I will have provided you, and you will  
7 determine whether or not the defendant's guilt has been  
8 proven beyond a reasonable doubt. And if it has, then your  
9 verdict would be guilty. And if it has not, then your  
10 verdict would be not guilty.

11           Now, before we begin with jury selection I've got some  
12 questions to ask you. And the purpose of the questions is  
13 to determine if there's some reason why any one of you  
14 jurors should not be selected to participate in the trial  
15 of this particular case.

16           In other words, do you have reason why you think you  
17 could not be fair and impartial in this particular case.  
18 And so I'll ask you some questions in order to determine  
19 that ability.

20           And I'll also be introducing some people to you --  
21 that is those who are involved in the trial of this case --  
22 because I need to find out if you know anybody involved in  
23 the trial, if you know any witness.

24           In other words, are you connected by blood or  
25 marriage, do you go to work with any of these people, do

1 you socialize with these people, do you go to church with  
2 them, or have you met them somewhere, do you know them in  
3 any capacity. And if you do as they are introduced, I'll  
4 ask that you please stand. And we'll determine that  
5 connection and whether or not it would affect your judgment  
6 in the case.

7 Now, first of all, as I told you, the defendant, the  
8 person who is accused of having committed the crime of  
9 trafficking in methamphetamine, is Norman Adger Bragg.

10 Mr. Bragg, if you will, stand and face the jury panel  
11 so they may see who you are.

12 (Whereupon, the defendant stood.)

13 THE COURT: Okay. In this case Mr. Bragg is  
14 represented by Ricky Harris, his lawyer. He'll be  
15 assisting him in the trial of the case.

16 Presenting the case on behalf of the state is Eddie  
17 Hunter. He is an assistant circuit solicitor for the  
18 Seventh Judicial Circuit.

19 Potential witnesses which may be called during the  
20 trial include Paul Norris with the sheriff's department,  
21 Beth Stuart with the sheriff's department, Robert Rosenberg  
22 with the sheriff's department, Gary Watson with the  
23 sheriff's department, and Matt wilde with the federal  
24 bureau of investigation.

25 Are there any other potential witnesses on behalf of

1 the state?

2 MR. HUNTER: None from the state, Your Honor.

3 THE COURT: The defendant?

4 MR. HARRIS: No, Your Honor.

5 THE COURT: All right. Does any member of the jury  
6 panel know anybody who has just been introduced to you or  
7 any members of their respective families -- if you happen  
8 to know a family member -- and also does any member of the  
9 jury panel know anyone who is employed in the  
10 Seventh Judicial Circuit Solicitor's Office? And that  
11 includes your circuit solicitor who is Barry Barnette. If  
12 anyone knows any of these persons, I would ask that you  
13 please stand.

14 All right. If you will, tell me your name and your  
15 juror number, please, sir.

16 JUROR NO. 1: Juror No. 1, Kenneth Brian Adair.

17 THE COURT: And how does that question relate to you?

18 JUROR NO. 1: I know Deputy Watson.

19 THE COURT: And how do you know him?

20 JUROR NO. 1: We used to work out at the same  
21 facility.

22 THE COURT: All right. And would that have any  
23 bearing upon your decision in this case if you were  
24 selected as a juror?

25 JUROR NO. 1: None at all.

1 THE COURT: Thank you. Be seated.

2 Anyone else know any person?

3 Yes, ma'am.

4 JUROR NO. 131: I work for Turnipseed and Brannon Law  
5 Firm. And I do have contact with the solicitor's office on  
6 a daily basis.

7 THE COURT: Okay. And tell me your name and number,  
8 please.

9 JUROR NO. 131: 131, Rhonda Price.

10 THE COURT: And would that fact have any bearing upon  
11 your decision in the case?

12 JUROR NO. 131: No, sir.

13 THE COURT: Thank you. Be seated.

14 Anyone else?

15 (No response.)

16 THE COURT: Now, as I told you, this is a case wherein  
17 the state alleges that the defendant did traffic in  
18 methamphetamine. The state alleges that occurred on  
19 November the 18th of 2009.

20 And where does the state claim this event occurred?

21 MR. HUNTER: In Spartanburg County at [REDACTED]  
22 Road, Your Honor.

23 THE COURT: [REDACTED]

24 Does any juror think you might have heard, seen or  
25 read anything that relates to this case? In other words,

1 have you been exposed to any type of information about this  
2 case from any person or any other source? If so, please  
3 stand.

4 (No response.)

5 THE COURT: Is there anything about the nature of the  
6 charge itself -- that is what the allegations are that have  
7 been brought against the defendant -- that would cause any  
8 juror to be unable to be fair and impartial if you were  
9 selected to participate? If so, please stand.

10 (No response.)

11 THE COURT: Is any member of the jury panel connected  
12 by blood or marriage to any type of law enforcement  
13 officer, any person employed to enforce the laws of this  
14 state?

15 Those include deputy sheriffs, city, town or municipal  
16 law enforcement officers, detention facility officers --  
17 officers, department of corrections officers, state law  
18 enforcement division, federal bureau of investigation;  
19 department of probation and parole, as well as any law  
20 enforcement officer, both civilian and/or military police  
21 types of officers. If so, please stand.

22 All right. I'll start on the closest row to me and  
23 I'll work my way back if you'll give me your name and  
24 number and tell me how the question relates to you.

25 JUROR NO. 83: Bralton Hyatt, Juror No. 83. I have a

1 cousin that's a police officer in Greenville.

2 THE COURT: In Greenville?

3 JUROR NO. 83: Yes, sir.

4 THE COURT: Would that have any bearing upon your  
5 decision?

6 JUROR NO. 83: No, sir.

7 THE COURT: Thank you. Be seated.

8 Yes, sir.

9 JUROR NO. 52: My name is Jerry Ferguson, Juror No.  
10 52. And I got a brother that's a correction's officer.

11 THE COURT: Where?

12 JUROR NO. 52: Tyger River.

13 THE COURT: Okay. Would that have any bearing upon  
14 your decision in the case?

15 JUROR NO. 52: No.

16 THE COURT: Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 140: Juror No. 140, Kathy Ridgeway. My  
19 husband's first cousin is a lieutenant with the Greenville  
20 Police Department.

21 THE COURT: And would that have any bearing on your  
22 decision?

23 JUROR NO. 140: No, sir.

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

25 Yes, ma'am.

1 JUROR NO. 25: Twenty-five, Kathy Bryant. My brother  
2 is a detention officer at the Livesay Center.

3 THE COURT: would that have any bearing upon your  
4 decision?

5 JUROR NO. 25: No, sir.

6 THE COURT: Thank you. You may be seated.  
7 Yes, sir.

8 JUROR NO. 138: My brother-in-law, Craig Stow, is a  
9 sheriff's officer here in Spartanburg County.

10 THE COURT: All right. And your number is what?

11 JUROR NO. 138: I'm sorry. My name is John Renner,  
12 and I'm Juror No. 138.

13 THE COURT: 138?

14 JUROR NO. 138: Yes, sir.

15 THE COURT: And would that fact have any bearing upon  
16 your decision in this case?

17 JUROR NO. 138: No, sir.

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

19 Does any member of the jury panel belong to any types  
20 of organizations that might be characterized as law  
21 enforcement support types of organizations or victims  
22 advocacy groups or any other similar type of organization?

23 I need to know if you belong to such. Or do you  
24 contribute your time or any money to any of those types of  
25 organizations? And as an example of those types of

1 organizations you might consider Mothers Against Drunk  
2 Drivers, Citizens Against Violent Crime, a neighborhood  
3 watch program, crime stoppers groups, or any other -- let's  
4 see. Fraternal order of police, the troopers' association,  
5 the honorary sheriffs' association or any other similar  
6 type of organization. Do you belong to any or do you  
7 contribute time or money to any such organizations? If so,  
8 please stand.

9 Okay.

10 JUROR NO. 122: Kirk Neely, Juror 122. Our company  
11 has contributed to the local sheriff's department.

12 THE COURT: Okay. would it have any bearing upon your  
13 decision?

14 JUROR NO. 122: No, sir.

15 THE COURT: Thank you. Be seated.

16 Anybody else?

17 Yes, ma'am.

18 JUROR NO. 24: Melissa Bray, Juror 24. I'm a  
19 contributor to the fraternal order of police.

20 THE COURT: Okay. would it have any bearing upon your  
21 decision?

22 JUROR NO. 24: No, sir.

23 THE COURT: Okay. Thank you. Be seated.

24 Yes, ma'am.

25 JUROR NO. 140: Kathy Ridgeway, Juror No. 140. We

1 contribute usually every year to the trooper's association  
2 and the police.

3 THE COURT: Okay. Would it have any bearing upon your  
4 decision?

5 JUROR NO. 140: No, sir.

6 THE COURT: Okay. Thank you. Be seated.

7 Anybody else?

8 (No response.)

9 THE COURT: Has any member of the jury panel yourself  
10 ever been employed as any type of law enforcement officer?  
11 If so, please stand.

12 Yes, sir.

13 JUROR NO. 48: Mitchell Eaker, Juror No. 48. I was  
14 security forces in the Air Force.

15 THE COURT: Okay. And would it have any bearing upon  
16 your decision in this case?

17 JUROR NO. 48: No, sir, it would not.

18 THE COURT: Thank you. Be seated.

19 Does any juror know of any reason whatsoever why you  
20 think you could not be fair and impartial if you were  
21 selected to serve as a juror in the case? If you have any  
22 reason whatsoever why you think you could not be fair, I  
23 would ask that you please stand.

24 (No response.)

25 THE COURT: None responding.

1 Any other questions requested by the state?

2 MR. HUNTER: None, Your Honor.

3 THE COURT: By the defendant?

4 MR. HARRIS: No, Your Honor.

5 THE COURT: Okay. As your names are called the -- a  
6 computer selects the jurors randomly. And as your name is  
7 called you're going to be asked to come forward and just  
8 come towards me. You'll see the desks where the lawyers  
9 are seated. Just step past those desks towards me about  
10 maybe two or three paces. Turn and face your fellow  
11 jurors.

12 Each side has an opportunity to have you excused from  
13 service in the case, or they may both agree to have you  
14 seated for service in the case.

15 If either asks that you be excused just simply go back  
16 and have a seat on the back row. If both agree to have you  
17 seated for service in the case you'll be having a seat in  
18 that jury box to your right and to my left.

19 So please come forward as your name is called. You'll  
20 be instructed if you're to be seated for service or excused  
21 from serving in the case.

22 THE CLERK: Juror No. 69, Jamey Handley -- 69.

23 UNIDENTIFIED JUROR: I think he was sick in the other  
24 courtroom.

25 THE COURT: Okay. Thank you.

1 (Juror previously excused by the Court.)  
2 THE CLERK: Juror No. 174, Michael webb.  
3 what says the state?  
4 MR. HUNTER: Please excuse this juror.  
5 THE CLERK: Juror No. 9, Patty Barrineau.  
6 what says the state?  
7 MR. HUNTER: Please seat the juror.  
8 THE CLERK: what says the defense?  
9 MR. HARRIS: Please excuse the juror.  
10 THE CLERK: Juror No. 28, Patricia Caldwell.  
11 what says the state?  
12 MR. HUNTER: Please seat this juror.  
13 THE CLERK: what says the defense?  
14 MR. HARRIS: Swear the juror, please.  
15 THE CLERK: Juror No. 72, Nathan Harper.  
16 what says the state?  
17 MR. HUNTER: Please excuse this juror.  
18 THE CLERK: Juror No. 106, Len Mathis.  
19 what says the state?  
20 MR. HUNTER: Please present this juror.  
21 THE CLERK: what says the defense?  
22 MR. HARRIS: Swear the juror, please.  
23 THE CLERK: Juror No. 144, Randy Samuel.  
24 what says the state?  
25 MR. HUNTER: Please present this juror.

1 THE CLERK: What says the defense?  
2 MR. HARRIS: Swear the juror, please.  
3 THE CLERK: Juror No. 1, Kenneth Adair.  
4 What says the state?  
5 MR. HUNTER: Please present this juror.  
6 THE CLERK: What says the defense?  
7 MR. HARRIS: Excuse the juror, please.  
8 THE CLERK: Juror No. 74, Deborah R. Hill.  
9 What says the state?  
10 MR. HUNTER: Please excuse this juror.  
11 THE CLERK: Juror No. 24, Melissa Bray.  
12 What says the state?  
13 MR. HUNTER: Please present this juror.  
14 THE CLERK: What says the defense?  
15 MR. HARRIS: Excuse the juror, please.  
16 THE CLERK: Juror No. 137, Harriette Reid.  
17 What says the state?  
18 MR. HUNTER: Please present this juror.  
19 THE CLERK: What says the defense?  
20 MR. HARRIS: Excuse the juror, please.  
21 THE CLERK: Juror No. 122, Kirk Neely.  
22 What says the state?  
23 MR. HUNTER: Please present this juror.  
24 THE CLERK: What says the defense?  
25 MR. HARRIS: Excuse the juror, please.

1 THE CLERK: Juror No. 19, Lara Blodgett.  
2 What says the state?  
3 MR. HUNTER: Please present this juror.  
4 THE CLERK: What says the defense?  
5 MR. HARRIS: Swear the juror, please.  
6 THE CLERK: Juror No. 110, Bobby McGill.  
7 What says the state?  
8 MR. HUNTER: Please present this juror.  
9 THE CLERK: What says the defense?  
10 MR. HARRIS: Swear the juror, please.  
11 THE CLERK: Juror No. 135, Renise Redman.  
12 What says the state?  
13 MR. HUNTER: Please present the juror.  
14 THE CLERK: What says the defense?  
15 MR. HARRIS: Swear the juror, please.  
16 THE CLERK: Juror No. 79, Kelsey Howell.  
17 What says the state?  
18 MR. HUNTER: Please present this juror.  
19 THE CLERK: What says the defense?  
20 MR. HARRIS: Swear the juror, please.  
21 THE CLERK: Juror No. 140, Kathy Ridgeway.  
22 What says the state?  
23 MR. HUNTER: Please present this juror.  
24 THE CLERK: What says the defense?  
25 MR. HARRIS: Swear the juror, please.

1 THE CLERK: Juror No. 25, Kathy Bryant.  
2 What says the state?  
3 MR. HUNTER: Please present this juror.  
4 THE CLERK: what says the defense?  
5 MR. HARRIS: Swear the juror, please.  
6 THE CLERK: Juror No. 80, Lawrence Hughes.  
7 what says the state?  
8 MR. HUNTER: Please present this juror.  
9 THE CLERK: what says the defense?  
10 MR. HARRIS: Swear the juror, please.  
11 THE CLERK: Juror No. 156, Joyce Steele.  
12 what says the state?  
13 MR. HUNTER: Please present this juror.  
14 THE CLERK: what says the defense?  
15 MR. HARRIS: Swear the juror, please.  
16 THE CLERK: Juror No. 170, Susan Voll.  
17 what says the state?  
18 MR. HUNTER: Please present this juror.  
19 THE CLERK: what says the defense?  
20 MR. HARRIS: Swear the juror, please.  
21 THE CLERK: Your Honor, this will be for the  
22 alternate.  
23 Juror No. 96, Teresa Lanford.  
24 what says the state?  
25 MR. HUNTER: Please present this juror.

1 THE CLERK: What says the defense?

2 MR. HARRIS: Excuse the juror, please.

3 THE WITNESS: Juror No. 118, Tony Morgan.  
4 What says the state?

5 MR. HUNTER: Please present this juror.

6 THE CLERK: What says the defense?

7 MR. HARRIS: Excuse the juror, please.

8 THE CLERK: Juror No. 134, Jacob Ravan.  
9 What says the state?

10 MR. HUNTER: Please present this juror.

11 THE CLERK: What says the defense?

12 MR. HARRIS: Swear the juror, please.

13 THE CLERK: Your Honor, the jury has been selected.  
14 (Whereupon, a jury was impaneled.)

15 THE COURT: All right. Those who are selected, I'll  
16 ask you to please go with a bailiff to a jury room. And I  
17 will bring you back in just a few minutes to begin.

18 (The following takes place outside the presence of the  
19 jury.)

20 THE COURT: Are there any matters that need to be  
21 addressed regarding jury selection by the state?

22 MR. HUNTER: None from the state, Your Honor.

23 THE COURT: By the defendant?

24 MR. HARRIS: No, Your Honor.

25 (Whereupon, the remaining members of the jury venire

1 were excused.)

2 THE COURT: Are there any matters that need to be  
3 addressed before the jury is sworn?

4 MR. HARRIS: Your Honor, for the defense, we have  
5 three pretrial motions that relate to search and seizure  
6 issues, and depending on what comes out in the suppression  
7 hearing perhaps other issues. But I would expect those  
8 matters to take 30 or 40 minutes or more.

9 THE COURT: Okay. Bring the jury in.

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

12 THE COURT: All right. Ladies and gentlemen, I've got  
13 some matters I'm going to need to address before we can  
14 actually begin with the trial of the case. So we're going  
15 to excuse you for lunch. And we'll start with the trial of  
16 this case at 2:30 this afternoon.

17 So you're going to be excused now. I'm going to ask  
18 that you report back to the jury room that you've just been  
19 introduced to. Please report to that jury room not later  
20 than 2:30 this afternoon.

21 Let me caution you as you leave that you're never  
22 permitted to talk about a case that you're involved in  
23 until jury deliberations take place at the trial's  
24 conclusion.

25 So during the lunch recess and at any other time

1 during the trial you can't talk about this case at all.  
2 You're only permitted to do that during jury deliberations.  
3 And, as I say, that won't be until the end of the trial  
4 after all of the evidence has been received and I've  
5 instructed you on the law that's applicable in the case.

6 So you are excused now for lunch. Please report to  
7 your jury room at 2:30 this afternoon. If you're not sure  
8 how to get to that jury room talk with the bailiffs before  
9 you leave. They'll provide you with those instructions.

10 Okay. Have a good lunch. I'll see you at 2:30.

11 (The following takes place outside the presence of the  
12 jury.)

13 (BEST bag marked State's Exhibit No. 1 for  
14 Identification; glass vase marked State's Exhibit No. 2 for  
15 Identification; black tool bag marked State's Exhibit No. 3  
16 for Identification; pipe marked State's Exhibit No. 4 for  
17 Identification; black bag marked State's Exhibit No. 5 for  
18 Identification; blue case marked State's Exhibit No. 6 for  
19 Identification; baggies and two pipes marked State's  
20 Exhibit No. 7 for Identification; bags marked State's  
21 Exhibit No. 8 for Identification; pipe and case marked  
22 State's Exhibit No. 9 for Identification; scales marked  
23 State's Exhibit No. 10 for Identification; scales and roach  
24 pipe marked State's Exhibit No. 11 for Identification; bag  
25 of roaches marked State's Exhibit No. 12 for

1 Identification; bag with marijuana marked State's Exhibit  
2 No. 13 for Identification; pipe marked State's Exhibit No.  
3 14 for Identification.)

4 THE COURT: All right. Mr. Harris, what's your first  
5 motion?

6 MR. HARRIS: May it please the Court, Your Honor.

7 Essentially, we have a search-and-seizure argument to  
8 make in what would amount to be three parts. And so this  
9 would be a motion to suppress the results of what we view  
10 to be an illegal search and seizure relating to the  
11 defendant's property at [REDACTED] Chesnee,  
12 South Carolina.

13 We would move to suppress information and evidence  
14 obtained as a result of an initial intrusion onto private  
15 property as an illegal, warrantless search; and then  
16 further to suppress the results of a search based on a  
17 search warrant that was later obtained using all or part of  
18 the information and evidence that was -- that resulted from  
19 the illegal intrusion onto the private property of the  
20 defendant.

21 Your Honor, factually I think it might be helpful to  
22 gain a little bit of background before going into the  
23 specific legal argument that we seek to make here.

24 So if the Court please, on the date alleged in the  
25 indictment discovery reveals that Deputy Watson of the

1 Spartanburg County Sheriff's Department and Deputy Wilde  
2 who is now with the F.B.I. received what is described as a,  
3 quote, narcotics complaint about [REDACTED]

4 Now, the defendant's private residence and the place  
5 that was ultimately searched is [REDACTED] But  
6 the discovery reveals that a complaint was received by  
7 these members of the sheriff's department about [REDACTED]

8 [REDACTED]

9 The complaint described -- it says the complaint  
10 described the house as the house across from Casey Creek  
11 Baptist Church with a Ford Mustang in the yard. It sat  
12 beside an abandoned trailer.

13 In response to this complaint the deputies went to the  
14 location. It is not clear to me from the discovery where  
15 they went, how long they were there. But they described  
16 what they did was observe from some vantage point a person  
17 coming to and from a garage to a vehicle, and a person  
18 going from a garage into the house, which turned out to be  
19 the private residence of Mr. Norman Bragg, the defendant.

20 Based on seeing these comings and goings -- and that's  
21 all that's described in discovery -- and I guess what was  
22 alleged to be occurring at [REDACTED] even  
23 though it was not [REDACTED] they were surveilling apparently at  
24 that time -- the officers decided to do -- to employ the  
25 so-called knock-and-talk tactic, which I'm given to

1 understand is when articulable suspicion and/or probable  
2 cause does not exist to obtain a warrant officers will  
3 attempt to approach the owner or occupants of a residence  
4 to knock on the door and talk to them for whatever purpose,  
5 investigative purposes, they have.

6 So the initial entry onto the curtilage of Mr. Bragg's  
7 property at [REDACTED] according to my  
8 information was to do this knock-and-talk tactic.

9 It is described then that once entered onto the  
10 curtilage of the property that the officers encountered an  
11 individual later identified as Mr. Hines who had come from  
12 the garage and was apparently approaching a vehicle in the  
13 yard.

14 They asked Mr. Hines if he was the owner of the  
15 property and he said no. They asked Mr. Hines if the owner  
16 of the property was there, and he said that the owner of  
17 the property was in the house. That matched information  
18 that's contained in the incident report where they saw the  
19 second white male go from the garage into the house.

20 Deputy Watson I believe -- one of the deputies -- went  
21 up to the front door, knocked, but nobody came to the door.

22 At that point in time it is described in the discovery  
23 that Deputy Watson then apparently without any more  
24 information or knowledge went around the house to the back  
25 yard or back area of the house where he allegedly saw

1 Mr. Bragg coming out from underneath the house. Mr. Bragg  
2 allegedly stumbled or tripped in some fashion when being  
3 hailed to talk with the officer.

4 The officer alleges -- Officer Watson I believe  
5 alleges -- that he saw something dropped or thrown from  
6 Mr. Bragg's hand. He instructed Mr. Bragg -- and at this  
7 point in time I'm assuming Mr. Bragg was in custody --  
8 instructing Mr. Bragg to go to the front of the house to  
9 talk with the other deputy.

10 The area of the yard where the object was thrown was  
11 searched, and it was a small bag allegedly contain --  
12 allegedly containing marijuana.

13 Mr. Bragg was then questioned in the front yard where  
14 he failed to get -- he was asked to give consent to search  
15 generally, and that consent was denied.

16 It was alleged that they would go and obtain a  
17 warrant, whereupon Mr. Bragg allegedly said, "I have  
18 marijuana," quote, "on the property but I'm not going to  
19 tell you where it is."

20 It is then alleged that -- and it's not clear to me  
21 which officer did this -- but Deputy Wilde apparently  
22 filled out a search warrant application, executed an  
23 affidavit, presented it to a magistrate while Mr. Bragg was  
24 being taken to the jail in custody, obtained a search  
25 warrant for the property, returned with several other

1 deputies to search the property generally. And the search  
2 of the property allegedly yielded from underneath the house  
3 and from inside the house various quantities of  
4 methamphetamine and marijuana. And the methamphetamine  
5 that was found was seized by various officers from various  
6 locations, later tested, and it's alleged is  
7 methamphetamine in slightly less than 28 grams.

8       Your Honor, as a legal matter we take the position and  
9 move to suppress the intrusion into the back yard of the  
10 property, I guess more properly to say an intrusion into  
11 any private area of the property other than the front yard  
12 and the front door -- as going beyond the scope that would  
13 be recognized as an exception to the warrant requirement  
14 for searches of private yards, the curtilage of private  
15 residences, or private residences.

16       Your Honor, the way we understand the Fourth Amendment  
17 analysis in this regard is that absent probable cause, flat  
18 out probable cause -- which could deal with a warrant --  
19 absent exigent circumstances the police may lawfully  
20 without violating the Fourth Amendment go upon private  
21 property in the same manner as any stranger or caller to  
22 the property would. They may go where society recognizes  
23 that it is common and expected that people will come like  
24 the front door.

25       They may knock on the door. And if they can get

1 anybody to come to the door they can attempt to talk with  
2 the occupant of the residence. Of course the owner or  
3 occupant of the residence may refuse to talk with them.

4       However when the -- when there's further intrusion  
5 into more what I would say protected and private areas of  
6 the curtilage of a property happen -- the Fourth Amendment  
7 is then implicated and the analysis then shifts to this is  
8 an area where people -- where the owner of that property  
9 may expect someone will come into -- up the drive into the  
10 front yard of the house or up to the door and to the more  
11 private and protected areas of property which are shielded  
12 from general public view which are in the back of the  
13 property which are -- in general I think society would say  
14 there is more of an expectation of privacy.

15       The intrusion into the back yard by Deputy Watson is  
16 what we believe dooms this knock-and-talk adventure that  
17 the police were on.

18       There was no incriminating evidence that I can tell  
19 from the discovery found as it would relate to any alleged  
20 criminal activity on Mr. Bragg's part until the intrusion  
21 into the back yard.

22       At that point in time we say that the police were not  
23 lawfully in a position to see or do any of the things that  
24 were done, that is to held Mr. Bragg over to see the  
25 throwing of this object, which I would say was -- the

1 incriminating nature of it was not apparent even in a  
2 plain-view analysis.

3 In other words, anything that happened beyond that  
4 point should never have happened had the police respected  
5 the privacy of the property as they should.

6 Your Honor, the cases that -- on this point that I  
7 offer to the Court, there's one state court case, State vs.  
8 Wright, and then two United States Supreme Court decisions  
9 Kyllo -- and I hope I am pronouncing that right. That's  
10 the thermal imaging case from 2001 -- Kyllo vs. United  
11 States -- and probably the leading case in the area, Katz  
12 vs. United States. And, Your Honor, I'd offer those cases  
13 at this time.

14 Your Honor, in addition I'd like to make it clear that  
15 we make this motion and this argument pursuant to the  
16 general authority of both the Fourth Amendment to the  
17 United States Constitution and Article I, Section 10, of  
18 the Constitution of the State of South Carolina dealing  
19 with searches and seizures and invasions of privacy.

20 And may I? And I'll provide copies of these to the  
21 solicitor unless he already --

22 MR. HUNTER: I know what Katz and Kyllo say.

23 MR. HARRIS: And that's the -- that's the first part  
24 of our motion to suppress, Your Honor.

25 And of course then we go further -- I'd say very

1 briefly or elaborate as the Court wishes -- that a search  
2 warrant was -- the questioning of the defendant was -- was  
3 done pursuant to what occurred in the back yard.

4 We say that shouldn't ever have happened. Mr. Bragg  
5 himself should never have been seized or taken into custody  
6 and have been subject to custodial interrogation.

7 That further the information that was obtained after  
8 the illegal intrusion into the back yard yielded the  
9 information which became the basis of the search-warrant  
10 affidavit to supply probable cause for the general search  
11 of the property.

12 So we would assert essentially I guess a  
13 fruit-of-the-poisonous-tree type -- apply the  
14 fruit-of-the-poisonous-tree type analysis to those parts  
15 that yielded -- yielded and totaled the final body of  
16 evidence that goes to support the indictment in the case  
17 Thank you, Your Honor.

18 THE COURT: Mr. Hunter.

19 MR. HUNTER: Actually, I'm sorry.

20 Your Honor, State vs. Wright is actually a  
21 dog-fighting case out of Clarendon County. In that case  
22 the circuit court decided to suppress the evidence.  
23 However the Supreme Court reversed the facts.

24 On multiple occasions -- you'll see the language -- a  
25 policeman may lawfully go to a person's home to interview

1 him, obviously go up to the door. He is privileged to  
2 enter without prior -- enter private property to  
3 investigate a complaint or report of an ongoing crime.

4 I think the real question as Ricky stated is the  
5 entering the back yard of the residence. And as far as  
6 that is concerned, Your Honor, I have three cases for you.

7 Your Honor, the first case is Alvarez vs. Montgomery  
8 County. It's a 1998 Fourth Circuit opinion arising out of  
9 Maryland.

10 In this case officers responded to a house on a 9-1-1  
11 called based on underage drinking. When they approached  
12 the house a sign in front of the house told them there was  
13 a party in the back. They went to the back yard where they  
14 issued a citation for the underage drinking.

15 The case is actually a 1983 action for violation of  
16 the Fourth Amendment rights. The district court granted  
17 summary judgment for the officers, and the fourth Amendment  
18 affirmed holding that the Fourth Amendment does not  
19 prohibit police from attempting to speak with a homeowner  
20 from entering the back yard when circumstances indicated  
21 they might find them there.

22 It is our belief that should Mr. Deputy Watson testify  
23 today he will say that he approached the front door,  
24 knocked on it, not loud, not like a search warrant, just  
25 knocked on it like any normal stranger would.

1        At that time he heard a door close. Believing that  
2 the homeowner who he had found out from Mr. Hines standing  
3 just ten feet away talking Deputy Wilde at the time was the  
4 one who entered the house. He heard the door shut.  
5 Thinking that the homeowner had gone out of the back of the  
6 door he went around to find the homeowner and actually  
7 finds him coming out from under the house.

8        The fact that he's coming out from under the house  
9 actually corroborates the fact of what he's going to  
10 testify that he actually heard a door shut while standing  
11 at the front door, Your Honor.

12        According to Alvarez and also the two other cases --  
13 it's going to be U.S. vs. Moore, the Fourth Circuit case,  
14 actually out of Greenville, and U.S. vs. Roberts, a  
15 Fourth Circuit case. Those are both pretty new, 2011 and  
16 2012. But they both cite this Alvarez case.

17        And the entry into in the back yard in these cases  
18 need only be reasonable. In the Moore case -- the Moore  
19 case is actually a 9-1-1 call for a domestic disturbance.  
20 The officer did not approach the front door, instead  
21 approached from the side.

22        And when he approached the house he could see in the  
23 window some crack cocaine and a gun. That search or the  
24 search warrant resulting from that warrantless entry onto  
25 the property was deemed valid. And the evidence should not

1 suppressed.

2 And also in Roberts officers were watching the house  
3 and observed that the back door was where people made  
4 entry. So reasonable for the officers to go to the back  
5 door upon a knock-and-talk.

6 This officer first went to the front door because  
7 that's where it's reasonable for him to go. When he  
8 knocked on the door he heard the back door shut.

9 At that point he thought that the homeowner had gone  
10 into the house. He heard the back door shut. He went  
11 around and actually found the homeowner underneath the  
12 house, which leads credence to his testimony that he would  
13 say he heard the back door shut, because obviously he can't  
14 underneath the house without going through the back door.

15 He'll testify he did not come back through the front  
16 door to get under the house. So we believe it was  
17 reasonable for him to enter the back door to speak to the  
18 homeowner, and as such the search warrant and probable  
19 cause, the marijuana found in plain view, as well as the  
20 statement given to Deputy Wilder that there was more  
21 marijuana on the property would grant him probable cause to  
22 get the search warrant, and the search warrant would be  
23 valid.

24 MR. HARRIS: Your Honor, may I respond just very  
25 briefly?

1 I have to admit I'm not familiar with the  
2 Fourth Circuit cases that the solicitor has presented, but  
3 just a very quick scan of them reveals I think the really  
4 heart of the problem with the state's case against  
5 Mr. Bragg on this search.

6 In these Fourth Circuit cases all of them were founded  
7 on facts that would suggest that law enforcement had reason  
8 to believe that any member of the public could go upon  
9 these areas of the property.

10 Like, for instance, people coming -- you know, going  
11 into the back door, other instances where -- where there  
12 was -- could be said to be no reasonable expectation of  
13 privacy in that area of the private yard, the police having  
14 probable cause to support going further.

15 But not so here, at least from everything that the  
16 discovery has yielded. I don't know what they might say on  
17 the stand if they choose to do that.

18 But, for instance, this knock on the door or this --  
19 hear this door opening or closing or whatever it was, it's  
20 not in the discovery. I don't know if that happened or  
21 not. But even if it did, it doesn't matter in this case.

22 The whole problem with the state's case is that the  
23 police had little or no -- and I would say closer to no --  
24 incriminating evidence to go on here to justify an entry  
25 onto the property and to justify the further intrusion.

1           They had -- they had supposedly received a complaint  
2 from a tipster or an informant. We don't know. The  
3 veracity of this person is not evident in the discovery.  
4 But they had received a tip about activity that supposedly  
5 was happening at [REDACTED]

6           But some way -- not explained at least thus far --  
7 surveillance became tied to [REDACTED] But  
8 what does the surveillance yield? Nothing of an  
9 incriminating nature -- one white male walking from a  
10 garage to a vehicle that was parked in the yard, another  
11 white male walking from the garage into what turned out to  
12 be his own house, and nothing else.

13           They questioned the first white male who was going to  
14 the car, but he says nothing incriminating, nothing at all,  
15 only that he's not the owner of the house and the owner of  
16 the house is in the house. Well, the owner of a house has  
17 a right to be in his own house.

18           Knocked on the front door, yields nothing other than  
19 now perhaps an argument to hear a door opening and closing.  
20 Well, the owner of the house has a right to move around in  
21 his own house.

22           Actually the owner of a house has a right to in this  
23 country we think come and go as he pleases. The owner of  
24 that house can leave the house if he wants to. There's  
25 nothing incriminating about that.

1 The assistant solicitor points out there was this sort  
2 of gentle knock at the door, nothing like would maybe occur  
3 in the announcement of a search warrant.

4 So therefore by their own statement of the facts the  
5 owner inside the house would have no way to know who's  
6 knocking on his door, would have no way to know it was the  
7 police and they want to talk to him or anything like that,  
8 by their own argument just now.

9 So there's nothing that would permit Deputy Watson  
10 from further intruding into the more private and protected  
11 parts of the property. That's the whole problem the state  
12 has here. They don't have any of the circumstances that  
13 existed in the Fourth Circuit cases.

14 Deputy Watson just wasn't going to give it up, is what  
15 happened. He didn't care what kind of intrusion he had to  
16 make. He wasn't going to leave there until he tried to  
17 make contact with the owner of the property.

18 Well, he didn't have a right to do that. He may have  
19 wanted to do it badly, but he didn't -- but objectively he  
20 didn't have a right to go that far. That's our argument.

21 THE COURT: Okay. Do you intend to proffer some  
22 testimony?

23 MR. HUNTER: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. HUNTER: The state would call Deputy Watson.

Gary Watson (In-camera)  
Direct examination by Mr. Hunter

1 GARY WATSON, having been first  
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. HUNTER

4 Q Would you please state your name for the Court for the  
5 record?

6 A Gary Watson.

7 Q And how are you currently employed?

8 A Spartanburg County Sheriff's Office. I work in the  
9 training division at the jail.

10 Q How long have you been employed by the sheriff's  
11 office?

12 A Since 1998 for Spartanburg County.

13 Q And what were your duties during that time -- during,  
14 I guess, that 14 years.

15 A For the first eight years I worked at the detention  
16 center. I worked in the pods and then worked property and  
17 I.D.

18 Also, after that I worked uniform patrol, and then the  
19 regional support unit. That almost entire time of 13 years  
20 I have worked with the county SWAT team where now I am the  
21 current team leader.

22 Q And prior to the sheriff's office how were you  
23 employed?

24 A I was enlisted in the Marine Corps where I was  
25 honorably discharged in '98.

Gary Watson (In-camera)  
Direct examination by Mr. Hunter

1 Q Okay. For how long?

2 A Four years.

3 Q And were you actively deployed during that time?

4 A Yes. I did two west packs.

5 Q Okay. Specifically, on this date of November 18th of  
6 2009, how did you come out to [REDACTED] in Chesnee?

7 A We received a complaint of possible drug activity, so  
8 we went to sit and watch and observe. Not a lot was going  
9 on.

10 We sat for a while, and the gentleman pulled up in a  
11 truck. Still not a lot of traffic was going on to suggest  
12 this, so that any kind of activity was going there. So we  
13 were going to talk to the owner and hopefully clear the  
14 complaint and just be about our business.

15 Q Do you know who the complaint came from?

16 A I do not.

17 Q Who did you actually receive the complaint from?

18 A Lieutenant Gabriel.

19 Q All right. When you went out to this location did you  
20 find a house at [REDACTED]

21 A It was an abandoned trailer.

22 Q Okay. With that complaint -- what did the complaint  
23 state as far as the house or what was around the house?

24 A There was a house across from Casey Creek Baptist  
25 Church, had a Ford Mustang in it with a garage to the side

Gary Watson (In-camera)  
Direct examination by Mr. Hunter

1 of it. And that's about all I can recall. And that was  
2 the only house there that was matching it.

3 Q Do you remember if the complaint stated a color?

4 A Blue.

5 Q Okay. When you pulled up to this Casey Creek  
6 residence, what residence actually matched the complaint?

7 A [REDACTED]

8 Q And that was the color of the garage, the house, the  
9 car?

10 A Yes, the house itself. The porch was like a dark  
11 blue.

12 Q Okay. When did you first arrive to watch the house?

13 A I don't recall what time. It was sometime in the  
14 afternoon, maybe part of the evening.

15 Q Okay. What did you observe when you first started  
16 surveilling the house?

17 A Not a lot of activity. Normal activity. Just a  
18 gentleman going back and forth from the garage to the  
19 house.

20 Q Well, before -- before that was there anybody at the  
21 house before Mr. Hines pulled up?

22 A Not that I recall.

23 Q Okay. And Mr. Hines was driving the brown truck?

24 A Yes, sir.

25 Q Once he pulled up what did you observe?

Gary Watson (In-camera)  
Direct examination by Mr. Hunter

1 A He just came out, spoke with another gentleman and  
2 they went to the garage. After that one of the gentlemen  
3 had came out and went to the front door of the house.

4 Q Okay. And is that gentleman Mr. Bragg?

5 A Yes, Mr. Bragg.

6 Q Okay. At that point what did you and Deputy Wilde  
7 decide to do?

8 A We just decided to go talk to him, was going to see,  
9 you know, why anybody would make this complaint about him.  
10 And if there was nothing to it, just be about our business,  
11 clear the complaint.

12 Q And when you approached the house Mr. Bragg had  
13 already gone inside?

14 A He did.

15 Q Okay. Did any time Mr. Hines tell you to leave the  
16 property?

17 A No.

18 Q What kind of car were you in?

19 A A black Crown Vic.

20 Q Okay. And how were you addressed at the time?

21 A In uniform.

22 Q And how was Deputy Wilde addressed?

23 A Also in uniform.

24 Q Okay. So you were clearly established as police  
25 officers.

Gary Watson (In-camera)  
Direct examination by Mr. Hunter

1 A Yes, sir.

2 Q Where did Deputy Wilde approach?

3 A Just the driveway in front of the house.

4 Q Okay. And how far between the road and the driveway  
5 and the garage -- how much of a distance is there?

6 A Not very far, maybe from here to the door.

7 Q Okay. And from that distance, from the actual garage  
8 to the front porch where the front door is, what's the  
9 distance?

10 A Not very far at all, maybe 13 feet, 15 feet.

11 Q Okay, so.

12 A Guesstimation.

13 Q And who was speaking with Mr. Hines?

14 A Deputy Wilde.

15 Q Okay. Could you hear what they were speaking about?

16 A Well, Deputy Wilde asked Mr. Hines if he was the owner  
17 of the house, and he said, no, he wasn't, that he had went  
18 inside.

19 Q Okay. At that point what did you do?

20 A I went and knocked on the door to talk to him.

21 Q And how did you knock on the door?

22 A Like I'd knock on any house. I didn't really announce  
23 because, you know, really I just wanted to talk to the guy.  
24 Sounded like I heard somebody went out the back. So I was  
25 like, okay, around back because I didn't want to delay any

Gary Watson (In-camera)  
Direct examination by Mr. Hunter

1 time.

2 Q Okay. So you -- again, just repeat what you said.

3 A When I walked to the front door I knocked on the door,  
4 just wanted to talk to the gentleman. Sounded like  
5 somebody went out the back. So I just was going to poke my  
6 head around the side and see if anybody was back there. If  
7 not, really nothing I can do.

8 Q Okay. And when you went around to the back what route  
9 did you take?

10 A The right-hand side.

11 Q Okay. Briefly describe the area of how you went. The  
12 right-hand side, that would be the garage side?

13 A Right side of the garage.

14 Q Okay.

15 A It was a little cluttered, but it wasn't barred.  
16 There wasn't a fence blocking the way. And so I just poked  
17 my head around the side, and that's where I saw a gentleman  
18 coming out from under a pretty big hole on the inside or on  
19 the bottom side of the house.

20 Q If you're driving down [REDACTED] can you  
21 actually see the area where you walked?

22 A From which way, from 221?

23 Q Coming from 221.

24 A It would be on the right-hand side of the hall [sic].  
25 Yes, you can see it from the road.

Gary Watson (In-camera)  
Direct examination by Mr. Hunter

1 Q All right. So the area where you actually went you  
2 can see from the road.

3 A Yes.

4 Q Okay. And when he crawled outta the house where --  
5 where did he crawl out of?

6 A It was the back -- well, if you're looking at it, it's  
7 the back left-hand corner. Does that make sense?

8 Q If you're looking at the garage where did he climb  
9 out?

10 A If I'm looking directly at the garage?

11 Q Correct. From the road.

12 A From the roadway. It'll be the, yeah, back left  
13 corner of the house.

14 Q The back left. Back behind the garage or the other  
15 side?

16 A Behind the garage, not, you know, in front.

17 Q Okay. So you could view him crawling out from the  
18 side of the house.

19 A Yeah, just from sticking my head to the side. I mean,  
20 it was cluttered, but, you know, usually you see motion,  
21 you know, and see somebody coming out from under the house.

22 Q Okay. And when he -- at this point because of  
23 Mr. Hines' statement you believed he to be the homeowner at  
24 this [REDACTED]

25 A Yes.

Gary Watson (In-camera)  
Direct examination by Mr. Hunter

- 1 Q How did you approach him?
- 2 A I just asked him if I could talk to him.
- 3 Q Okay. In what type of voice?
- 4 A I said, "Hey, buddy, can I talk to you?"
- 5 Q Did you have your handcuffs out or --
- 6 A No, no, not at all. I had no reason to.
- 7 Q Okay. And if he had told you at that point to leave
- 8 his property what would you have done?
- 9 A I would have had no choice but to leave.
- 10 Q Okay. When he climbed out from under the house did
- 11 you notice him doing anything?
- 12 A Well, he started walking towards me. And when he did
- 13 he kinda recognized who I was, I guess. And I can't
- 14 speculate that. But he kinda took a step and dropped
- 15 something down on the ground.
- 16 Q Let me show you what's been premarked State's
- 17 Exhibit 12. Do you recognize that?
- 18 A Yes, sir.
- 19 Q And how do you recognize that?
- 20 A That would be the baggie that Mr. Bragg threw down.
- 21 Q In 2009 how long had you been a law enforcement
- 22 officer?
- 23 A Eleven years.
- 24 Q What type of training did you receive to become a law
- 25 enforcement officer?

Gary Watson (In-camera)  
Direct examination by Mr. Hunter

1 A I've been to the basic jail academy. I've been to  
2 basic law. I hold a dual certification in that now. I've  
3 been to many classes -- G.T.I., SWAT schools, done a lot of  
4 search warrants dealing with narcotics.

5 Q Are you currently on the SWAT team?

6 A I am.

7 Q Okay. And what is your position on the SWAT team?

8 A Team lead.

9 Q Okay. And during your training and experience as a  
10 law enforcement officer have you had the opportunity to  
11 come across marijuana?

12 A Yes.

13 Q Approximately how many times?

14 A Countless.

15 Q Okay. When he threw that bag down was it immediately  
16 apparent what it appeared to be?

17 A Yes.

18 Q Okay. What did it appear to be to you?

19 A Looked like just a bag of roaches and some buds.

20 Q At that point what did you do with Mr. -- did you  
21 place him under arrest or --

22 A No. I actually asked him if he'd just walk around and  
23 talk to Deputy Wilde.

24 Q Okay. And what did you do?

25 A I went and picked up the bag.

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 Q Okay. Was he in your sight the whole time?

2 A Just for me to turn around and pick up the bag. That  
3 was the only moment he was out of my sight.

4 Q Okay. But had he made it up to Deputy Wilde by the  
5 time you turned around?

6 A No.

7 Q Okay. And what did you do with the bag?

8 A I approached behind him.

9 Q Okay. And did you tell Deputy Wilde what you had  
10 found?

11 A Not just yet.

12 Q Okay. But at this time Deputy Wilde started talking  
13 to the defendant?

14 A Right. He just started talking to him.

15 Q Please answer any questions Mr. Harris may have for  
16 you.

17 A Absolutely.

18 CROSS-EXAMINATION

19 BY MR. HARRIS

20 Q Deputy, do I understand your testimony to be that this  
21 complaint that you had received -- actually you had  
22 received a complaint from another deputy.

23 A From Lieutenant Gabriel.

24 Q From Lieutenant Gabriel.

25 A Yes.

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 Q All right. He is with -- he was at that time with the  
2 Spartanburg County Sheriff's Department?

3 A Yes, sir.

4 Q Okay. So you didn't receive a complaint from a  
5 citizen at all.

6 A No.

7 Q To your knowledge was the extent of Deputy Wilde's --  
8 then Deputy Wilde's -- knowledge about a complaint that was  
9 passed on through you?

10 A Well, we both got it from Lieutenant Gabriel.

11 Q Okay. So Lieutenant Gabriel is saying, hey, there's a  
12 complaint.

13 A He received a complaint from a citizen. That's what  
14 was conveyed to us.

15 Q You had no, no clue who the complaint came from to  
16 Lieutenant Gabriel.

17 A No, sir.

18 Q What that person's basis of knowledge was.

19 A No, sir.

20 Q Or anything else.

21 A No, sir.

22 Q Okay. But it was very clear that the complaint passed  
23 on to you by Lieutenant Gabriel was of an allegation that  
24 methamphetamine was being cooked at a specific location,  
25 [REDACTED] is that correct?

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 A Yes, sir.

2 Q And [REDACTED] is an actual street address,  
3 is it not?

4 A It is.

5 Q And it was very plain that was whatever complaint was  
6 being tied to that street address.

7 A Well, it didn't match the descriptions on the  
8 complaint.

9 Q Well, I understand.

10 A Okay.

11 Q My question is it was very clear that the complaint  
12 was about a specific physical address, [REDACTED]  
13 Road.

14 A Yes.

15 Q All right. So you and Deputy Wilde went on  
16 November 18th of 2009 to somewhere near [REDACTED]  
17 Road.

18 A Yes, sir.

19 Q Okay. And you went there for the purpose of basically  
20 just seeing what you could see.

21 A Yes, sir.

22 Q All right. And what you went and what you saw  
23 initially was what you have described as an abandoned  
24 trailer.

25 A Yes, sir.

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 Q Mobile home.

2 A Right.

3 Q Okay. Your knowledge would be that people cook  
4 methamphetamine in some of the best places and some of the  
5 worst places.

6 A It can be cooked anywhere.

7 Q So your attention then focused on [REDACTED]  
8 Road, which was a private home, is that correct?

9 A Which matched the description, yes. Only made common  
10 sense.

11 Q So, well, the complaint, at least in regard to the  
12 physical address, was just wrong.

13 A Yes. Well, I mean, it didn't match.

14 Q So that didn't make you think that the complaint might  
15 be wrong or somebody might be making it up?

16 A That's why I sat and observed.

17 Q And you didn't see anything at all.

18 A No, sir.

19 Q You said you saw very little of anything.

20 A Very little activity.

21 Q So you saw very little of anything to corroborate this  
22 erroneous complaint.

23 A Yes, sir.

24 Q But undeterred you figured since you had taken the  
25 trouble to go out there you'd just go and employ the

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

- 1 knock-and-talk tactic.
- 2 A Well, he's a citizen. I just thought I'd talk to him.
- 3 Q Just as -- as a guy, right?
- 4 A Just talk to him.
- 5 Q Yeah. Okay. But at that -- to be clear, at that
- 6 point you had nothing to corroborate the complaint.
- 7 A Right.
- 8 Q So you went on the private property of Mr. Bragg for
- 9 the purpose of trying to make contact with him.
- 10 A Yes.
- 11 Q Is that correct? And the locale out there is that
- 12 this is a 1-story, composite-shingle private home with a
- 13 driveway leading up to the house, is that correct?
- 14 A Can you define composite shingle -- looked like just a
- 15 trailer?
- 16 Q Well, a shingle -- it wasn't a mobile home.
- 17 A Okay. Like a stick-built house?
- 18 Q It was -- yes. It was a structure, is that correct?
- 19 A It is. It's a house.
- 20 Q All right. And it's very apparent somebody -- that
- 21 that was a private home.
- 22 A Yeah. It was somebody's house.
- 23 Q And that was private property.
- 24 A Right.
- 25 Q Did you see a sign on a -- there's a large spreading

Gary Watson (In-camera)  
Cross-examination by Mr. Harris.

1 tree in the front, in front of the front porch. Do you  
2 remember that?

3 A Yes.

4 Q All right. And that -- do you recall seeing a  
5 no-trespass sign on the large spreading tree?

6 A No, sir.

7 Q You don't? Do you remember seeing a no-trespass sign  
8 on the front porch?

9 A No, sir. It's just a Confederate flag hanging from  
10 the front porch.

11 Q Okay. So when you walk up the very front of the  
12 house, the -- if you imagine the jury box here as being the  
13 front of the house, okay, when you're back across the  
14 street, say at the church, Casey Creek Church, you see the  
15 front of the house that fronts roughly [REDACTED] is  
16 that correct?

17 A Right.

18 Q And the driveway comes up. And then there is a  
19 stepped-up sort of length-wise porch that runs at least  
20 partially across the front of the house, is that right?

21 A Yes. It has the -- the walls around it kind of like  
22 the jury box, and then an overhang.

23 Q And is it correct that you initially approached and  
24 you made contact with this Mr. Hines? But the only thing  
25 that that contact yielded was that the owner of the house

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 had gone inside the house.

2 A Yes.

3 Q Of course you'd already seen somebody -- seen a white  
4 male go in the front door --

5 A Yes, sir.

6 Q -- before you ever entered onto the property at all.

7 A Yes, sir.

8 Q So what turned out to be -- at least you would have  
9 thought would have been -- the owner of the house had gone  
10 in his own front door and closed it, right?

11 A I didn't know that. That could have been a visitor.

12 Q Well, it was closed.

13 A No. I mean, it could have been the visitor that went  
14 inside. The owner come out so I didn't know --

15 Q But you later found out the owner of the house had  
16 gone in the house --

17 A Yes.

18 Q -- in his own front door --

19 A Yes, sir.

20 Q -- before you and Deputy Wilde ever entered onto his  
21 property.

22 A Yes, sir.

23 Q So then you come up in the driveway, and you encounter  
24 Mr. Hines and have that discussion.

25 A Yes, sir.

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 Q Then you personally go up onto the front porch and  
2 knock on the front door.

3 A Yes, sir.

4 Q The front door was closed, wasn't it?

5 A I don't recall.

6 Q You don't remember?

7 A The glass door was closed.

8 Q Okay. It wasn't open for you to come in.

9 A No.

10 Q All right. Now --

11 A I didn't have any reason to go in.

12 Q Now, the -- well, I -- certainly not. The -- your  
13 incident report describes as the time of day when you  
14 arrived, as being 1836 hours, which is the 6:36 p.m.

15 A Yes, sir.

16 Q And so you believe it was somewhere around 6:36 p.m.  
17 when these things are happening --

18 A Yes, sir.

19 Q -- that you're testifying about.

20 A Yes, sir.

21 Q And that's November 18th of 2009.

22 A It is.

23 Q So it was dark.

24 A It was getting there, yeah. But it had already turned  
25 on the darker side.

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

- 1 Q 6:36 p.m. on November 18th, a week before  
2 Thanksgiving.
- 3 A Yeah. It was dark.
- 4 Q Okay. And there were no lights on -- there were no  
5 lights on.
- 6 A Floodlights?
- 7 Q Floodlights, porch lights, anything.
- 8 A Floodlights.
- 9 Q Floodlights. Where were the floodlights?
- 10 A Garage. Oh, where it shining? Just out in the front  
11 of the garage.
- 12 Q out in front of the garage. Okay. And so you knocked  
13 on the door, and nobody comes to the door.
- 14 A Correct. It sound like somebody went out the back  
15 door.
- 16 Q Okay. And so you walk around -- imagine the jury box  
17 again --
- 18 A Yes, sir.
- 19 Q -- the right-hand side of the property, is that right?  
20 The house.
- 21 A Yes, sir.
- 22 Q Around the corner of the house to the back of the  
23 house, around the back of the house and you walked around  
24 to --
- 25 A No, sir.

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 Q When you said you saw Mr. Bragg --

2 A I poked my head around to the side.

3 Q -- coming from the left-hand corner, right?

4 A I can -- I can see depth. I can see.

5 Q Well, my question is --

6 A Oh, I'm sorry.

7 Q -- you said you saw Mr. Bragg coming from the opposite  
8 corner.

9 A Well --

10 Q Left-hand corner of the house.

11 A If I'm looking at the front of the house, back  
12 left-hand corner. If you look --

13 Q Right.

14 A If you look at the front of the house it would be  
15 labeled, the front of the house as side one; left-hand side  
16 of the house, side two; very back of the house, side three;  
17 right-hand side of the house, side four. He was on the  
18 three-hand side which would be the back towards the left,  
19 which would be towards the two-three corner if that makes  
20 sense.

21 Q But you went around what you're calling the fourth  
22 side.

23 A Yes, sir.

24 Q You went around the right-hand side of the house.

25 A But I didn't penetrate deep into the yard. I didn't

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

- 1 have to.
- 2 Q And around the corner of the back of the house,
- 3 correct?
- 4 A I didn't walk down there. I didn't approach all the
- 5 way. I just observed.
- 6 Q Well, you went -- let me see if I can understand your
- 7 report.
- 8 A Maybe I'm not getting the question. I'm sorry.
- 9 Q You stated that, "I knocked on the front door and
- 10 there was no answer," correct?
- 11 A Right.
- 12 Q "I then went around the side of the house to look in
- 13 the back to see if I could locate the owner."
- 14 A Right.
- 15 Q Your words -- your words?
- 16 A Yes, sir. They are.
- 17 Q All right. "I came around the back where I saw
- 18 Mr. Bragg coming from under his house." Your words.
- 19 A Okay. Yes, they are my words.
- 20 Q Okay. So you came around the back of the house in
- 21 order to see Mr. Bragg.
- 22 A Well, where are you trying to put me in relations to
- 23 as in around the back?
- 24 Q Well, you're in the back of the house, right?
- 25 A Pretty big yard, sir. I was around that side of the

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 house. I looked in-depth.

2 Q You weren't invited to go back there, were you?

3 A No, I wasn't.

4 Q And up until that time you had observed nothing to  
5 corroborate the original complaint, correct?

6 A Which is why I wanted to clear the complaint as  
7 unfound.

8 Q You wanted to go further and further, although you had  
9 nothing to go on, correct?

10 A After clearing the complaint.

11 Q Well, you had obtained no information up until that  
12 point in time that would have corroborated the complaint.

13 A Correct.

14 MR. HARRIS: Your Honor, that would be the  
15 cross-examination other than one other question as would  
16 relate to this first part -- of course we're talking also  
17 about obtaining information to support the search warrant,  
18 and the search warrant.

19 I don't know how the assistant solicitor did not  
20 direct examination in this in-camera hearing -- didn't  
21 extend other than just to -- I think touching on the plain  
22 view. I don't know if you want me to cover it all.

23 THE COURT: Well, you --

24 MR. HARRIS: Well, I --

25 THE COURT: I don't intend to, you know, have the

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 witness step done and step back up.

2 MR. HARRIS: Okay.

3 THE COURT: I assume that Mr. Hunter's through with  
4 the witness.

5 So if you've got any questions you want to ask him,  
6 feel free to do so.

7 MR. HARRIS: Yes, sir. I just wanted to make sure.

8 BY MR. HARRIS

9 Q All right. So you're back there, and you see  
10 Mr. Bragg coming from under his house, correct?

11 A Yes, sir.

12 Q All right. Of course he has a right to be under his  
13 house, wouldn't you agree?

14 A Absolutely.

15 Q And when you're around the back of the house, of  
16 course it's dark, is that right?

17 A Yes, sir.

18 Q You say that you spoke to Mr. Bragg. "I then spoke to  
19 him and asked him if I could talk to him," is that correct?

20 A I did. Your words.

21 Q "He began to walk towards me and then appeared to  
22 stumble. As he did I observed him throw down a plastic bag  
23 under a table."

24 A Yes, sir.

25 Q Correct? So at the time you say you saw a plastic bag

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 being thrown, that's all you could see, a plastic bag, is  
2 that correct?

3 A Yes, sir.

4 Q You couldn't see the contents of that bag.

5 A Until I stepped up and looked at it, that's correct.

6 Q Until you searched for it.

7 A I didn't search. I just looked.

8 Q well, until you went and looked and picked it up and  
9 looked at it.

10 A No. I knew what it was when it was laying on the  
11 ground. Then I recovered it.

12 Q But you didn't know what it was when it came out of  
13 his hand, correct?

14 A when people throw things down don't you look? I'm  
15 sorry. I can't question ask questions.

16 Q I don't answer the question.

17 A I apologize.

18 Q Thank you. You didn't know what the object was, what  
19 was in the bag when it came out of his hand.

20 A Correct. I could not conclusively identify what it  
21 was.

22 Q You could only know what was in the bag and the  
23 incriminating nature of it when you went further, looked,  
24 inspected closer to see what was there, is that correct?

25 A Yes, sir.

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 Q So the incriminating nature of the object was,  
2 contrary to what the solicitor asked you, not readily and  
3 immediately apparent.

4 A Just to look at it?

5 Q When it came out of his hand you didn't know what it  
6 was.

7 A You're right.

8 Q Only a further search of the property would reveal  
9 that.

10 A Could you define search for me, sir?

11 Q Looking to see what you could see.

12 A Manipulating or -- manipulating the object? I  
13 don't -- is that within the scope?

14 Q Looking, trying, trying to go -- take further actions  
15 to find out what it was, because you didn't know what it  
16 was.

17 A Not to take half a step forward and look at it.

18 Q Yeah.

19 A That's a search?

20 Q Well, I mean I --

21 A I mean, I'm just asking. I want to make sure I answer  
22 the correct -- question correctly.

23 Q Is this -- my point is you went back to the back of  
24 the house to talk to the owner, to make contact with the  
25 owner of the house, right?

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

1 A Yes.

2 Q And you made contact with him, but you told him to go  
3 around to the front of the house. You were onto something  
4 else at that point in time.

5 A Well, I asked him if he could step around to the  
6 front. He was very cooperative, very polite.

7 Q Now, as a result of that interaction with the owner in  
8 the back of the house you said there was a table that this  
9 object wound up being under.

10 A Well, he had a lot of stuff in the back yard.

11 Q Okay. All right. In the back yard. And there was a  
12 table in the back yard.

13 A Yes.

14 Q Okay. And so you had to be in the back yard to go and  
15 look under that table.

16 A As he stumbled I stepped forward.

17 Q Okay. Now, is it correct that Mr. Bragg ultimately  
18 was arrested on his property?

19 A He was.

20 Q And he was arrested for what offense?

21 A Drug paraphernalia and simple possession of marijuana.

22 Q Okay. And is it correct that based on the evidence  
23 that you started finding when you went into the back of the  
24 house either you or Deputy Wilde or both of you ultimately  
25 sought and obtained a search warrant for the premises?

Gary Watson (In-camera)  
Cross-examination by Mr. Harris

- 1 A From the back of the house, no, sir. He actually was  
2 arrested when he found the pipe in his front shirt pocket  
3 after he consented to a search.
- 4 Q Well, I'm saying to you that having -- finding what  
5 was in the back yard, having Mr. Bragg go to the front,  
6 having him questioned, searching him was all part of what  
7 started in the back yard.
- 8 A Actually started from just the knock-and-talk. We  
9 just wanted to talk to him.
- 10 Q Okay. And it was all of that information that  
11 eventually wound up in a search-warrant affidavit --
- 12 A Yes, sir.
- 13 Q -- for the house.
- 14 A Yes, sir.
- 15 Q Who made the application for the search warrant?
- 16 A The affidavit for the search warrant --
- 17 Q Yes.
- 18 A -- was Deputy Wilde.
- 19 Q Did you have anything to do with it whatsoever?
- 20 A I had to write the report.
- 21 Q Okay. And you supplied information to Deputy Wilde  
22 that eventually wound up in the application for the search  
23 warrant.
- 24 A Yes.
- 25 Q Thank you. I believe that's all I have for you.

Gary Watson (In-camera)  
Redirect examination by Mr. Hunter

1 MR. HUNTER: Your Honor, if I may briefly.

2 REDIRECT EXAMINATION

3 BY MR. HUNTER

4 Q Just to clear up a little about that tip. [REDACTED]

5 [REDACTED] is an abandoned mobile home?

6 A Yes.

7 Q Okay. And the other parts other than the physical  
8 address, every other part of the tip was corroborated at

9 [REDACTED]

10 A Yes.

11 Q Okay. And after you went and knocked on the front  
12 door and heard what you call as the door shutting and  
13 someone going out the back -- let's say -- let's say you're  
14 sitting -- you're sitting at the house and I'm you. I've  
15 knocked on the front door here. So you've walked around  
16 the garage here going to -- where were you heading?

17 A I was just going to head around the side of the house  
18 and look in the back yard and see if somebody come out the  
19 back door.

20 Q Okay. Were you going to go to the back door?

21 A No.

22 Q Where were you when you spotted Mr. -- if the garage  
23 is here and I'm walking around the right side of the house,  
24 where were you located when you spotted --

25 A About right in here.

Gary Watson (In-camera)  
Redirect examination by Mr. Hunter

1 Q Okay. And where was --

2 A I actually stepped around the corner.

3 Q Okay. So you're actually right at the corner of the  
4 back yard and the side yard.

5 A Yeah, because it was a narrow alleyway out to the --  
6 officer safety is I have to have an avenue of escape.

7 Q Okay. And what -- what did you see -- Mr. Bragg?  
8 Where did you see Mr. Bragg?

9 A He was coming out from under the house.

10 Q Okay. On the opposite side?

11 A On this side.

12 Q How far from you?

13 A Maybe 50 feet, 60 feet.

14 Q Okay. How far from you was he when you saw him throw  
15 down the baggie?

16 A He was maybe 13 or 15 feet.

17 Q So he was very close to you at this point.

18 A Yeah. He -- he had gotten close to me.

19 Q Okay. It was dark outside. Did you have anything to  
20 help you see?

21 A Flashlight.

22 Q Okay. And when he threw down the bag, did you  
23 actually go 2 inches up to it and look at it or --

24 A No. I shined my light on it and looked at it.

25 Q Okay. From where you were standing.

Gary Watson (In-camera)  
Recross-examination by Mr. Harris

1 A Well, I took about a half a step forward. I mean,  
2 it's --

3 Q And from that half step you were able to tell or at  
4 least with reasonable certainty what it was.

5 A Yes, sir.

6 Q Okay. And at that point, again, you asked him to come  
7 back around the house?

8 A Well, I just asked him if I could talk to him, and he  
9 said yeah. And he came around. And I said, well, if you  
10 don't mind stepping around front with my partner there.

11 Q Okay. And this is after you've seen -- after you've  
12 shown the flashlight on the front that he threw down.

13 A Yes, sir.

14 Q Okay. And when you come back to the house that's --  
15 when you come back to the front of the house before a  
16 search warrant is done, do you do anything else?

17 A I don't.

18 Q Or does Deputy Wilde take over from there?

19 A Deputy Wilde takes over from there.

20 Q Thank you.

21 RECROSS-EXAMINATION

22 BY MR. HARRIS

23 Q Well, the solicitor was just asking you more detailed  
24 questions about the property.

25 I want to show you a photograph.

Gary Watson (In-camera)  
Recross-examination by Mr. Harris

1 MR. HARRIS: Let me have these marked for  
2 identification, please.

3 (Photograph marked Defendant's Exhibit No. 1 for  
4 Identification; photograph marked Defendant's Exhibit No. 2  
5 for Identification.)

6 Q Let me first show you what's been marked as  
7 Defendant's Exhibit 1 for purposes of this hearing. Do you  
8 recognize the property in the photograph?

9 A It's dark.

10 Q It is.

11 A Do you have one in color or brighter?

12 Q I don't.

13 A I can't from this picture.

14 Q Okay. You have no idea.

15 A I can't from this picture.

16 Q Okay. Show you what's been marked as Defendant's  
17 Exhibit 2.

18 A Looks like -- I can't see the whole right-hand side of  
19 the house.

20 Q Yeah.

21 A It's even blurrier on this one.

22 Q I'm just asking you if you recognize the location.

23 A No, sir.

24 Q You ever been there before?

25 A I don't know this location.

Matt wilde (In-camera)  
Direct examination by Mr. Hunter

1 Q Okay.

2 A I can't tell what it is. It's too blurry.

3 Q Thank you.

4 MR. HARRIS: Nothing further.

5 THE COURT: Step down.

6 MR. HUNTER: Your Honor, at this time the state would  
7 call Matt wilde.

8 MATT WILDE, having been first  
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. HUNTER

11 Q This is -- go to really deep. Just say your name.

12 A Matt wilde.

13 Q And how many years of law enforcement experience?

14 A I began the sheriff's office in August of 2000. And  
15 my time there I did everything from patrol, to  
16 investigations, canine and SWAT. And in May of 2010 I left  
17 the sheriff's office and became an F.B.I. agent and have  
18 been working in that capacity since then.

19 Q All right. And how were you employed on November of  
20 2009?

21 A I was with the sheriff's office, and I was a member of  
22 the regional support unit.

23 Q Okay. Did you have a chance to go out to [REDACTED]

24 [REDACTED]

25 A I did.

71  
Matt wilde (In-camera)  
Direct examination by Mr. Hunter.

1 Q Okay. Did you receive the complaint that Deputy  
2 Watson spoke of?

3 A Yes, I did. So the address on [REDACTED] is  
4 located in the Chesnee area. It was our zone to work that  
5 area and our assignment to work directly with the  
6 lieutenants and basically take care of any complaints or  
7 problems that they were having. We weren't responsible for  
8 answering calls for the most part. We were free to take  
9 care of complaints and other issues.

10 Q Okay. And you learned from one of your lieutenants  
11 that a complaint had come in. Is that the normal course of  
12 business when a complaint comes in? Do you learn of it  
13 first hand or does it go through the chain of command?

14 A Sometimes it goes through the chain of command. It'll  
15 come in through a citizen through the front desk and then  
16 be assigned to a lieutenant. And then the lieutenant will  
17 either -- send it to the right person.

18 For instance, if it were an animal complaint the  
19 lieutenant would get it and then assign it to somebody with  
20 animal control. If it were a narcotics complaint it would  
21 get assigned to either our unit, the R.S.C., or the  
22 narcotics unit.

23 With Lieutenant Gabriel specifically, he's from the  
24 Chesnee area. He's lived there as far as I know his whole  
25 entire life. And he has a lot of contacts in the community

Matt wilde (In-camera)  
Direct examination by Mr. Hunter

1 just because of his residence there. And a lot of times he  
2 would get complaints maybe not directly through the  
3 sheriff's office, maybe from somebody who'd call him at  
4 home and just -- and give him the -- give him the  
5 information.

6 Q But you're not how he got this.

7 A I'm not sure how he got it.

8 Q What did the complaint state?

9 A The complaint stated that at that address there was a  
10 blue house with a Mustang in the drive and that somebody  
11 was living there and manufacturing methamphetamine.

12 Q And when you got the complaint it stated it was [REDACTED]

13 [REDACTED]

14 A That's correct.

15 Q Okay. However when you arrived at this location you  
16 had multiple pieces of information in that complaint. And  
17 which house did it actually match up to?

18 A It matched [REDACTED] I mean, [REDACTED] was an unoccupied  
19 mobile home. [REDACTED] was a blue house with a Mustang in the  
20 driveway. I mean, it just -- it was common sense to make  
21 the connection.

22 Q Okay. And I believe he's already testified, but just  
23 to make sure, y'all approached in a break Crown Vic or a  
24 black unmarked car?

25 A That's correct. We were -- I believe I was driving.

Matt Wilde (In-camera)  
Direct examination by Mr. Hunter

1 So we were in my black unmarked Crown Victoria.

2 The church was directly across the street from the  
3 location, which was also in the complaint. I believe we  
4 sat either at a house right beside the church or in the  
5 actual church parking lot and monitored. And you see could  
6 the front -- the front of the house from there.

7 Q Okay. Could you see the sides of the house?

8 A No.

9 Q From the road could you see the sides of the house?

10 A I'm not sure.

11 Q Okay. And when you were monitoring you saw a brown  
12 truck pull up?

13 A That's correct.

14 Q And at that point you and Mr. Watson went to the  
15 house?

16 A That's correct.

17 Q And where did he go?

18 A Watson -- well, I made contact with the guy in the  
19 truck. He -- I believe he's come out of the garage.  
20 started speaking to him. So, I mean, there's this natural  
21 course of action for Watson to go to the front door and  
22 knock on the door and try to speak to the owner.

23 Q And how far away was he from you?

24 A Maybe 10 -- 10 or 12 feet. It wasn't far.

25 Q And had you observed the gentleman enter the house

Matt Wilde (In-camera)  
Direct examination by Mr. Hunter

1 right previously before you went up to the house?

2 A Yes, we had. We observed him coming out of the garage  
3 and then go in the front house -- in the front of the  
4 house. I believe he might have come in and out a few  
5 times.

6 Q Okay. And is that person Mr. Bragg?

7 A That's correct.

8 Q Okay. And when you talked to Mr. Hines, what did you  
9 learn?

10 A I learned that Mr. Hines was from North Carolina and  
11 he was there to see the owner -- he didn't say who the  
12 owner was -- about purchasing some bird houses.

13 Q Okay. And I don't know if you've been recently, but  
14 there's a sign up there talking about bird houses at one  
15 residence really close to it. Do you remember that?

16 A No, I don't remember that, no.

17 Q At this point when you're talking to Mr. Hines did you  
18 learn who actually entered the house?

19 A Well, when I was talking to Mr. Hines I noticed Gary,  
20 Deputy Watson, went around the side of the house. He came  
21 back. Then as he -- Mr. Bragg came back around the front  
22 of the house, and Gary was behind him.

23 Q Okay. When you talked to Mr. Hines did you learn who  
24 actually entered the house when y'all were observing it?

25 A He just said the owner. He didn't say who it was.

Matt Wilde (In-camera)  
Direct examination by Mr. Hunter

- 1 Q He didn't know --
- 2 A He didn't say Norman -- Norman Bragg, no. He just  
3 said the owner.
- 4 Q And at this point you see Gary go around the garage  
5 side of the house?
- 6 A That's correct.
- 7 Q Did he get an answer at the front door?
- 8 A No.
- 9 Q Okay. And how far away were you from the front door?
- 10 A Again, like 12 or 13 feet. It wasn't very far.
- 11 Q Did Mr. Hines ever ask you to leave?
- 12 A No.
- 13 Q Did he ever ask Mr. Watson to leave?
- 14 A No.
- 15 Q Okay. After searching the house -- well, obviously  
16 you went in the house after the search warrant. Were you  
17 able to find any way to get from underneath the house from  
18 inside the house?
- 19 A No, I wasn't other than, I mean, you have to go out  
20 the back door and underneath the house.
- 21 Q You have to go out the back door to get under the  
22 house.
- 23 A That's correct.
- 24 Q Okay. At one point I believe you were sitting there  
25 talking to Mr. Hines and Mr. Bragg comes back with Deputy

Matt wilde (In-camera)  
Direct examination by Mr. Hunter

1 Watson behind him.

2 A That's correct.

3 Q What did you do at that point?

4 A At that point I wasn't sure if Deputy Watson had  
5 patted Mr. Bragg down. So I asked Mr. Bragg -- Mr. Bragg  
6 if I could pat him down and he --

7 Q You asked for consent?

8 A I asked for consent to pat him down, that's correct.

9 Q Did he -- did he give you consent?

10 A Yes, he did.

11 Q Okay. Were you able to locate anything during your  
12 patdown?

13 A Yeah. Let me go to my report. I found a gray case  
14 containing a glass pipe.

15 Q I show you what's been premarked State's Exhibit 9.  
16 Do you recognize that?

17 A Yes. That would be the gray case.

18 Q Would you please open it?

19 A Yes, sir.

20 (Pause.)

21 Q Is that -- is that the pipe that you located on  
22 Mr. Bragg?

23 A That's correct.

24 Q Okay. When Mr. Bragg and Deputy Watson came from the  
25 side of the house did Deputy Watson have anything in his

77  
Matt Wilde (In-camera)  
Direct examination by Mr. Hunter

1 hand?

2 A Yes. He had a clear bag that had some marijuana in  
3 it.

4 Q That bag in front of you, do you recognize it?

5 A Yes.

6 Q Is that the bag he had?

7 A That's it.

8 Q So at this point what did you do with Mr. Bragg?

9 A We -- I -- I asked him if he had any other marijuana  
10 in the house.

11 Q Well, did you arrest him first? You can look at your  
12 affidavit.

13 A I think. Yeah. I think I did. My affidavit says  
14 that we placed Mr. Bragg under arrest for simple possession  
15 of marijuana. And then I asked if he had any weapons on  
16 him, and then that's when I found the pipe.

17 Q Okay. So actually you placed him under arrest for the  
18 marijuana before you ever even found the pipe.

19 A That's correct.

20 Q Okay. When you place someone under arrest is it  
21 procedure to read them their Miranda rights?

22 A If you have a reason to, yes.

23 Q Okay.

24 A If you intend on questioning them or --

25 Q Did you do that in this instance?

Matt wilde (In-camera)  
Direct examination by Mr. Hunter.

1 A Yes, I did.

2 Q And what did you read to him?

3 A I read him his Miranda rights.

4 Q And what were those rights?

5 A You have the right to remain silent. Anything you say  
6 can and will be used against you in court. You have a  
7 right to an attorney. If you cannot afford to hire an  
8 attorney one will be appointed to represent you before any  
9 questioning if you so wish. You have the right to stop  
10 answering questions at any time. And do you understand  
11 these rights.

12 Q Okay. And at that point did he understand his rights?

13 A Yes.

14 Q Did he appear to have understanding of everything  
15 y'all were talking about?

16 A Yes.

17 Q Appeared to have an education level that he understood  
18 your discussions.

19 A Yes.

20 Q Okay. And after asking him his Miranda rights did he  
21 ask for his attorney?

22 A No. He did not.

23 Q Did you ask him some questions about the marijuana?

24 A I did.

25 Q Okay. And what was his response?

Matt Wilde (In-camera)  
Direct examination by Mr. Hunter

1 A His response was that -- his response was that he  
2 understood the rights. I asked him if there's anything  
3 else illegal in the house, meaning drugs, and he said no.  
4 I asked for consent to search the house. He said no. And  
5 then I advised him that I was going to seek a search  
6 warrant for the house and then --

7 Q And once you advised him that you were going to seek a  
8 search warrant did he say anything or blurt anything out?

9 A He said that there was -- that he did have some  
10 marijuana on the property but did not want to tell us  
11 where it was.

12 Q Okay. So after he had been advised of his Miranda  
13 rights he admitted that he had marijuana on the property  
14 but was not going to tell you where it was.

15 A That's correct.

16 Q Okay. At that point what did you and Deputy Watson  
17 do?

18 A We arrested Mr. Bragg. I believe we arrested  
19 Mr. Hines. We waited for -- I think Sergeant Luther and  
20 Deputy Roper arrived on the scene and held the house,  
21 secured it, for us. And we took those -- took Mr. Bragg  
22 and Mr. Hines to the jail.

23 MR. HUNTER: Your Honor, did I provide you a copy of  
24 the search warrant?

25 THE COURT: No.

Matt Wilde (In-camera)  
Direct examination by Mr. Hunter

1 Q And based on that information what did you do?

2 A I wrote an affidavit. well, Deputy Watson booked the  
3 two gentlemen in. I wrote an affidavit based upon the  
4 information, what happened, to establish probable cause for  
5 a search warrant.

6 Q And where did you take the affidavit?

7 A I took it to the judge's office.

8 Q And who was that judge?

9 A Judge was Judge Smith.

10 Q Okay. Were you placed under oath?

11 A Yes.

12 Q Okay. And would you please -- what did you swear to?  
13 If you want to you can just read it off the report.

14 A Read the affidavit?

15 Q Yes.

16 A "On today's date, Wednesday, November 18th of 2009,  
17 the Spartanburg County Sheriff's Office received a  
18 complaint about drug activity at [REDACTED]  
19 Chesnee, South Carolina. This address is within the  
20 jurisdiction of the Spartanburg County Sheriff's Office.  
21 The complaint stated that Norman Bragg was manufacturing  
22 meth at this location. The complaint stated the house was  
23 a blue house across from a church with a Mustang in the  
24 yard. Deputy Watson and I, Deputy Wilde, responded to the  
25 area to investigate the complaint. We observed a white

Matt wilde (In-camera)  
Direct examination by Mr. Hunter

1 male going in and out of the garage of the house. We then  
2 observed another male pull up in a G.M.C. truck and go into  
3 the garage. We then observed one male come out of the  
4 garage and go into the house. When Sergeant Luther and  
5 Deputy Roper arrived in the area we approached the house.  
6 When we pulled in the driveway the male in the garage  
7 identified himself as Benjamin Hines. He stated he was  
8 there is to talk to Norman Bragg about building bird  
9 houses. Deputy Watson walked around the rear of the house  
10 and Mr. -- and found Mr. Bragg coming out from underneath  
11 the residence. As he walked towards Deputy Watson  
12 Mr. Bragg stumbled and threw something under a table.  
13 Deputy Watson asked Bragg -- Bragg to go into the front  
14 yard and speak with me. He -- he then looked where  
15 Mr. Bragg through the item and found a clear plastic baggie  
16 containing the ends of marijuana cigarettes. When Watson  
17 came to the front of the house we placed Mr. Bragg under  
18 arrest for simple possession of marijuana. I also asked  
19 Mr. Hines if he had any weapons on him. He stated no, and  
20 he agreed to let me pat him down. When I did this I felt  
21 the marijuana pipe in his right front pocket. This was  
22 retrieved and he was arrested. Mr. Bragg was read his  
23 Miranda rights by me. He stated that he understood. I  
24 asked him if there was anything else illegal in the house.  
25 He stated no. But when I asked -- but when asked if I

Matt wilde (In-camera)  
Direct examination by Mr. Hunter

1 could look he stated no. I then told him I was going to  
2 get a search warrant for the house. He stated that he did  
3 have some marijuana on the property but did not want to  
4 show me where it was. This warrant is needed to search the  
5 property located [REDACTED] for the marijuana  
6 Mr. Bragg admitted he has on the property."

7 Q Okay. And under the description of the premises, what  
8 is listed?

9 A "The residence, outbuildings, vehicles and curtilage  
10 of [REDACTED] Chesnee, South Carolina. From  
11 Spartanburg travel on Highway 221 north to [REDACTED].  
12 Turn left onto [REDACTED] and left -- "

13 Q I just needed the address.

14 A I'm sorry.

15 Q As far as the property sought, is that marijuana?

16 A That's correct.

17 Q And that's what was presented to the judge, and he  
18 signed that?

19 A That's correct.

20 Q Okay. And, again, why did you list [REDACTED] instead of  
21 [REDACTED]

22 A Because that was the actual address where Mr. Bragg  
23 lived.

24 Q And that's the actual address where Deputy Watson  
25 discovered the marijuana?

Matt wilde (In-camera)  
Cross-examination by Mr. Harris

1 A That's correct.

2 Q And that's the actual address where he was in front of  
3 when he told you he had marijuana on the property and did  
4 not want to tell you where.

5 A That's correct.

6 Q Please answer any questions Mr. Harris may have for  
7 you.

8 MR. HARRIS: Yes.

9 CROSS-EXAMINATION

10 BY MR. HARRIS

11 Q So the -- when you stated as you just read in your  
12 sworn affidavit in support of the search warrant and your  
13 sworn testimony today -- the sequence of events relating to  
14 the original arrest of Mr. Bragg was that Deputy Watson  
15 went to the front door, knocked and no one came to the  
16 door, is that correct?

17 A That's correct.

18 Q Deputy Watson then went around to the rear of the  
19 house --

20 A That's correct.

21 Q -- as you put in your search warrant and apparently  
22 encountered Mr. Bragg, although you couldn't see that.

23 A No, sir. I was in the front of the house.

24 Q All right. And I assumed that Deputy Watson in some  
25 way or another informed you what had happened out of your

Matt Wilde (In-camera)  
Cross-examination by Mr. Harris

1 view in the rear of the house so you would know it to be  
2 able to put it in the affidavit.

3 A Absolutely.

4 Q You had to rely on Deputy Watson for that because you  
5 couldn't see that.

6 A Right.

7 Q So the next thing you know after Deputy Watson goes  
8 around to the rear of the house is that some time went by  
9 and Mr. Bragg and Deputy Watson came back around to the  
10 front of the house, is that correct?

11 A Yes.

12 Q And at that point in time you learned from Deputy  
13 Watson that marijuana had been discovered in the rear of  
14 the house.

15 A That's correct.

16 Q And at that point in time was it you or Deputy Watson  
17 that actually formally placed Mr. Bragg under arrest?

18 A It was two years ago. I really couldn't tell you.

19 Q Longer than two years ago. One of you at that point  
20 right there in the front yard when they came back around  
21 from the back put Mr. Bragg under arrest for possession of  
22 marijuana relating to what was found in the back yard.

23 A And what was found in his front pocket.

24 Q Well, you -- you couldn't arrest him for something you  
25 didn't know about, correct?

Matt wilde (In-camera)  
Cross-examination by Mr. Harris

1 A Apparently I wrote in my affidavit that I asked him  
2 for consent to pat him down. So I'm thinking that he  
3 wasn't handcuffed when I asked him for consent to pat him  
4 down, because I wouldn't ask for consent to pat somebody  
5 down who is handcuffed.

6 Q Well, is it correct that the sequence of events, at  
7 least as you relate them in your affidavit, at the time was  
8 that Mr. Bragg came around to the front of the house from  
9 the rear with Deputy Watson, he was placed under arrest for  
10 possession of marijuana, for the marijuana found in the  
11 back, is that correct?

12 A Yeah.

13 Q At that point in time but prior to reading him Miranda  
14 you asked him if he had any weapons on him and could you  
15 pat him down, correct?

16 A Correct.

17 Q You did pat him down, is that correct?

18 A Correct.

19 Q You found the paraphernalia.

20 A Yes, sir.

21 Q As you described as paraphernalia. But that was after  
22 the point of arresting him for what was found in the back.

23 A I'm not sure, sir. I'm just going by what the --

24 Q Well, is the search-warrant affidavit correct?

25 A I hope so, yes, sir.

Matt wilde (In-camera)  
Cross-examination by Mr. Harris

- 1 Q You hope so?
- 2 A To the best of my knowledge, it's correct.
- 3 Q Okay. And then as you've described you then read
- 4 Mr. Bragg his Miranda rights and questioned him, and he
- 5 refused consent to search.
- 6 A Correct.
- 7 Q So, and it was clear he was refusing consent.
- 8 A Absolutely, say no.
- 9 Q So he didn't want people searching his property.
- 10 A Right.
- 11 Q And even after you threatened him with obtaining a
- 12 search warrant you -- Mr. Bragg said he had marijuana on
- 13 the property but still refused to let you -- give you
- 14 consent to search.
- 15 A It wasn't a threat, sir.
- 16 Q Well, after you informed Mr. Bragg that you intended
- 17 to seek a search warrant he stated that he had marijuana on
- 18 the property, but he still refused to consent to a search.
- 19 A That's right.
- 20 Q And so you went to get the search warrant based on the
- 21 events that had transpired up until that point.
- 22 A Yes.
- 23 Q Including the events that led to his, Mr. Bragg's,
- 24 arrest that happened in the back.
- 25 A Correct.

Matt wilde (In-camera)  
Cross-examination by Mr. Harris

1 Q Right. I show you a photograph marked as Defendant's  
2 Exhibit 1 and ask you do you recognize that location. I  
3 know it's not a good picture, but you being an F.B.I.  
4 agent.

5 A That could be a house anywhere.

6 Q It could be a house anywhere. Do you think it is, or  
7 you have no clue?

8 A It was pitch dark outside when -- the last time I was  
9 there. And I've never see the house --

10 Q There where?

11 A At the house on [REDACTED]

12 Q So your testimony today is that it was so dark and so  
13 hard to see when you were doing the surveillance that you  
14 can't recognize a photograph of a house that you were at  
15 even if it were shown to you.

16 A Sir, this is a horrible photograph. I'm sorry.

17 Q It is. I agree.

18 A If it was a clear picture I'd be able to say yes or  
19 no. I'm not going to say yes or no based on this.

20 Q Well, I'm not trying to encourage you to say yes or  
21 no. I'm just trying to get it straight. Is it your  
22 testimony it was so dark that you can't recognize the  
23 property you said you surveilled even if shown the  
24 photograph?

25 A No, sir. That's not my testimony.

1 Q Okay. Thank you.

2 A Thank you.

3 MR. HARRIS: Nothing further, Your Honor. Thank you.

4 THE COURT: Step down.

5 Anything else?

6 MR. HUNTER: Nothing from the state, Your Honor.

7 THE COURT: From the defendant?

8 MR. HARRIS: No, Your Honor. We rely on the cases and  
9 the argument we've made.

10 THE COURT: All right. Well, based upon the testimony  
11 I've heard and the evidence received it appears that when  
12 the officers went to the residence of the defendant that  
13 they weren't actually going to search his residence or  
14 anything else other than to respond to a complaint they had  
15 received. They were simply making contact with citizens  
16 because there had been a complaint made.

17 When they went out there to investigate the complaint  
18 they saw Mr. Hines and they saw Mr. Bragg, and so they  
19 simply approached them to ask questions.

20 There's nothing at all illegal, unreasonable or  
21 unconstitutional about law enforcement officers making  
22 contact with citizens, whether it be on a public street or  
23 whether it be on private property, so long as they have a  
24 right to be where they are. And there's nothing indicated  
25 to me that the officers didn't have a right to be where

1 they were. They simply approached the residence to have a  
2 conversation with the owner as has been alluded to during  
3 the examination of these witnesses.

4 If Mr. Hines and/or Mr. Bragg had refused to talk to  
5 the police officers, which they had every right to do, they  
6 couldn't have done anything else. But in this case they  
7 did consent to talk with them.

8 Officer Watson went to the front door. He knew or had  
9 reason to believe that the owner or someone had gone in the  
10 house. Mr. Hines had told him that the owner had gone into  
11 the house. So he went to knock on the door simply to ask  
12 questions.

13 No one came to the door. He thought he heard a back  
14 door close. So he went to the back yard to see if that  
15 was, in fact, the owner.

16 There was nothing to prevent any person from walking  
17 around to the back of the house, so there's nothing to  
18 indicate any heightened expectation of privacy in the back  
19 yard as opposed to the front yard.

20 There was no fence; there was no sign. There was  
21 nothing to deter or to inhibit someone from walking around  
22 to the back of the house to see if someone was there.

23 So there's nothing unreasonable about going to a back  
24 door if no one responds to the front door when you have  
25 every reason to believe someone's in the residence. And

1 there was nothing to preclude him from going into the back  
2 yard.

3 As I say, there's nothing to indicate that Mr. Bragg  
4 had any heightened expectation of privacy in the back than  
5 he did from the front.

6 when Officer Watson saw Mr. Bragg in the back yard he  
7 simply approached him. He saw him throw something down.  
8 He was suspicious. He says he took a half a step and  
9 shined the light and saw it was a bag of marijuana. And  
10 then of course he was placed under arrest.

11 Pursuant to that arrest he was advised of his rights.  
12 He refused consent to a search. He was informed that they  
13 would go back and get a search warrant if necessary. He  
14 said apparently fine and indicated that there was marijuana  
15 on the property but that he wasn't going to say where it  
16 was.

17 well, that certainly gives probable cause for the  
18 issuance of a search warrant based upon the fact that the  
19 marijuana was found on the premises and that Mr. Bragg  
20 indicated that there was other marijuana on the premises.  
21 But he would not say where.

22 So a search warrant was obtained. Additional  
23 contraband was found and the defendant was placed under  
24 arrest for that.

25 There's nothing that's been shown during the course of

1 this presentation that indicates that the officers did  
2 anything unconstitutional, that they did anything unlawful  
3 and/or that they did anything unreasonable. Therefore the  
4 motion for suppression is denied.

5 All right. Any other matters we need to address?

6 MR. HUNTER: Just briefly, Your Honor.

7 We have I believe multiple bags of marijuana. He was  
8 charged with the simple possession and the possession with  
9 the intent to distribute. We would request that just a  
10 pretrial ruling on the admissibility of these four to show  
11 knowledge of the controlled substance is in the house, Your  
12 Honor.

13 THE COURT: And where was it found?

14 MR. HUNTER: They were found underneath the house.  
15 They were found next to the meth.

16 THE COURT: Okay. Mr. Harris, anything you want to --

17 MR. HARRIS: I'm not quite understanding the request  
18 that's being made.

19 THE COURT: He intends to offer the marijuana that was  
20 found in close proximity to the methamphetamine as relevant  
21 on the point of knowledge of the defendant as to the  
22 presence and the possession and use of the drugs.

23 MR. HARRIS: Well, I object to that. It's a  
24 methamphetamine case.

25 THE COURT: I understand.

1 MR. HARRIS: I mean, I don't -- I can't imagine what  
2 purpose it would be offered other than to suggest to the  
3 jury that Mr. Bragg ought to be found guilty of possession  
4 of trafficking in methamphetamine because he had marijuana.

5 THE COURT: Well, it's relevant to show that because  
6 he had marijuana in his actual possession and there was  
7 other marijuana in the house in close proximity to the  
8 methamphetamine that -- it's relevant to show knowledge as  
9 to possessing the methamphetamine.

10 I think there are plenty of cases that stand for that  
11 proposition.

12 Anything else?

13 MR. HUNTER: Nothing from the state.

14 THE COURT: All right. It's admitted over objection.  
15 Anything else?

16 MR. HUNTER: I will admit it through the officer.

17 THE COURT: Well, it's got to be properly admitted.

18 MR. HARRIS: Not at this point in time.

19 THE COURT: Okay. Court in's recess until 2:30.

20 The defendant's in custody.

21 (Whereupon, a recess was taken.)

22 (Question and response from juror marked Court's  
23 Exhibit No. 1.)

24 THE COURT: All right. Any matters to address before  
25 the jury is brought around?

1 MR. HUNTER: None from the state.

2 MR. HARRIS: Your Honor, I have one thing that I  
3 considered during lunch.

4 At this time I would ask that the state be prevented  
5 from introducing evidence of the substance of this  
6 complaint, so-called complaint, that was the subject of the  
7 suppression hearing.

8 MR. HUNTER: I don't plan. That'd be hearsay  
9 evidence. I don't plan on putting the complaint in, Your  
10 Honor.

11 THE COURT: Very good.

12 MR. HARRIS: That's all, Your Honor.

13 THE COURT: All right. Bring the jury in. Ask  
14 Ms. Voll to take the foreperson's seat -- V-O-L-L.

15 MR. HUNTER: Your Honor, just for point of  
16 clarification, I believe the testimony would have covered  
17 any objections that have been brought up during the Jackson  
18 vs. Denno hearing.

19 THE COURT: Just a minute. Well, I didn't know  
20 anything about Jackson vs. Denno. I had a motion to  
21 suppress.

22 MR. HUNTER: Just his conversation.

23 THE COURT: Motion to suppress the evidence.

24 MR. HUNTER: Just his conversation would have been  
25 after Miranda. We would have covered that in his

1 testimony.

2 THE COURT: Well, I'm sure it would have been covered,  
3 but was there any objection to any statement being  
4 voluntary?

5 MR. HARRIS: I have not raised a voluntariness issue.

6 MR. HUNTER: I just wanted to make sure before we --

7 THE COURT: Okay.

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

10 THE COURT: Good afternoon, ladies and gentlemen.  
11 We are ready to begin with the trial of the case for  
12 which each of you have been selected.

13 And, Ms. Voll, I'm going to ask you to -- is that  
14 pronounced correctly?

15 THE FOREPERSON: Yes, sir.

16 THE COURT: I'm going to ask you if you'll serve as  
17 the foreperson of the jury.

18 As the foreperson you'll have three specific duties  
19 that none of the other jurors will have.

20 No. 1, you will be asked to serve as the spokesperson  
21 for the jury. And so if during the trial something arises  
22 that needs to be brought to my attention -- you or a fellow  
23 juror has some difficulty, problem or question -- if you'll  
24 let me know directly or let me know through one of the  
25 bailiffs, I'll address those issues or answer those

1 questions.

2       Secondly, you'll be called upon to preside over jury  
3 deliberations when that time comes. And that of course  
4 won't be until after all of the evidence has been received  
5 and I've instructed you on the law that's applicable in  
6 this case. But when that time does come it will be you who  
7 will preside over that process in the jury room simply to  
8 ensure that those deliberations are carried out in some  
9 orderly fashion.

10       And, thirdly, you'll be asked to actually write the  
11 verdict or the decision of the jury. You'll do that on a  
12 verdict form that I'll provide you at the trial's  
13 conclusion on which you will indicate the jury's unanimous  
14 decision.

15       Now, the foreperson has those specific duties that  
16 I've just indicated. That does not however mean that she  
17 is any more important than any of you other jurors, and  
18 that's because the decision or the verdict of a jury is the  
19 unanimous consensus opinion of all 12 jurors. And so each  
20 of you will have an equal say and an equal vote in what the  
21 ultimate decision will be in this case.

22       Someone simply has to be delegated those  
23 responsibilities that I have just indicated, and I have  
24 delegated those to Ms. Voll in appointing her as the  
25 foreperson. But each of you jurors are equally important

1 so far as the ultimate decision in the case is concerned,  
2 because, as I have stated, the verdict has to be unanimous.  
3 All of you must be in agreement.

4 Now, Mr. Ravan, you've been selected as an alternate  
5 juror. The function of an alternate is to take the place  
6 of one of the original 12 if during the trial one of these  
7 12 cannot continue to serve for some reason.

8 If one is called away because of an emergency or an  
9 illness and cannot continue, then you would take that  
10 person's place. And in that event you become the  
11 12th juror.

12 When the time does come for deliberations if the  
13 original 12 are able to perform that function, then your  
14 service ends and you don't participate any further, and  
15 that's because the decision of a jury is that of 12. And  
16 no more than 12 are permitted to engage in that  
17 deliberation process.

18 But it is important that you pay just as careful  
19 attention as we ask of all of the jurors in this case  
20 because it does occur from time to time for one reason or  
21 another one of these 12 may be unable to continue. In that  
22 event you become the 12th.

23 So we do appreciate your participation as an alternate  
24 juror, just as we appreciate the participation of each of  
25 you jurors who have been selected for the purpose of

Jury sworn

1 deciding the verdict in this particular case.

2 You may swear the panel.

3 (Whereupon, the jury was duly sworn.)

4 THE COURT: Now, ladies and gentlemen, as you know,  
5 you've been selected to decide the verdict in the case of  
6 the State vs. Norman Adger Bragg.

7 As you also know, he's been accused by the prosecutor  
8 by way of this indictment that I referred to prior to your  
9 selection with having committed the crime of trafficking in  
10 methamphetamine.

11 As to those allegations and as to that charge he has  
12 entered a plea of not guilty, and that plea of not guilty  
13 therefore places upon the prosecutor because he's made the  
14 accusation to establish the allegations that are set forth  
15 in the indictment, to prove each of the essential elements  
16 that constitute the crime that the prosecutor alleges this  
17 defendant has committed; and therefore the burden is upon  
18 the state to establish the defendant's guilt to the  
19 satisfaction of you 12 jurors beyond a reasonable doubt  
20 before any verdict of guilty could be returned.

21 Every person accused of a crime -- and it doesn't  
22 matter how serious the offense might be -- every person  
23 accused of a crime is presumed to be innocent of the  
24 charge. And that presumption of innocence remains with any  
25 defendant, as it does with this defendant, from the time

1 that he is placed under arrest, throughout the course of  
2 the criminal process and even throughout the course of the  
3 actual trial in the case.

4 And that presumption of innocence will be with  
5 Mr. Bragg even as you go back into your jury room to begin  
6 with your deliberations at this trial's conclusion.

7 That presumption of innocence will be with him in that  
8 jury room, and it'll be with him forever unless you 12  
9 jurors determine that he's no longer entitled to the  
10 presumption of innocence.

11 In other words, after you've carefully considered all  
12 of the evidence in the case, and from that evidence you've  
13 decided the facts, and upon deciding those facts you apply  
14 the law that I will have provided you, if you 12 jurors  
15 unanimously determine that his guilt has been proven beyond  
16 a reasonable doubt, then he would no longer be entitled to  
17 the presumption of innocence. But it's only if, unless and  
18 until you are satisfied of his guilt beyond a reasonable  
19 doubt that the presumption of innocence would no longer be  
20 applicable.

21 Now, the way the trial will proceed is that in a  
22 moment the lawyers are going to address you in what are  
23 called opening statements. There are two occasions in  
24 trial of a case where lawyers are permitted to address the  
25 jury, and that is at the beginning of the trial before any

1 evidence has been introduced and then again at the  
2 conclusion of the trial after all of the evidence has been  
3 received.

4       Please keep in mind however that the lawyers'  
5 statements are not evidence and you are not to rely upon  
6 their statements as establishing any fact that's an issue.  
7 And that's because the lawyers aren't witnesses to  
8 anything. If they were they wouldn't be acting as lawyers  
9 in the case. They'd be called to the witness stand to  
10 testify if they had personal knowledge. And they have no  
11 personal knowledge of the facts that relate to this case.

12       They're not going to take the witness stand. They  
13 won't testify under oath. They won't be subjected to  
14 direct and cross-examination like every witness will be.  
15 And so what they tell you in their statements is not to be  
16 considered by you as any evidence upon which you will base  
17 your decision.

18       But you should listen to what the lawyers have to say  
19 because those statements do serve a purpose. The opening  
20 statements serve to provide you with a basic understanding  
21 as to what this case is about from both the perspective of  
22 the state and the defendant and so that you will have some  
23 context in which to place the evidence that we will be  
24 receiving shortly thereafter.

25       The closing statements of the lawyers occur after all

1 of the evidence has been received. And, again, while those  
2 statements are not evidence it does afford the lawyers an  
3 opportunity to discuss with you the evidence that you have  
4 seen and heard during the course of the trial. And through  
5 that opportunity each will have a chance to try to persuade  
6 you or to convince you that the evidence in this case does  
7 or does not support a particular decision.

8 It's in between those opening and closing statements  
9 that we actually receive the evidence upon which you will  
10 base your decision.

11 The state, as you have been told, has the burden of  
12 proof. They have an obligation to put forth sufficient  
13 evidence to establish the defendant's guilt beyond a  
14 reasonable doubt. And so the state must present evidence.  
15 And therefore they will go forward first in their  
16 presentation.

17 Once the state has concluded with that presentation a  
18 defendant in a criminal trial has the same opportunity to  
19 take the witness stand and testify or call witnesses or  
20 produce other evidence.

21 But a defendant has no obligation to present any kind  
22 of evidence, and that's because the burden is not upon a  
23 defendant to prove that he or she is not guilty or to prove  
24 that he or she is innocent because in some cases that might  
25 not even be possible.

1           The burden's on the state to prove a defendant guilty  
2 beyond a reasonable doubt. There is not burden on a  
3 defendant to prove anything.

4           So sometimes in trials a defendant doesn't testify or  
5 doesn't call any witnesses, doesn't produce any evidence.  
6 And if that occurs that's not a fact or a circumstance that  
7 you jurors may consider in any way whatsoever in your  
8 deliberations or in your determination as to whether or not  
9 the evidence in this case proves his guilt beyond a  
10 reasonable doubt.

11           You cannot allow that to weigh in the slightest degree  
12 against a defendant, nor may you consider it in any way  
13 whatsoever.

14           You've got to base your decision upon the testimony  
15 and the evidence received during the trial. And you  
16 determine the facts from that evidence, and then you apply  
17 the law that I will have provided you. And you will  
18 determine whether or not the defendant's guilt has been  
19 proven beyond a reasonable doubt. And if it has, then your  
20 verdict's guilty. If it has not, then your verdict is not  
21 guilty.

22           Now, all that we're going to ask for you to do  
23 throughout the course of the trial is to pay careful  
24 attention, and that's because there may be several  
25 witnesses called to testify. And sometimes there's a

1 conflict in testimony. And where there is a conflict in  
2 testimony it's your prerogative to decide what you believe  
3 to be the most credible testimony and what the true facts  
4 are. And you do that by considering the testimony of each  
5 witness in light of not just that witness' testimony but in  
6 light of all of the testimony and all of the evidence  
7 received during the trial.

8 And of course it's important that you keep an open  
9 mind throughout the course of the trial. And that just  
10 simply means that you are not to begin making up your minds  
11 or formulating your opinions as to what you think the  
12 ultimate decision in this case ought to be until all of the  
13 evidence has been presented, until I have instructed you on  
14 the law that's applicable in the case and until you've been  
15 asked to begin with your deliberations.

16 That is the process that is designed for you 12 jurors  
17 to arrive at a fair and just decision in this case, as well  
18 as any case that you might be called upon to participate  
19 in.

20 So I do want to thank you in advance for your  
21 participation, as well as for your careful attention. I  
22 would ask that you please give the lawyers your attention  
23 now as they give you their opening statements.

24 Mr. Hunter.

25 MR. HUNTER: May it please the Court.

Opening statements

1 Ladies and gentlemen of the jury, again, my name is  
 2 Eddie Hunter. I'm an assistant solicitor here in the  
 3 Seventh Circuit. I prosecute mainly drug trials. And  
 4 today we're here for the trial of Mr. Norman Bragg. We  
 5 allege that he trafficked in methamphetamine. I'll talk  
 6 about a little bit about trafficking.

7 By trafficking we mean that he possessed a certain  
 8 amount. In South Carolina law that amount ranges anywhere  
 9 from 10 grams or more up to kilos or even further. The  
 10 amount we specified that he trafficked and possessed was  
 11 between 10 and 28 grams. We believe the evidence will show  
 12 that he possessed somewhere around 23.69 grams of  
 13 methamphetamine.

14 You will hear from Deputy Watson who is currently at  
 15 the sheriff's office. You'll also hear from Agent Matt  
 16 Wilde with the F.B.I. He's with the F.B.I. now. At the  
 17 time of this case he was working with the sheriff's office  
 18 here in Spartanburg.

19 At that time they went out to a residence at [REDACTED]  
 20 [REDACTED] It's in the Chesnee area of Spartanburg  
 21 County. And they encountered Mr. Bragg at that residence.  
 22 That is Mr. Bragg's residence. They encountered him coming  
 23 out from underneath his residence.

24 Deputy Watson saw him throw something on the ground.  
 25 He asked Mr. Bragg to come around and talk to Deputy Wilde.

## Opening statements

1 what he threw on the ground was a bag of marijuana roaches,  
2 little blunts, little pieces of marijuana. So he comes  
3 around and talks to Deputy Wilde. He's arrested for the  
4 marijuana.

5 A search of his person is then done where a meth pipe  
6 was found on Mr. Bragg's person. He then asked if there's  
7 any more marijuana on the property. Mr. Bragg admits  
8 there's marijuana on the property but won't tell him where.

9 So he'll get a search warrant. By this time Mr.  
10 Bragg, along with Deputy Wilde, Deputy Watson and a few  
11 other officers go back to the house. The house had been  
12 secured. Officers were left at the house in the meanwhile.

13 And during the execution of that search warrant  
14 multiple, multiple bags of meth were located in his house,  
15 under his house where he was seen leaving earlier that day  
16 and throughout his entire house -- 23.69 grams. That's  
17 what the evidence will show.

18 I want to talk to you a little bit about the law.  
19 He's going to talk to you -- Judge Cole -- a lot more --  
20 definitely a lot more and a lot better than I can. He's  
21 been doing this a lot longer.

22 He'll talk about reasonable doubt and burden of proof.  
23 As the prosecutor I have the burden of proof. Mr. Bragg  
24 and his attorney, Mr. Harris, have no burden. It's all on  
25 me. It's what I present to you. It's a burden I gladly

## Opening statements

1 accept every time I step into this courtroom.

2 That burden is reasonable doubt -- not every doubt,  
3 not all doubt, reasonable doubt, doubt that would make a  
4 reasonable man hesitate.

5 And I submit to you by the end of this trial we will  
6 have met that burden and crossed that burden, and we'll  
7 have proven that he possessed methamphetamine in an amount  
8 greater than 10 grams but less than 28 grams. Thank you  
9 very much.

10 MR. HARRIS: May it please the Court, Your Honor.

11 THE COURT: Mr. Harris.

12 MR. HARRIS: Mr. Foreman, ladies and gentlemen of the  
13 jury -- Madam Foreman, ladies and gentlemen of the jury, my  
14 name, once again, is Ricky Harris. I'm an attorney here in  
15 Spartanburg. And I am here to represent and defend that  
16 gentleman seated over there at the defense table, Norman  
17 Bragg.

18 Sometimes during the preliminary questioning of  
19 jurors, the qualification process and what we call the voir  
20 dire process when you're asked do you know people and do  
21 you have, you know, biases and prejudices and those general  
22 questions, I think, I often think, that all of that must go  
23 by very quickly for prospective jurors like yourselves.

24 And you hear -- you normally have been here for a  
25 short period of time by the time that's happening today.

## Opening statements

1 It's not like this is the third or fourth jury that you've  
2 been selected on this week or anything like that.

3 I'm sure that after fighting for parking spaces and  
4 after fighting to figure out where the circuit courtrooms  
5 are and after fighting to figure out where you are supposed  
6 to be and after receiving pamphlets and so many  
7 instructions you wonder how you could be expected to  
8 remember all of that in an hour and a half you're thrust  
9 into a trafficking methamphetamine case. And I know that  
10 must be a little concerting and little daunting for you.

11 But I'm here to tell you -- suggest to you I should  
12 say -- that you being here, you participating in this  
13 system as unbiased jurors, objective and open-minded jurors  
14 in this case, is essential to justice in this case.

15 Mr. Bragg has been waiting on this since November of  
16 2009, to present his case to a jury. And that day has come  
17 and you're his jury.

18 You may have heard many things about the criminal  
19 justice system or been exposed to many things. I think  
20 there's countless lawyer shows and lawyer movies and lawyer  
21 books. Unfortunately, there's too many to count lawyer  
22 jokes.

23 But what you see and what you will see in here -- in  
24 here -- the rest of today and perhaps tomorrow is no joke  
25 certainly, and it's no movie. It's no book. It's no

## Opening statements

1 television program. It's no talk show. It's real to the  
2 lives of the people here.

3 And it's no more real to anybody than Mr. Bragg who is  
4 the accused person, the person that the state has pointed  
5 the finger at here and said you committed a crime and we're  
6 going to -- just think about the word -- prosecute you for  
7 that crime.

8 Thankfully as His Honor has told you, we do have a  
9 system in the United States of America. It's not a perfect  
10 system, but it's the one we have chosen and the one that we  
11 have fought and died for, and one sweat and bleed for.

12 That system says that every single American -- Norman  
13 Bragg included -- every single person in this country, no  
14 matter how high or low their status may be -- as His Honor  
15 said, no matter how serious the crimes -- is entitled to  
16 certain basic constitutional rights and freedoms. And we  
17 honor those. And by your oath that you just took you have  
18 sworn to honor those.

19 As His Honor just said, Mr. Bragg -- like every person  
20 that comes before a jury in this country -- is presumed  
21 innocent of this charge. That means that at the starting  
22 point, your starting point here in the case, as an  
23 orientation, is that Mr. Bragg did not do what they said he  
24 did.

25 Now, there may be a variety of reasons why at the end

## Opening statements

1 of this case by the time you deliberate the case you will  
2 say collectively as a group of jurors and individually in  
3 terms of fighting for your own individual conscience about  
4 the case that the state -- that the presumption of  
5 innocence should stay with Mr. Bragg for this reason or  
6 that reason, because of the failure of the state to be  
7 convincing on one essential point or another essential  
8 point.

9       We don't know where the road's going to lead us as a  
10 jury, but because we don't know and because it's important  
11 that we don't prejudge -- let me say that again -- because  
12 it's important that we don't prejudge the outcome I suggest  
13 this is why the men and women that founded this country  
14 said that the guiding principal in our criminal justice  
15 system was going to be we're going to presume that the  
16 accused person did not commit this crime and that there  
17 won't be proof that they committed it. That's why we start  
18 there so you, the jury, don't prejudge the case. So the  
19 starting point is we don't prejudge anything. The starting  
20 point is he's not guilty.

21       Now, we don't know yet what reasons you will give at  
22 the end for validating that presumption of innocence, but  
23 I'm saying you'll never be able to get there as a jury and  
24 you'll never be able to be true to your oath if you  
25 prejudge the case.

## Opening statements

1           Now, there's a variety -- I warn you to start the  
2 case -- a variety of ways in which human beings being lawed  
3 as we all are could prejudge without even really knowing  
4 it.

5           I mean, you could come into this jury box and not  
6 think you are, but you could be saying, well, you know, I  
7 can probably believe any police officer. Well, but that's  
8 prejudging the case. That's prejudging how you look at the  
9 evidence.

10           Or surely the state wouldn't accuse somebody of doing  
11 something like this unless it was absolutely true. Well,  
12 if you think that even subconsciously you have prejudged  
13 the case.

14           If you think, well, you know, that witness wasn't very  
15 impressive or they left something out or they didn't quite  
16 convince me, but, you know, we can give them a break, what  
17 are you doing? Prejudging the case. Because who are you  
18 supposed to give the breaks to, the benefit of the  
19 reasonable doubt? Not that side but that side, the accused  
20 side.

21           You cannot deliberate this case and come back with a  
22 unanimous verdict of guilty -- that guilty simply meaning  
23 the state has proved each and every thing that they're  
24 required to prove beyond a reasonable doubt, the highest  
25 standard of proof we have in this country -- you can't

## Opening statements

1 reach that point at all until the very end and until you  
2 can say to yourself I can leave here with no hesitation in  
3 my mind.

4 That is a heavy burden. It is not supposed to be --  
5 and let me just tell you this to start with I think it's so  
6 important. It's not supposed to be easy to convict  
7 somebody in a court of law. It's supposed to be nearly  
8 impossible. That's the kind of heavy burden that's placed  
9 on the state.

10 Now, what's claimed to have happened in this case very  
11 briefly, because you'll hear the witnesses, and I warn you  
12 there may be some you won't hear from. And you have to  
13 take that into account -- it's claimed that Mr. Bragg, as  
14 the solicitor said, had in his possession a certain  
15 quantity of a drug called methamphetamine.

16 Now, these quantities are established by the  
17 legislature, by the people in Columbia, the legislature, as  
18 if you have this quantity, then you can be charged with a  
19 certain crime.

20 When we're talking about charging somebody by the  
21 weight of something they have that's always an elusive  
22 concept.

23 The assistant solicitor has said to you already in his  
24 remarks that Mr. Bragg is claimed to have had a small  
25 quantity of marijuana on him, his person -- marijuana.

Opening statements

1 That's not methamphetamine. That's nowhere near  
2 methamphetamine. That's nothing like it. It is a  
3 completely different controlled substance -- and that  
4 Mr. Bragg is alleged to have after some degree of  
5 questioning by the police made a statement that there was  
6 some marijuana, some additional amount of marijuana, on the  
7 property.

8 Okay. And from there it became a methamphetamine case  
9 later after Mr. Bragg was totally removed from the  
10 property, not even home, because they took him away for  
11 this small amount of marijuana that he had.

12 This case is going to revolve quite a bit around if  
13 Mr. Bragg is guilty of anything what is it that he's really  
14 guilty of. What can they prove, if anything? And there's  
15 a lot of elements of proof which His Honor will explain to  
16 you at the appropriate time in this case.

17 Whatever is supposed to be proved though has to be  
18 proved to the required standard beyond a reasonable doubt.  
19 That is supposed to be the hardest standard to achieve in  
20 our system of justice.

21 So thank you for not prejudging this case, because if  
22 you don't we have hope for justice in this case. And I'm  
23 going to suggest to you, ladies and gentlemen, that at the  
24 end of your deliberation you will feel that the justice in  
25 the case is a not-guilty verdict for methamphetamine.

Matt Wilde  
Direct examination by Mr. Hunter

1 Thank you.

2 MR. HUNTER: Your Honor, at this time the state would  
3 call Special Agent Matt Wilde.

4 MATTHEW WILDE, having been  
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. HUNTER

7 Q Please state your name for the record.

8 A Matthew Wilde.

9 Q And, Mr. Wilde, how are you currently employed?

10 A I'm employed as a special agent with the F.B.I.

11 Q And where are you located?

12 A In Baltimore, Maryland.

13 Q Okay. Prior to becoming an F.B.I. agent how long were  
14 you in law enforcement?

15 A Approximately nine and a half years. I began in  
16 August of 2000.

17 Q And where did you begin?

18 A At the Spartanburg County Sheriff's Office.

19 Q And prior to going to the F.B.I. had all of your  
20 service been at the Spartanburg County Sheriff's office?

21 A That's correct.

22 Q Could you briefly go over what type of jobs you had  
23 over at the Spartanburg County Sheriff's office?

24 A I began as a basic patrol officer and moved on after  
25 that to working investigations. I worked burglaries, auto

Matt wilde  
Direct examination by Mr. Hunter

1 theft, went into narcotics investigations. And then prior  
2 to leaving I was part of the regional support unit. During  
3 my time at the sheriff's office I also worked on the  
4 bloodhound tracking team. The last three years I was there  
5 I was on the SWAT team.

6 Q Okay. On November 18th of 2009 did you have a chance  
7 to go to [REDACTED] here?

8 A Yes, I did.

9 Q Where is that located?

10 A It's -- it's in Chesnee.

11 Q What county?

12 A Spartanburg County.

13 Q Okay. Who did you encounter at that location?

14 A Mr. Bragg.

15 Q Was anybody else there?

16 A There was another gentleman there named Mr. Hines.

17 Q When you went -- where did Deputy Watson -- first of  
18 all, when you pulled up what kind of car were you in?

19 A I was in a black unmarked Crown Victoria. And Deputy  
20 Watson was with me.

21 Q What were y'all wearing?

22 A We were wearing our standard uniform such as what  
23 Deputy Watson's wearing with an outer vest over it, sir.

24 Q Who did you first encounter?

25 A Mr. Hines was in the driveway.

Matt wilde  
Direct examination by Mr. Hunter

1 Q where did Deputy Watson go?

2 A Deputy Watson went to the front door.

3 Q Okay. Did Deputy Watson leave the front-door area?

4 A Yes, he did. He eventually went around to the rear of  
5 the residence.

6 Q Okay. Did you find out who the owner of the house  
7 was?

8 MR. HARRIS: Objection.

9 THE COURT: Well, the answer is yes or no?

10 MR. HUNTER: Yes.

11 THE COURT: Overrule the objection.

12 A Yes.

13 Q Who is the owner of the house?

14 MR. HARRIS: Objection.

15 THE COURT: All right. Let me see y'all just a  
16 minute.

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

19 THE COURT: Sustain the objection.

20 Q Did you see anyone go into the house before you pulled  
21 up?

22 A Yes, we did.

23 Q Who did you see go into the house?

24 A Mr. Bragg.

25 Q Okay. While you were outside the house did Mr. Watson

Matt wilde  
Direct examination by Mr. Hunter

1 come back from behind the house?

2 A Yes, he did.

3 Q Who was he with?

4 A He was with Mr. Bragg. He was actually following  
5 Mr. Bragg.

6 Q Okay. what did Mr. Watson or Deputy Watson have on?

7 MR. HARRIS: Objection.

8 THE COURT: Rephrase the question.

9 Q When Deputy Watson came up to you did he hand you  
10 anything?

11 A He didn't hand me anything.

12 Q Okay. Did he have anything in his hand?

13 A Yes.

14 Q And what was in his hand?

15 MR. HARRIS: Objection.

16 THE COURT: Overruled.

17 A He had a plastic baggie -- it was a very small one --  
18 containing what were marijuana -- we call them roaches,  
19 little pieces of marijuana cigarettes.

20 Q I show you what's been premarked State's Exhibit 12.  
21 Do you recognize that item?

22 A Yes, I do. This is the bag that Deputy Watson  
23 recovered from the back of the house. And you can see  
24 inside of it there's some green and black substances like  
25 burnt and unburnt marijuana.

Matt wilde  
Direct examination by Mr. Hunter

1           And these white pieces -- well, they're kind of off  
2 white now -- but would be the rolling papers that you would  
3 actually roll the marijuana into.

4 Q       Once you were at the front of the house with Mr. Bragg  
5 and Deputy Watson and Mr. Hines did you place Mr. Bragg  
6 under arrest?

7 A       Yes, I did for simple possession of marijuana.

8 Q       Okay. At that time did you read him his Miranda  
9 rights?

10 A       Yes, I did.

11 Q       And what were the rights that you read to him?

12 A       "You have the right to remain silent. Anything you  
13 say can and will be used against you in a court of law.  
14 You have the right to an attorney. If you cannot afford  
15 one, one will be appointed to represent you before any  
16 questioning if you so wish. Do you understand these  
17 rights?" And --

18 Q       Okay. Did he answer you when you asked him if he  
19 understood the rights?

20 A       He stated he understood the rights.

21 Q       Okay. What type of questioning did you pursue next  
22 with Mr. Bragg?

23           MR. HARRIS: Your Honor, I object. May we approach?

24           THE COURT: Okay.

25           (Bench conference held off the record in the presence

Matt Wilde  
Direct examination by Mr. Hunter

1 of the jury but out of the hearing of the jury.)

2 Q While speaking with Mr. Bragg did you ask him if he  
3 had any marijuana on his property?

4 A Yes, I did.

5 Q And what did he tell you?

6 A He said that he did have some on his property but he  
7 didn't wish to tell me where it was.

8 Q Okay. I'm going to show you what's been premarked as  
9 State's Exhibit 9. Do you recognize this?

10 A Yes, I do. It's a gray case, and this was taken off  
11 Mr. Bragg's -- I think it was in his right front pocket.  
12 And it's containing a -- a pipe.

13 Q Is that in the same or substantially same condition as  
14 when you found it on Mr. Bragg?

15 A Absolutely.

16 MR. HUNTER: Your Honor, at this time the state would  
17 seek to admit State's Exhibit 9 into evidence.

18 MR. HARRIS: I object.

19 THE COURT: Overruled.

20 (Pipe and case marked State's Exhibit No. 9.)

21 A I could also say that pipe is commonly used to smoke  
22 methamphetamine.

23 MR. HARRIS: Your Honor, I -- I object to the witness  
24 simply volunteering without even being asked a question.

25 THE COURT: Well, just be sure you answer the

Matt wilde  
Direct examination by Mr. Hunter

1 questions that are asked --

2 THE WITNESS: Yes, sir.

3 THE COURT: -- instead of providing a narrative.

4 THE WITNESS: I'm sorry.

5 BY MR. HUNTER

6 Q Again, where was this located?

7 A That was in Mr. Bragg's right front pocket.

8 Q And after that you went and got a search warrant for  
9 his residence.

10 A That's correct.

11 Q Okay. Who was left at the residence when you went to  
12 go get the search warrant?

13 A Deputy Luther or Sergeant Luther and Deputy Roper  
14 stayed at the residence to secure it while we went to get  
15 the search warrant.

16 Q As far as chain of command, where did they stand with  
17 you at the time?

18 A Well, Sergeant Luther was my sergeant and Deputy Roper  
19 was just another colleague just like Deputy Watson.

20 Q Sergeant Luther was your boss at the time?

21 A That's correct.

22 Q Okay. And he stayed at the residence when you went to  
23 get the search warrant?

24 A Yes.

25 Q When you came back to the residence did you

Matt wilde  
Cross-examination by Mr. Harris

1 participate in the search?

2 A Yes, I did.

3 MR. HARRIS: Objection, Your Honor. I object to any  
4 testimony or evidence of the search.

5 THE COURT: Overruled.

6 BY MR. HUNTER

7 Q Just briefly. We can go over this with Deputy  
8 Watson as well, but can you explain what a return person  
9 is?

10 A Okay. So on a search somebody -- in this case  
11 myself -- I signed the warrant. So we would designate  
12 somebody to be the return person. And what that person  
13 does is keep a detailed log of the items that we find that  
14 we are intending on taking into evidence. That person  
15 seizes that evidence and puts it into the correct evidence  
16 bags which are then sent to the lab for testing.

17 Q Please answer any questions Mr. Harris may have.

18 A Yes, sir.

19 MR. HARRIS: Yes.

20 CROSS-EXAMINATION

21 BY MR. HARRIS

22 Q Is it proper to address you as Agent wilde?

23 A Sure.

24 Q I just want to --

25 A That's fine. No offense.

Matt wilde  
Cross-examination by Mr. Harris

1 Q I know when you were with the sheriff's department you  
2 say deputy often.

3 A Yes, sir.

4 Q Yes. Thank you for being here.

5 Let me start with when you left [REDACTED] the  
6 address on [REDACTED] Is it correct that you and  
7 Deputy Watson participated in the arrest of Mr. Bragg for  
8 possession of a small amount of marijuana?

9 A That's correct. We did.

10 Q And is it correct that Deputy Watson took Mr. Bragg to  
11 be booked into the county jail?

12 A We were together, yes, that's correct.

13 Q So you and Deputy Watson took Mr. Bragg to the county  
14 jail, and then you went to get a search warrant.

15 A That's correct.

16 Q And you left two other deputies at the location on  
17 [REDACTED]

18 A That's correct. Sergeant Luther and Deputy Roper.

19 Q Up until that time -- do I understand your testimony  
20 to be up until that point in time -- that you had  
21 discovered a small amount of marijuana that you've  
22 described was in this bag, is that correct --

23 A Yes.

24 Q -- and this case that you've testified about the gray  
25 case in Mr. Bragg's pocket?

Matt wilde  
Cross-examination by Mr. Harris

- 1 A That's correct.
- 2 Q And is it correct that at some point later in time you  
3 and many other deputies returned to the location on Casey  
4 [REDACTED] with the search warrant?
- 5 A It would be correct that it was Deputy Watson, myself  
6 and I believe two other deputies, and then Luther and Roper  
7 who were already there.
- 8 Q Well, would it be correct that it was Deputy Luther  
9 who was there? Was Deputy Luther there for the search?
- 10 A Correct.
- 11 Q Deputy Hutchins.
- 12 A That's correct.
- 13 Q You, Matt Wilde.
- 14 A Yes.
- 15 Q Agent Wilde. Deputy Roper.
- 16 A That's correct.
- 17 Q Deputy Watson.
- 18 A That's correct.
- 19 Q And Deputy Daniels.
- 20 A Yes.
- 21 Q So there were including -- other than yourself five  
22 other people participating in the search, is that correct?
- 23 A Actually six. Deputy Washington was there also.
- 24 Q Deputy Watson. Six.
- 25 A No. Washington, sir.

Matt Wilde  
Cross-examination by Mr. Harris

- 1 Q Washington.
- 2 A Yes, sir.
- 3 Q Six other people participated in the search.
- 4 A Yes, sir.
- 5 Q Did Deputy Watson come back out to participate?
- 6 A Absolutely.
- 7 Q So seven people participated in the search other than  
8 yourself.
- 9 A That's six other than myself. Seven in total.
- 10 Q And the -- that was only after the two deputies,  
11 Luther and Roper, had been left there by themselves.
- 12 A Correct.
- 13 Q And to your knowledge are they going to be testifying  
14 in this case?
- 15 A I don't believe so.
- 16 Q And so you weren't there. You don't know what  
17 happened at that location, do you?
- 18 A No, sir, I do not.
- 19 Q Is it correct that you personally took possession of  
20 some item when you did come back from inside the house?
- 21 A I did find one item inside the house.
- 22 Q Okay. You found a zip-lock bag containing smaller  
23 bags with white crystals found in a wooden box on a coffee  
24 table.
- 25 A That's correct.

Matt wilde  
Cross-examination by Mr. Harris

1 Q So you yourself found that, retrieved it and gave it  
2 to somebody?

3 A what I normally do is leave it where it is, and we'd  
4 have Watson or the person doing the return come and get it.  
5 So in that case it would be Watson would come, actually  
6 pick -- we mark it, say here it is. And the person doing  
7 the return would come back and take that item and bag it  
8 and then log it.

9 Q And to your knowledge other deputies did the same  
10 thing.

11 A Correct. They would find items, leave them where  
12 they're at. And then Watson would come back and pick them  
13 up and log them and put them in a bag and take a note of  
14 where they were found.

15 Q And to your knowledge are those deputies going to  
16 testify here in this case?

17 A No, they are not.

18 Q The person that you've described as the other person  
19 that was present there -- this Mr. Hines --

20 A Yes, sir.

21 Q -- he was there on the property when you arrived.

22 A That's correct. He was.

23 Q Okay. For that matter Deputy Luther, and Roper,  
24 were -- were nearby while you were on the property, is that  
25 correct?

Matt wilde  
Redirect examination by Mr. Hunter

1 A When we initially made our approach they were nearby,  
2 that's correct.

3 Q Okay. Thank you very much.

4 MR. HARRIS: No further questions.

5 REDIRECT EXAMINATION

6 BY MR. HUNTER

7 Q How many search warrants have you taken part of in the  
8 sheriff's office as well as the F.B.I. approximately?

9 A Well over a hundred.

10 Q Okay. When he's describing seven people searching the  
11 home, is that normal during a search warrant?

12 A It absolutely is. It's -- you're searching a house.  
13 I mean, so two people, yeah, could theoretically search a  
14 house. However, it would take a long time to physically go  
15 through.

16 You're talking about looking for marijuana. You're  
17 talking about looking for something that could be as small  
18 as this. To go through somebody's entire house, garage,  
19 outbuilding, car and look for something this small, it  
20 could take two people hours on end.

21 So, yeah, we frequently use six or seven people.

22 That's not uncommon. It's not unheard of.

23 Q Is that common in almost all of your search warrants?

24 A Oh, absolutely. At the F.B.I. we take at least ten to  
25 go do a search warrant, so.

Matt wilde  
Redirect examination by Mr. Hunter

1 Q And as far as a return man, why is there a designated  
2 return man who takes control of all of the evidence?

3 A So you have one, because you have multiple people  
4 there. It just simplifies the process to say, okay, well,  
5 I found this or Watson found that. But it just -- it  
6 simplifies it to say, well, we have one person now who is  
7 taking control of all of the evidence and taking that to  
8 the sheriff's office or to be put in bags and sent to the  
9 evidence.

10 Q So in all your other search warrants and this one  
11 included if you find an item, what is your job if you're  
12 not listed as the return officer?

13 A Your job is to leave -- is to notify the return person  
14 that you found the item, leave it there. And that way when  
15 you're getting ready to go, basically the return person  
16 goes room by room throughout the house and gets every  
17 single item that we're going to take.

18 Q As far as leaving Deputy Roper and Sergeant Luther at  
19 the scene, were they there after you effected the arrest on  
20 Mr. Bragg and Mr. Hines?

21 A Yes, they were.

22 Q Was there anybody else at that house when you left?

23 A No.

24 Q When you arrived back with the search warrant, other  
25 than Deputy Roper and Sergeant Luther, was anybody else at

Matt wilde  
Recross-examination by Mr. Harris

1 that house, or other than police officers?

2 A No, there was nobody else there.

3 Q Okay. Thank you.

4 RECROSS-EXAMINATION

5 BY MR. HARRIS

6 Q Just one question. How do you verify -- how can you  
7 verify, how can you know, that the two deputies remained  
8 there the whole time?

9 A They're people I've worked with for a very long time,  
10 and I would trust them with my kid.

11 Q Well, I'm not -- I understand --

12 A So, I mean, I would believe their word, yes.

13 Q I understand. But you don't know for a fact that they  
14 were there and they were -- that was an adequate force to  
15 secure that entire property.

16 A I know because I was told that they were there.

17 Q Well.

18 A And I trust them as being people I worked with and I  
19 trust that they would stay there the whole time like they  
20 were supposed to do.

21 Q Well, but beyond your trust you don't have any  
22 evidence that they were there or could secure the property.  
23 You don't have any hard facts beyond your trust.

24 A I don't have a -- I don't have a surveillance system  
25 to make sure my deputies stay where they're supposed to

Gary Watson  
Direct examination by Mr. Hunter

1 stay while we were off to get a search warrant for an hour  
2 or so, no.

3 Q Thank you, Agent Wilde.

4 MR. HARRIS: No further questions.

5 THE COURT: You may step down.

6 THE WITNESS: Thank you.

7 MR. HUNTER: Your Honor, since Deputy Wilde lives in  
8 Maryland may he be excused?

9 THE COURT: Any objection?

10 MR. HARRIS: I have no objection.

11 THE COURT: You may be.

12 (Whereupon, the witness was excused.)

13 MR. HUNTER: Your Honor, at this time the state would  
14 call Deputy Gary Watson.

15 GARY WATSON, having been first  
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. HUNTER

18 Q When you arrived at [REDACTED] what did you  
19 initially see, when you and Deputy Wilde are outside the  
20 residence?

21 A Not a lot going on, just a -- there's a brown truck  
22 there. We pulled into the driveway and walked up to the  
23 residence. That's where Deputy Wilde came in contact with  
24 Mr. Hines, and I proceeded to the front door.

25 Q Okay. Did anyone answer the front door?

Gary Watson  
Direct examination by Mr. Hunter

1 A No.

2 Q When you knocked on the door what did you hear?

3 A Sounded like somebody went out the back door.

4 Q Okay. At that point what did you do?

5 A I go around back to talk with the homeowner.

6 Q Okay. When you arrived at the back of the house what  
7 did you see?

8 MR. HARRIS: Objection.

9 THE COURT: Overruled.

10 BY MR. HUNTER

11 Q What did you observe when you arrived at the back of  
12 the house?

13 A As I came around the corner of the house I could see  
14 off in the distance someone coming out from a hole in the  
15 inside -- or up under the house, the underpinning.

16 Q Did you help search this house later that night?

17 A I did.

18 Q Could you have gotten under the house from within the  
19 house?

20 A Not that anyone found.

21 Q Okay. Did you see anyone enter the house before you  
22 and Deputy Wilde approached?

23 A Mr. Bragg.

24 Q Okay. When you got to the back and you see people  
25 coming out from underneath the house, who was that?

Gary Watson  
Direct examination by Mr. Hunter

1 A Mr. Bragg.

2 Q Did you say anything to him at that time?

3 A I just asked him, hey, buddy, can I talk to you a  
4 minute.

5 Q And at that point what did he do?

6 MR. HARRIS: Objection.

7 THE COURT: Overruled.

8 BY MR. HUNTER

9 A He approached me.

10 Q Okay. And how was he walking?

11 A He began approaching to me, and then it kind of dawned  
12 on him who I was and I saw him take --

13 MR. HARRIS: I object, Your Honor.

14 A I can't speculate. I'm sorry. I apologize.

15 THE COURT: Sustained.

16 BY MR. HUNTER

17 Q So how was he walking?

18 A Towards me.

19 Q Okay. Did he do anything upon approaching you?

20 MR. HARRIS: Your Honor, I object. And may we  
21 approach?

22 THE COURT: Okay.

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

25 THE COURT: All right. Ask your next question.

Gary Watson  
Direct examination by Mr. Hunter

1 BY MR. HUNTER

2 Q When he was approaching you did he do anything?

3 A It appears as if he stumbled and he threw something  
4 down.

5 MR. HARRIS: Objection.

6 THE COURT: Overruled.

7 Q Would you repeat that again?

8 A It appears that if he stumbled and then threw  
9 something to the ground.

10 Q Okay. Were you initially aware of what that was?

11 A No, I was not initially, just an object.

12 Q How was the light outside?

13 A It was dark.

14 Q Okay. Did you have anything to help you see?

15 A A flashlight.

16 Q What did you do with the flashlight when you saw him  
17 throw something down?

18 A Shine it on the object.

19 Q Let me show you what's been premarked as State's

20 Exhibit 12. Do you recognize that item?

21 A Yes. That would be the object that Mr. Bragg threw on  
22 the ground.

23 Q And it's in the same or substantially the same  
24 condition as when you found it?

25 A Yes, sir.

Gary Watson  
Direct examination by Mr. Hunter

1 Q At that point what did you ask Mr. Bragg to do?

2 A If he would step around front and talk with Deputy  
3 wilde.

4 Q Were you there when Deputy wilde was speaking with  
5 him?

6 A Yes.

7 Q And did you hear him say that there was more marijuana  
8 on the property?

9 A I did.

10 Q Where did you and Deputy wilde go from there?

11 A Well, we placed Mr. Bragg under arrest -- Deputy wilde  
12 did. And then we transported him to the county jail where  
13 I proceeded to book him in and to write the citations. And  
14 Deputy wilde then wrote an affidavit for a search warrant,  
15 where we were given it.

16 Q Okay. Did you take anybody else with you to jail?

17 A Mr. Hines.

18 Q Okay. When you left the residence who was left at the  
19 residence?

20 A Sergeant Luther and Deputy Roper.

21 Q Okay. And to your knowledge you don't know, you can't  
22 say for certain, if they stayed there.

23 A No, I can't say for certain.

24 Q But you can also not say for certain that they left.

25 A Absolutely.

Gary Watson  
Direct examination by Mr. Hunter

1 Q Okay. After booking and getting the search warrant  
2 did you return to the house?

3 A Yes.

4 Q Approximately how much later?

5 A Total maybe about an hour or an hour and 15 minutes.

6 Q At that time who was at the residence?

7 A Sergeant Luther and Deputy Roper.

8 Q Okay. Again, I know Deputy Wilde described it, but  
9 how many -- excuse me. Let me actually go back a little  
10 bit. Can you please briefly go over your law enforcement  
11 experience?

12 A After being honorably discharged from the Marine Corps  
13 in '98 I got a job with the Spartanburg County Detention  
14 Center where I worked there for eight years. Then I went  
15 to Spartanburg County Sheriff's Office as a road deputy for  
16 five years, uniform patrol.

17 Also, I went to the regional support unit where I  
18 worked there for my final stint. I've now just went over  
19 to training.

20 In that time I worked for Spartanburg County SWAT team  
21 for 13 years, and now I'm acting as a team leader for  
22 Spartanburg County.

23 Q And approximately how many search warrants have you  
24 been on through your SWAT team and other police experience?

25 A Over a hundred.

Gary Watson  
Direct examination by Mr. Hunter

1 Q Can you briefly describe what the return also -- what  
2 his assignment is?

3 A To ensure the integrity of the chain of custody, at  
4 least far as I'm concerned as return officer. If that were  
5 me, which it was that night, I would be notified if any  
6 items were found. Therefore I would go to where they were  
7 found and recover them myself, that way to simplify the  
8 entire process.

9 Q Do the officers that find them actually take  
10 possession of them?

11 A No.

12 Q Who takes possession of them?

13 A The return officer.

14 Q Will you go back into a little bit into -- where did  
15 you first find Mr. Bragg?

16 A Coming out from under the house.

17 Q After you had gotten the search warrant where did you  
18 actually go first to start searching?

19 A Up under the house since that's where he came from.

20 Q I show you what's been premarked State's Exhibit 3.  
21 Do you recognize that item?

22 A Yes, sir.

23 Q And how do you recognize that item?

24 A That was the bag that was up under the house.

25 Q Is it in the same or substantially the same condition

Gary Watson  
Direct examination by Mr. Hunter

1 as when you found it?

2 A Yes, sir.

3 MR. HUNTER: Your Honor, at this time the state would  
4 seek to offer State's Exhibit 3 into evidence.

5 MR. HARRIS: Objection.

6 THE COURT: It's admitted.

7 (Black tool bag marked State's Exhibit No. 3.)

8 Q I know this is going to be general, but I show you  
9 what's been marked as State's Exhibit 1. Do you recognize  
10 that item?

11 A Yes, sir.

12 Q How do you recognize that item?

13 A That would be the BEST bag that I placed all the  
14 narcotics into other than the marijuana. The marijuana  
15 goes into its own separate bag.

16 Q Okay. Did you -- please explain the BEST bag, what it  
17 is?

18 A This is a bag that we seal up all narcotics that is  
19 not marijuana to be sent in to the lab so it can be tested  
20 and confirmed for what it is, whether it be meth, Ecstasy,  
21 L.S.D., what have you.

22 Q Once you place an item in a BEST bag and close it can  
23 you tamper with it?

24 A No. It's sealed, and they are numerically ordered.  
25 So if the number doesn't match the actual envelope it

Gary Watson  
Direct examination by Mr. Hunter

1 comes, then it's no good.

2 Q If you find multiple items that you believe are  
3 controlled substances do you use separate bags?

4 A No. That would a waste of resources. We put them all  
5 in one bag.

6 Q Okay. Is that what you did in this situation?

7 A Yes, I did.

8 Q And I believe -- did you -- within this lab bag that's  
9 been admitted State's Exhibit 3, did you find anything  
10 within the bag?

11 A Yes. Go back to my report. Do you want me to go to  
12 just what's just over in the bag or what was near it?

13 Q Just in the bag.

14 MR. HARRIS: Your Honor, my objection continues as to  
15 other items that may have been found in the bag. I object  
16 to that.

17 THE COURT: Okay. Overrule the objection.

18 BY MR. HUNTER

19 A I found --

20 Q Item No. 3 in your search warrant.

21 MR. HARRIS: Your Honor, I object to the assistant  
22 solicitor telling the witness how to find his testimony.

23 THE COURT: Yeah. I mean, he's got to answer the  
24 questions. You can't give him the answer.

25 A It should be one black tool bag found under the house

Gary Watson  
Direct examination by Mr. Hunter

1 by me containing one pill bottle containing pills, one  
2 glass vial containing brown crystal like substances, five  
3 bags of green plant-like material, two glass pipes, one bag  
4 containing white powder, five bags with smaller baggies,  
5 and other miscellaneous drug paraphernalia.

6 Q I believe the first -- one of the first things you  
7 said was a vial.

8 A Yes.

9 Q Where is that vial?

10 A It is inside the BEST bag. It's kind of hard to see.  
11 It's jumbled up in here, but there's the black lid.

12 Q Okay. And there were multiple other bags found in  
13 that tool bag?

14 A Yes.

15 Q And where in that?

16 A A pill bottle, and then the marijuana or green  
17 plant-like material was in the evidence bag.

18 Q Was there anything else found underneath the house?

19 A The blue cigarette case.

20 Q I show you what's been premarked State's Exhibit 6.  
21 Do you recognize that item?

22 A That would be the blue what I call cigarette a case,  
23 water-proof cigarette case.

24 Q Okay.

25 MR. HUNTER: Your Honor, at this time the state would

Gary Watson  
Direct examination by Mr. Hunter

1 seek to admit State's Exhibit 6 into evidence.

2 MR. HARRIS: Objection.

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

5 THE COURT: Overrule the objection.

6 (Blue case marked State's Exhibit No. 6.)

7 BY MR. HUNTER

8 Q When you found that cigarette case was there anything  
9 inside of it?

10 A The baggies of white crystal-like substance.

11 Q Okay. Where were those baggies placed by you?

12 A In the BEST bag.

13 Q Was there anything else located underneath the house?

14 A Was a cigarette pack that had cigarettes and green  
15 plant-like material in it.

16 Q Okay. Who were the other officers there that were  
17 helping you search the house?

18 A Would be Sergeant Luther, Investigator Hutchins, Matt  
19 Wilde, Deputy Roper, myself and Deputy Daniels and Deputy  
20 Washington.

21 Q Okay. And at the time where were Investigator  
22 Hutchins and Washington assigned?

23 A Investigator Hutchins is part of the narcotics unit,  
24 and Deputy Washington was at that time also part of the  
25 narcotics unit.

Gary Watson  
Direct examination by Mr. Hunter

1 Q Okay. And so then Sergeant Luther, yourself, Deputy  
2 Wilde and Deputy Roper and Deputy Daniels were part of the  
3 regional support unit?

4 A Yes.

5 Q So at the house -- what units were at the house?

6 A We were just it -- the R.S.U. and then the two  
7 narcotics detectives.

8 Q Did you help search inside the house?

9 A My part was the return. I did look at a few items,  
10 but other than that I had to stick with the return.

11 Q Let me show you what's been premarked State's  
12 Exhibit 2. Do you recognize that item?

13 A Yes. That was setting by the lounge chair in the  
14 living room.

15 Q In the same or substantially same condition as when  
16 you found it?

17 A Yes.

18 MR. HUNTER: Your Honor, at this time the state would  
19 seek to introduce State's Exhibit 2 into evidence.

20 MR. HARRIS: Objection.

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

23 THE COURT: Overrule the objection.

24 (Glass vase marked State's Exhibit No. 2.)

25 BY MR. HUNTER

Gary Watson  
Direct examination by Mr. Hunter

1 Q When you took possession of the vase did you notice  
2 anything on the inside of it?

3 A Yes. A pink crystal-like substance.

4 Q What did you do with that pink crystal-like substance?

5 A What was loose, put it in a small bag to be tested.

6 Q All right. Is that also here, the BEST bag?

7 A It is.

8 Q Okay. I show you what's been premarked State's  
9 Exhibit 5. Do you recognize that item?

10 A Yes.

11 Q How do you recognize that item?

12 A That was found inside the house.

13 Q And is it in the same or substantially the same  
14 condition as when you found it?

15 A It is.

16 Q I show you what's been marked State's Exhibit 4. Do  
17 you recognize that item?

18 A Yes. That was one of the pipes inside the bag.

19 Q Okay. And is it in the same or substantially the same  
20 condition as when you found it?

21 A Yes.

22 MR. HUNTER: Your Honor, at this time the state would  
23 seek to admit State's Exhibits 4 and 5.

24 MR. HARRIS: I object.

25 THE COURT: They're admitted.

Gary Watson  
Direct examination by Mr. Hunter

1 (Pipe marked State's Exhibit No. 4; Skil black bag  
2 marked State's Exhibit No. 5.)

3 BY MR. HUNTER

4 Q I show you what's been premarked as State's Exhibit 8.  
5 Do you recognize that item?

6 A Yes.

7 Q And how do you recognize that item?

8 A To be one of the items found in the search warrant.

9 Q Is there a number written on it?

10 A Thirteen.

11 Q What is -- is that in the same or substantially same  
12 condition as you found it?

13 A Yes.

14 Q Okay. And what is it?

15 A In my experience what's known to be baggies used for  
16 sale of narcotics.

17 Q Okay. Is it -- what's inside of it there?

18 A Baggies.

19 Q Okay. One, two?

20 A Two packs of them.

21 Q Okay.

22 MR. HUNTER: Your Honor, at this time the state would  
23 seek to admit State's Exhibit 8 into evidence.

24 MR. HARRIS: I object.

25 THE COURT: Overruled.

Gary Watson  
Direct examination by Mr. Hunter

1 (Baggie marked State's Exhibit No. 8.)

2 BY MR. HUNTER

3 Q And where was this located?

4 A One of the bags inside the tool bag.

5 Q Okay. Show you what's been marked, pre -- premarked,  
6 State's Exhibit No. 11. Do you recognize those items?

7 A Yes.

8 Q And how do you recognize those items?

9 A It was also found on the search warrant.

10 Q And where was this located, or is there a number on  
11 the bag other than marked?

12 A Yes, 11.

13 Q Okay. And where was this located?

14 A That was found in the garage on the -- in the center  
15 shelves.

16 Q Okay. And who located it?

17 A I believe Investigator Hutchins.

18 Q And what's actually in the bag?

19 A Scale, a broken meth pipe.

20 MR. HUNTER: Your Honor, at this time the state would  
21 seek to admit State's Exhibit 11 into evidence.

22 MR. HARRIS: I object to that too.

23 THE COURT: It's admitted.

24 (Scales and roach pipe marked State's Exhibit No. 11.)

25 BY MR. HUNTER

Gary Watson  
Direct examination by Mr. Hunter

1 Q Let me show you what's been premarked State's  
2 Exhibit 10. Do you recognize that item?

3 A Yes.

4 Q How do you recognize that item?

5 A It was also found on the search warrant.

6 Q Is it in the same or substantially the same condition  
7 as when you found it?

8 A Yes.

9 MR. HUNTER: Your Honor, at this time the state would  
10 seek to admit State's Exhibit 10 into evidence.

11 MR. HARRIS: Object.

12 THE COURT: It's admitted.

13 (Scales marked State's Exhibit No. 10.)

14 BY MR. HUNTER

15 Q What is State's Exhibit 10?

16 A Scale.

17 Q Is it currently working?

18 A It is.

19 Q Okay. Where did you locate that?

20 A In the residence of Mr. Bragg.

21 Q Just a few more items. I show you what's been  
22 premarked State's Exhibit 7. Do you recognize that item?

23 A Yes.

24 Q Is it in the same or substantially the same condition  
25 as when you found it?

Gary Watson  
Direct examination by Mr. Hunter

1 A It is.

2 Q And what is in that bag?

3 A More baggies, M & M bottle and a glass pipe.

4 Q If you could, take the M & M bottle out of there.

5 What's...

6 MR. HUNTER: Let me go ahead and premark that by  
7 itself.

8 (Pipe marked State's Exhibit No. 14 for  
9 Identification.)

10 BY MR. HUNTER

11 Q Where was State's Exhibit 7 found?

12 A Also in the residence of Mr. Bragg.

13 MR. HUNTER: Your Honor, at this time the state would  
14 seek to admit State's Exhibit 7 into evidence.

15 MR. HARRIS: Objection.

16 THE COURT: Overruled. It's admitted.

17 (Baggies and two pipes marked State's Exhibit No. 7.)

18 BY MR. HUNTER

19 Q Show you what's been premarked State's Exhibit 14. Do  
20 you recognize that item?

21 A Yes.

22 Q Is it in the same or substantially the same condition  
23 as when you found it?

24 A Yes.

25 Q And where did you find that item?

Gary Watson  
Direct examination by Mr. Hunter

1 A Also in the residence of Mr. Bragg.

2 Q And what is inside the bottle?

3 A Be a glass pipe.

4 MR. HUNTER: Your Honor, at this time the state would  
5 seek to admit State's Exhibit 14 into evidence.

6 MR. HARRIS: I object.

7 THE COURT: Overruled. It's admitted.

8 (Pipe marked State's Exhibit No. 14.)

9 BY MR. HUNTER

10 Q I show you what's been premarked as State's  
11 Exhibit 13. Do you recognize what's in that bag?

12 A Yes, I do.

13 Q Okay. Is it in the same or substantially the same  
14 condition as when you found it?

15 A It is.

16 Q And, in fact, is State's Exhibit 12 originally placed  
17 in that bag?

18 A Yes.

19 Q What is located in that bag?

20 A Green plant-like material, also marijuana, is what  
21 it's called -- scales, cigarette package and paraphernalia.

22 Q Okay. And specifically I'm talking about State's  
23 Exhibit 1. Is that 13?

24 A It is.

25 Q Go through the process of what you do when you find

Gary Watson  
Direct examination by Mr. Hunter

1 controlled substances in a residence.

2 A First, you record where you found it, log it down,  
3 take possession of it. And what you do is put it in a bag  
4 and do a chain of custody form. You'll sign it as being  
5 the person who found it, log what it is, where you found  
6 it, place it into evidence.

7 A BEST bag is a little bit different. When you get it  
8 usually you do a field test for what it is and what it may  
9 test positive for. You'll put it in an evidence bag.  
10 You'll fill out the correct forms and submit it to be  
11 tested by the lab. What the lab does with it after that is  
12 part of the chain of custody, but everything is documented  
13 down.

14 Q Okay. And did you follow that procedure on both  
15 State's Exhibit 1 and 13?

16 A I did.

17 Q Now, I noticed State's Exhibit 1 is kind of jumbled,  
18 but these are all items found from the house?

19 A They are.

20 Q Okay. And that includes underneath the house and --

21 A Yes, sir.

22 Q Okay. And did you find all of State's Exhibit 13 in  
23 the same place?

24 A Yes, sir.

25 Q All of the marijuana in the same place?

Gary Watson  
Direct examination by Mr. Hunter

1 A No. They were like it was all throughout the house.

2 Q Okay. What -- what's your job when you find it in  
3 multiple places? Do you put it in separate bags or --

4 A No. What I do is take it and place it into one bag.  
5 You don't want five or six bags floating around the  
6 evidence room with the same case number. You always keep  
7 it together. And that way none of the evidence gets lost.

8 Q And State's Exhibit 12, where did you find this,  
9 again?

10 A That would be what Mr. Bragg threw on the ground.

11 Q And where did you place that after you collected the  
12 evidence?

13 A Placed it into a marijuana bag and also submitted into  
14 evidence.

15 Q Okay. Approximately how long did it take y'all to  
16 finish the search?

17 A Approximately maybe two hours.

18 Q Okay. And is that why you had seven people present to  
19 search?

20 A Yes, sir. It'd be a lot longer if not.

21 Q Okay. The policy that you followed here as far as you  
22 being the return man or anybody being the return man, did  
23 you follow the same policy as you have on every other --

24 A Yes, sir.

25 Q And what is that, again, just to make sure we're

Gary Watson  
Cross-examination by Mr. Harris

1 clear?

2 A When I'm notified that something is found I personally  
3 go recover it and log it down onto the form and make sure  
4 that it's submitted into evidence properly.

5 Q Okay. All of these items that we've showed you, one  
6 through 13, these are items that you found or that you took  
7 possession of?

8 A I did take possession of them, yes.

9 Q And where were these items?

10 A In the residence of Mr. Bragg.

11 Q Okay. Please answer any questions Mr. Harris might  
12 have for you.

13 A Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. HARRIS

16 Q So it is true that when all of the deputies went back  
17 over to the location on [REDACTED] and participated  
18 in the search, various deputies found various items in  
19 various locations.

20 A Yes.

21 Q I believe that you found some items.

22 A Yes.

23 Q Deputy Luther found some items.

24 A Yes.

25 Q Deputy Roper found some items.

Gary Watson  
Cross-examination by Mr. Harris

1 A Yes.

2 Q Deputy Hutchins found some items.

3 A Yes.

4 Q We've already established that Deputy Wilde says he  
5 found some items.

6 A Yes.

7 Q And some of those items were white crystal or pinkish,  
8 some color, powder-like or crystal-like substance that was  
9 seized because it was believed it might be methamphetamine.

10 A Yes.

11 Q So you may have gotten some amount of what you believe  
12 was methamphetamine.

13 A Yes.

14 Q Deputy Roper might have gotten what he might have  
15 believed was some amount of methamphetamine.

16 A I recovered all of the items.

17 Q Deputy Roper found it, says he found it anyway.

18 A Yes.

19 Q And so on for the same with Deputy Wilde -- then  
20 Deputy Wilde -- and Deputy Watson. Same thing.

21 A Yes.

22 Q You all had a part in finding some varying amounts of  
23 what you believed to be methamphetamine.

24 A Yes, sir.

25 Q Do you know what period of time went by between the

Gary Watson  
Cross-examination by Mr. Harris

- 1 time that you and then Deputy Wilde left [REDACTED]  
2 and went and -- and went to get -- to do whatever you do  
3 with Mr. Bragg and get the search warrant -- and came back?  
4 From the time you left until the time you came back, how  
5 much time expired?
- 6 A I don't have an approximate time. I could take a  
7 guesstimation, an hour or an hour and 15 minutes.
- 8 Q Shouldn't you keep up with those things if you have an  
9 active criminal investigation going on?
- 10 A I don't usually start logging down times until we open  
11 up the search warrant.
- 12 Q Well, you don't often -- well, I guess it's not  
13 necessary in the normal case that you go to a location  
14 without a search warrant, decide to go get one and come  
15 back and have to leave folks there at what was an active  
16 crime scene. would that be fair to say?
- 17 A Would you go over that again for me?
- 18 Q Well, it's not on every case where you go to a place  
19 without a search warrant, decide to get a search warrant,  
20 leave the place entirely to get the search warrant and come  
21 back.
- 22 A No. It doesn't happen every time.
- 23 Q So that's sort of an out-of-the-ordinary occurrence,  
24 isn't it?
- 25 A No.

Gary Watson  
Cross-examination by Mr. Harris

1 Q How many times have you participated in that sort of  
2 thing?

3 A Several.

4 Q Several.

5 A Yes, sir.

6 Q How many?

7 A I can't give you or --

8 Q You can't say.

9 A An exact number.

10 Q You can't say. But when you do have that situation  
11 you have to take certain precautions to make sure that the  
12 scene you're hoping to search later is kept intact, is that  
13 correct?

14 A That is why we left Sergeant Luther and Deputy Roper  
15 there.

16 Q Well, you answered -- is it correct you answered the  
17 assistant solicitor's question -- I believe the question  
18 was you can't say if they stayed there and you can't say if  
19 they did.

20 A Absolutely. I'd have to take their word for it.

21 Q Shouldn't something like that be documented if you're  
22 going to charge somebody with a crime?

23 A I don't write the policy on it, sir. So I can't say.

24 Q Is there a policy on it?

25 A Not that I know of.

Gary Watson  
Cross-examination by Mr. Harris

1 Q So the Spartanburg County Sheriff's Department has no  
2 official policy on how to secure a site that they are  
3 actively seeking a search warrant for.

4 A They do.

5 Q Well, you just said they didn't have one.

6 A No, I didn't.

7 Q Okay. Well, do you have one? What is it?

8 A Part of it just like opening and logging down.

9 Q What? So, oh, they have a policy --

10 A The search warrant --

11 Q -- and the policy is don't document anything.

12 A You do document it.

13 Q Well.

14 A I didn't document those times.

15 Q Well, you are supposed to document it.

16 A No, sir. I didn't say that.

17 Q Oh, okay. Are you supposed to document it?

18 A I documented the opening of the search warrant and I  
19 documented the closing time of the search warrant.

20 Q So let me be clear about what my question relates to.

21 My question relates to whether or not you are supposed  
22 to document what goes on at a crime scene location while  
23 you're trying to seek a search warrant for that location.

24 A All times there's supposed to have been documented  
25 word.

Gary Watson  
Cross-examination by Mr. Harris

1 Q Where is the documentation?

2 A The search warrant, sir.

3 Q Well, that relates to opening the search warrant.

4 That goes to when you get back to the place, doesn't it?

5 A It does.

6 Q That's what you did when -- you say you did -- when  
7 you got back there with all of those folks.

8 A Yes.

9 Q I'm asking you is there -- where is the documentation  
10 about what happened at that place?

11 A I don't have any.

12 Q So there is no -- there's supposed to be  
13 documentation, but you don't have any.

14 A I didn't say there's supposed to be.

15 Q Oh, I'm sorry. I thought you said that you -- that  
16 there was a policy you're supposed to document what happens  
17 at a crime scene.

18 A No, sir. That's not what I said at all.

19 Q Oh, I'm sorry. So then the sheriff's department has  
20 no -- no policy that says you ought to keep up with and  
21 document what you're keeping up with at a crime scene while  
22 you're trying to get a search warrant for it.

23 A It does have a policy on keeping up with times and  
24 incidences on a crime scene. But therefore it being a  
25 search warrant the crime has not been committed there that

Gary Watson  
Cross-examination by Mr. Harris

1 we know of yet. So until we follow through with the search  
2 warrant there is no documentation needed. That way, you  
3 know, anything happens. That way you document the time of  
4 the search warrant when it's opened so if something is  
5 found it is correctly documented about a crime scene. But  
6 until then there is no crime scene. We're just given a  
7 search warrant based on probable cause in order to execute  
8 a search warrant.

9 Q Well, then why did you leave, supposedly leave, two  
10 deputies over there if you don't have to really keep up  
11 with the place until you get back?

12 A Because I trust them and I want to keep the integrity  
13 of the scene to make sure nobody tampers and violates  
14 Mr. Bragg's rights by planting anything there.

15 Q All right. Well, then let me ask you this, Deputy.  
16 What evidence can you present in court today by way of  
17 paperwork documentation or testimony that would prove that  
18 no tampering happened at that scene?

19 A I cannot offer any.

20 MR. HARRIS: No further questions.

21 MR. HUNTER: Nothing from us, Your Honor.

22 THE COURT: You may step down.

23 We're going to take a short break. I'll ask the jury  
24 to please go to your jury room. Remember the caution I've  
25 given you previously. Don't talk about the case. I'll

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 bring you back after a short break and we'll continue.

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

4 THE COURT: Mr. Hunter, make sure all of the exhibits  
5 that have been introduced are up here with the court  
6 reporter.

7 we'll be at ease 15 minutes.

8 (Whereupon, a recess was taken.)

9 THE COURT: Where is that spectator that has the  
10 telephone?

11 THE OFFICER: They are looking for her now, sir.

12 (Pause.)

13 THE COURT: Who is your next witness?

14 MR. HUNTER: Beth Stuart, Your Honor.

15 THE COURT: All right. Bring the jury in, please.

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

18 THE COURT: Mr. Hunter.

19 MR. HUNTER: Your Honor, at this time the state would  
20 call Lieutenant Beth Stuart.

21 MARY ELIZABETH STUART, having  
22 been first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. HUNTER

24 Q Please state your name for the record.

25 A Mary Elizabeth Stuart.

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 Q And where are you currently employed?

2 A The Spartanburg County Sheriff's Office.

3 Q And what is your job title there?

4 A I am a forensic chemist.

5 Q Okay. How long have you been employed there?

6 A Nine years.

7 Q Okay. Where did you get your undergrad degree?

8 A I have a bachelor's of science in chemistry and a  
9 bachelor's of science in biochemistry, both from the  
10 College of Charleston.

11 Q And did you get a graduate degree?

12 A I do. I have a master's in chemistry from the  
13 University of South Carolina.

14 Q And after your master's what did you do?

15 A I taught at universities, organic chemistry, and then  
16 applied and was accepted at the Spartanburg County  
17 Sheriff's Office as a forensic chemist.

18 I've been to the Law Enforcement Academy. I've been  
19 to the D.E.A. forensic chemist school. I've been to the  
20 D.E.A. clandestine lab school. I've been -- let's see  
21 where else I've been. I am the -- certified by the  
22 American Board of Criminalistics in all areas of forensic  
23 science.

24 I do 40 hours of continuing education each year, which  
25 includes going to the different companies that provide our

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 instrumentation and taking their classes on our  
2 instrumentation.

3 Q And, Lieutenant Stuart, in that time what are your job  
4 duties?

5 A I do drug analysis, fire debris analysis and work  
6 clandestine labs, also poison analysis.

7 Q Specifically, with drug analysis, how many controlled  
8 substances have you tested?

9 A I can't tell you all the different substances, but I  
10 think I'm up to about 3,000 cases.

11 Q Okay. And in that time how many times have you come  
12 into court to testify as an expert in that field?

13 A Twenty-eight.

14 Q Are you currently or have you recently worked on  
15 projects with other academics or other universities in the  
16 area?

17 A Yes. I've done some research with Converse College.

18 Q Is that relating also to the field of forensic  
19 chemistry?

20 A Yes, it is research in the area of drug chemistry.

21 Q And how many times have you come to court and  
22 testified, again?

23 A Twenty-eight.

24 Q Okay.

25 MR. HUNTER: Your Honor, at this time the state would

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 offer Lieutenant Stuart as an expert in the chemical  
2 analysis of controlled substances.

3 MR. HARRIS: Your Honor, I don't know if she is or  
4 not, but I don't wish to cross-examine her at this point in  
5 time. I'll wait until the general cross-examination.

6 THE COURT: All right. She is so qualified.

7 BY MR. HUNTER

8 Q Can you please give a brief routine of what happens  
9 when evidence comes to the evidence room for you to test?

10 A After the officer packaged the evidence -- and the  
11 packaging we package it into is called a BEST bag. And  
12 best stands for best evidence sample testing.

13 It's basically just a routine way for all drug  
14 evidence to be packaged and come into the lab. We accept  
15 evidence from every agency within Spartanburg County. So  
16 we need one way for everybody turn it into us. It'd just  
17 be too complicated if they didn't.

18 So it's called a BEST bag. And it's tamper evident.  
19 It's not tamper proof. Of course you can get into it if  
20 you want to. You can cut it. You could try to rip it.  
21 But it's tamper evident, which means if someone has altered  
22 it, messed with it, then you'd be able to tell when you  
23 looked at it.

24 So the officer would place it into that and then  
25 either submit it into the drop box or to the evidence

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 officer depending on what time of day it is.

2 The general routine of the evidence officer, they  
3 would pick it up from the drop box or if it was handed  
4 directly to them, log it into the system and then place it  
5 into the drug room.

6 From there as the chemist I'd go into the drug room,  
7 retrieve the evidence and take it back to the lab with me.

8 Before I take it back to the lab with me I look at it  
9 and make sure it's sealed and the paperwork's filled  
10 correctly and then take it back to the lab.

11 Q Is a BEST bag the practice you and the sheriff's  
12 office use with marijuana?

13 A It's not. BEST bags are extremely sealed from the  
14 air. So if an item is inside of it, it's not going to be  
15 able to dry. So if something's wet in it it's going to  
16 kind of mold and mildew.

17 Marijuana because it's a plant substance, it's  
18 typically got some moisture in it when it's found. And if  
19 you were to put it in a BEST bag, then it's going to get  
20 moldy and wet and you're going to have water stopping in  
21 the bottom.

22 So we tell them to package it either in just a regular  
23 plastic bag which has some air flow or into a paper bag  
24 which is the best so you have a lot of air flow so that  
25 that material is not going to mold. So marijuana is

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 packaged into paper bags or plastic bags and then sealed  
2 with evidence tape.

3 Q Let me show you what's been premarked State's  
4 Exhibits 12 and 13. Do you recognize those items?

5 A I do. They have my initials on them. As you can see  
6 on the outside of the bag, when I would have been done  
7 testing it I would have folded it over and sealed it and  
8 you would see where I put my initials and the lab number  
9 associated with this case. And then my initials are  
10 actually on every item inside the bag, also along with the  
11 lab number and the date I worked the case.

12 Q So although Exhibit 12 is outside the bag with your  
13 initials you know what?

14 A That it belongs to this. That's the reason we do it.  
15 we have our initials, the date and the lab number on every  
16 bag inside so I know it went with this case, because  
17 obviously they've opened it up before I got here today, so.

18 Q And did you receive that item back in November of  
19 2009?

20 A Yes, I did. I received it on November 19th of 2009.

21 Q Okay. When you received it did it appear to be  
22 tampered with?

23 A No. If it's not sealed properly we won't accept it.  
24 And then also what we do on the outside of the brown paper  
25 bags, I put the lab number and date and my initials on the

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 first day I test it so that I know it was sealed before I  
2 ever opened it. It's just like another kind of  
3 verification, although we don't take it from evidence if  
4 it's not sealed either.

5 Q And what's actually -- so it's your testimony that it  
6 was not tampered with when you received it?

7 A Yes, or I would have never taken it from evidence.

8 Q Okay. What do you do specifically with this case or  
9 any other marijuana case once you receive the bag into your  
10 lab?

11 A On a marijuana case it's logged into what we call our  
12 LIM [sic] system. It's just a database where we put in all  
13 of the information. At that point it's put into a vault or  
14 locked room, depending on how large the item is, until we  
15 can work it.

16 On this case I received it on the 19th and actually  
17 looks like I got to work it on the 20th, is what my -- the  
18 data is saying on all of the items. Yes, on the 20th. So  
19 the very next day.

20 At that point, again, like I said, I look at it and  
21 make sure it's sealed. And then I would open it up, open  
22 up each individual item and begin to test it.

23 Q And did you do that in this case?

24 A I did, yes.

25 Q And how many items did you actually test?

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 A Did I actually test?

2 Q Yes.

3 A Seven items.

4 Q Okay. And what are the tests for marijuana?

5 A Marijuana -- and I'll take this bag down so I can see  
6 all of y'all.

7 Marijuana is what we call a 2-prong test. And  
8 basically that just means there are two different parts of  
9 the test in order for us to call it positive for marijuana.

10 One of them is just a color-change test. We have the  
11 marijuana in a little bowl-like apparatus. And we would  
12 drop chemicals on it, and it would change a color that we  
13 know to be associated with marijuana.

14 Okay. But then we also do what's called a microscopic  
15 test very easy. We put it under a microscope and look at  
16 it, and we're looking at -- we're looking for very specific  
17 things when we look under the microscope -- the different  
18 hairs on the marijuana. It has to pass both of those  
19 tests -- not just one but both of them -- before we call it  
20 marijuana.

21 Q And did you perform those tests to the bags inside  
22 that brown bag?

23 A I did.

24 Q Did you perform it on all seven or, excuse me,  
25 actually --

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 A There are seven items I tested. One of them I did not  
2 analyze.

3 Q Okay. What was the item that you did not analyze?

4 A It was paraphernalia that was inside the bag with it.

5 Q Through the testing were you able to come up with an  
6 expert opinion as to what the items in those bags were?

7 MR. HARRIS: Your Honor, at this point I'm to make an  
8 objection to further testimony concerning the items that  
9 were allegedly submitted -- we don't know by who at this  
10 point -- because the state has failed to provide the  
11 adequate -- an adequate foundation in terms of the chain of  
12 custody -- we don't -- unless the only hands that the items  
13 went through were Deputy Watson and this witness. We have  
14 no other information, no other foundation.

15 MR. HUNTER: Your Honor, may we approach?

16 THE COURT: Yeah.

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

19 THE COURT: You may continue.

20 BY MR. HUNTER

21 Q Were you able to come to an expert opinion as to what  
22 the items in the bag were?

23 A Yes, marijuana.

24 Q Can you please look in the bag?

25 A I see.

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 Q And were those the items you tested?

2 A Yes. As I stated before, they all have my initials,  
3 the date. And what I do, the lab number in this instance  
4 is L09M667. And I put like dog five after it so I know  
5 it's the fifth item on my list.

6 And as I look at every item in here they all have my  
7 initials and the lab number on them. They all have my  
8 initials, the lab number and the date I tested them on.

9 Q And that includes State's Exhibit 12 as well.

10 A Yes, as I stated earlier.

11 Q All right. And were you able to obtain a weight for  
12 those items?

13 A Yes.

14 Q Will you please state what those weights were?

15 A Would you like individual weights or total weight?

16 Q Either or both -- both actually.

17 A Okay. Item 2, 5.98 grams; item 3, 0.83 grams, item 4,  
18 1.43 grams; item 5, 109.09 grams; item 6, 1.74 grams; item  
19 7, 71.88 grams; item 8, 72.59 grams. That's a total of  
20 263.54 grams.

21 Q Of marijuana.

22 A Of marijuana, yes.

23 Q Let me show you what's been premarked State's  
24 Exhibit 1. Do you recognize that item?

25 A Once again as with the marijuana we just discussed, my

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 initials, the date -- are on the bag and multiple items  
2 inside the bag, as well as in the seal of the bag.

3 Q Okay. When did you receive that bag?

4 A I also received this on November 19th of 2009.

5 Q Okay. When you receive a bag like that what is your  
6 general routine when you take it to the lab?

7 A When I received this it was not in this outer bag as  
8 you see now. I sealed in that after I tested it. It was  
9 in this inner bag, which is what I told y'all before was  
10 called a BEST bag -- best evidence sample testing.

11 It would have been sealed. And you see the lines on  
12 it. If someone tried to rip it open those would be  
13 distorted. And it's sealed closed.

14 So, like I say, in evidence I look at it and make sure  
15 it's sealed and take it back to the lab. Once I begin to  
16 test it I look at it again. When I know it's sealed I put  
17 my initials, the date and the letters OK so I know it's  
18 sealed before I open it. And then I cut it open and  
19 proceed with the testing.

20 Q Okay. On November 19th when you received it was it  
21 tampered with?

22 A No. would have never taken it from the evidence.

23 Q Okay. And what tests were you to perform on that bag?

24 A This had several different items.

25 MR. HARRIS: Your Honor, I have the same objection as

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 relates to this testimony as I did the previous items of  
2 evidence, that a proper foundation hasn't been laid.

3 THE COURT: Overrule the objection.

4 BY MR. HUNTER

5 A There were several different items in this case, so  
6 there's different testing methods.

7 Q Okay. As far as the crystal-like substances.

8 A Okay. The crystal-like substances -- when any unknown  
9 crystal substance, white powder substance, comes into the  
10 lab it's opened up and just the general look of it is  
11 written down, whether it be a white powder or off-white or  
12 crystal. The coloring of it is written down.

13 At that point we perform a spot test on it, which is  
14 very similar to what I told y'all about before with the  
15 marijuana and the color change test.

16 The spot tests do not tell me definitely what I have.  
17 It just gives me an idea. It's a field test, a presumptive  
18 test of what I might have.

19 Where I perform spot tests on it -- and depending on  
20 what the substance is -- it will turn different colors in  
21 different chemicals. And that gives me an idea of where to  
22 go from then.

23 At that point we would put it on our instrument, and  
24 the instrument would give us readouts, printouts, data on  
25 what the item is.

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1 Q Okay. And did you do that in this instance?

2 A I did.

3 Q And specifically with items 1 through 12, would you go  
4 through each item and give your expert opinion as to what  
5 each item was?

6 A Item 1, which was a vial containing a white crystal  
7 substance was found to be methamphetamine with a weight of  
8 0.74 grams.

9 Item 2 noted to be a white crystal substance in a  
10 zip-lock labeled sale was found to be methamphetamine at a  
11 weight of 1.07 grams.

12 Item 3, a pink crystal substance, was found to be  
13 methamphetamine with a weight of 8.09 grams.

14 Item 4, which was a white crystal substance in a  
15 Handi-Vac zip-lock was found to have no controlled or  
16 prescription substances detected within it.

17 Item 5, which is a white crystal substance in a  
18 plastic bag, was found to have no controlled or  
19 prescription substance detected in it.

20 Item 6, which was a white crystal substance in a  
21 zip-lock labeled 14, was found to have no control or  
22 prescription substances detected in it.

23 Item 7, which is a white crystal substance in a  
24 plastic bag, was found to have no controlled or  
25 prescription substances detected in it.

Mary Elizabeth Stuart  
Direct examination by Mr. Hunter

1           Item 8, which was a white powder substance in a  
2 plastic bottle, was found to be methamphetamine at a weight  
3 of 2.97 grams.

4           Item 9, which was a white crystal substance that also  
5 had four empty bags in with it, was found to be  
6 methamphetamine at a weight of 1.99 grams.

7           Item 10, which is a pink rock substance in a zip-lock,  
8 was found to be methamphetamine at a weight of 1.09 grams.

9           Item 11, which was a clear crystal substance in a  
10 zip-lock, was found to be methamphetamine at a weight of  
11 0.28 grams.

12           And Item 12, which was four zip-locks containing  
13 off-white crystal substance, was found to be  
14 methamphetamine at a weight of 7.46 grams.

15 Q       And what is the total weight of methamphetamine?

16 A       The total weight of methamphetamine found was  
17 23.69 grams.

18 Q       Okay. What are the other items in there?

19 A       Item 13 was seven yellow tablets.

20 Q       You don't have to go through the entire --

21 A       Okay. They're tablets.

22 Q       Okay. Pills?

23 A       Yes.

24 Q       What do you do when you're done with the substances or  
25 done testing?

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

1 A Once I'm finished testing the items, it's just like  
2 you see here. They're all signed, dated, lab number on  
3 them, item number put on them. And then they're all placed  
4 down into this heat-sealed bag with the BEST bag. And I  
5 write my initials, the date and the lab number on it. And  
6 I seal over it so if somebody opens it up, I know it.

7 Q So then what is your testimony as to the substance and  
8 the weight of the substance?

9 A On the crystal-like items and the powder-like items,  
10 methamphetamine.

11 Q Okay. And what weight?

12 A Of 23.69 grams.

13 Q Okay. Thank you. Please answer any questions Mr.  
14 Harris may have for you.

15 CROSS-EXAMINATION

16 BY MR. HARRIS

17 Q I'd like to direct your attention to the -- your  
18 handling of the crystal-like substances you described as in  
19 your opinion as methamphetamine.

20 A Yes, sir.

21 Q Do you know if all of the items that you have gone  
22 through -- this items 1 through 12 that you describe in  
23 detail -- do you know when those items were originally  
24 seized?

25 A When they were originally seized?

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

1 Q The date.

2 A I could only say that by looking at the form B chain  
3 of custody or looking at an incident report. I can't say  
4 that from my notes.

5 Q Okay. So is it your testimony that you can't testify  
6 when those items were seized?

7 A Were seized, no, sir. I received them from evidence  
8 after the fact.

9 Q And is it the case that, say, for instance, on your  
10 item No. 5 --

11 A Uh-huh.

12 Q -- described as a white crystal substance in plastic  
13 bag -- is that correct?

14 A Yes, sir.

15 Q And you've given an expert opinion that no controlled  
16 or prescription substance is detected.

17 A Yes, sir.

18 Q Which means there were no drugs found.

19 A I did not detect them with the methods and  
20 instrumentation I used in the lab that day.

21 Q Well, I'm sure you're going to say you're confident  
22 you have all the right technology --

23 A I am confident, yes, sir.

24 Q -- to detect them if they're there.

25 A Yes, sir.

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

1 Q You didn't detect any for, say, item No. 5.

2 A No, sir.

3 Q Do you know whether Detective Roper seized item No. 5  
4 originally?

5 A I wasn't there during the search warrant or the  
6 writing of the return.

7 Q Do you know whether Deputy Hutchins seized the item  
8 that had no drugs?

9 A Once again, sir, I wasn't there during the search  
10 warrant.

11 Q Do you know whether Deputy Watson seized it?

12 A Once again, sir, I wasn't there during the search  
13 warrant.

14 Q Do you know whether Deputy --

15 MR. HUNTER: Your Honor, I believe this is getting  
16 cumulative. She's answered the question.

17 THE COURT: Overruled.

18 BY MR. HARRIS

19 Q Do you know whether Deputy Wilde seized that item that  
20 had no drugs?

21 A I wasn't there during the search warrant.

22 Q Do you know whether Deputy Watson seized it?

23 A I wasn't there during the search warrant.

24 Q You have an item No. 4 here, white crystal substance  
25 in a Handi-vac zip-lock. Am I reading that right?

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

- 1 A Yes, sir.
- 2 Q A Handi-vac. Is that different than a regular  
3 zip-lock?
- 4 A Well, they would have -- they say Handi-vac on them.
- 5 Q Oh, it's -- that's what the company calls them.
- 6 A That's the name brand, yes, sir.
- 7 Q What brand was it?
- 8 A Handi-vac, I'm assuming. That's what written on the  
9 zip-lock.
- 10 Q Handi-vac is a brand? It's like -- not Glad or Hefty?
- 11 A It would be what -- this is what was written on the  
12 zip-lock. I haven't investigated all the different brands.
- 13 Q All right. So on this particular item No. 4 --
- 14 A Yes, sir.
- 15 Q -- where you make specific reference in Handi-vac  
16 zip-locks.
- 17 A I try to do that, sir, when there's several different  
18 zip-locks. If there's a way to distinguish one from  
19 another in my report I'll do that so that during times like  
20 this it would be easy to distinguish which items we're  
21 talking about in court.
- 22 Q But it's your testimony that the Handi-vac zip-lock  
23 bag --
- 24 A Yes, sir.
- 25 Q -- is a commercially available to be bought in stores

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

1 and such -- zip-lock bag.

2 A I don't know where the person bought it, sir.

3 Q Well, I'm not asking you that question. I'm just

4 asking you that if you have the kind of expertise or

5 knowledge in this field that would enable you to say

6 whether a Handi-vac zip-lock bag is a commercially

7 available brand --

8 A I would assume it is. Handi-vac was written on the

9 zip-lock bag.

10 Q Well, you mean written on it like printed on it like a

11 company printed on there.

12 A Yes, sir, yes, sir.

13 Q Like Hefty might print on there Hefty bag.

14 A Yes, sir.

15 Q Or Glad might print on there Glad bag or whatever.

16 A Yes, sir.

17 Q Okay. And other than that though, I mean, you're not

18 familiar. You're just kind of saying this was printed on

19 there -- Handi-vac.

20 A It's a way to distinguish the item from other items in

21 the case.

22 Q whichever kind of bag it was, item No. 4, the white

23 crystal substance, there are -- no drugs were detected.

24 A No drugs. No controlled substances were detected in

25 that sample.

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

- 1 Q And rather than go through each of those names that I  
2 went through for item 5 --
- 3 A I can tell you I was not on the search warrant.
- 4 Q -- you don't know what person seized those items.
- 5 A No, sir, I do not.
- 6 Q You don't know what person found those items.
- 7 A No, sir, I do not.
- 8 Q You don't where they were found.
- 9 A No, sir, I do not.
- 10 Q And you've already said that you don't know when they  
11 were found.
- 12 A No, sir. I do not.
- 13 Q You don't know who they were taken from.
- 14 A No.
- 15 Q Or if they were taken from anybody.
- 16 A Not besides the suspect name written on my paperwork.
- 17 Q You have item 6, white crystal substance in a zip-lock  
18 labeled 14. Is that -- has somebody written or marked or  
19 in some way that particular bag, zip-lock bag, with a 14?
- 20 A Yes, sir.
- 21 Q Do you know who?
- 22 A I can make an assumption, but I do not know.
- 23 Q Well, we're trying to stick with the facts here. So  
24 do you know who --
- 25 A Typically, it's the person who does the return who

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

1 writes that.

2 Q All right. Well, then who was that?

3 A In this case I believe it was Gary Watson.

4 Q You believe?

5 A I have not been here during the whole trial nor have I  
6 seen the search warrant.

7 Q I understand. But you're -- you're testifying. I'm  
8 just asking do you know who wrote the 14 on this bag to  
9 distinguish it.

10 A He was up here before me testifying to his return that  
11 he filled out, therefore that leads me to believe he did  
12 the return. Typically, it's the person who does the return  
13 who writes the numbers on the bag, and 14's written on the  
14 bag.

15 Q So if things were done properly --

16 A Yes.

17 Q -- and documented properly you might guess that it  
18 could have been Deputy Watson.

19 A Yes.

20 Q But it could have been Deputy Luther, Wilde, Roper,  
21 Hutchins. You just don't know.

22 A Sure.

23 Q Where was item 6, white crystal substance in zip-lock  
24 labeled 14 -- where was that found?

25 A Once again, sir, I wasn't there during the search

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

1 warrant.

2 Q Do you know whether it was found under the house?

3 A Once again, sir, I was not there during the search  
4 warrant.

5 Q Do you know whether it was found in a vase?

6 A Once again, sir, I wasn't there during the search  
7 warrant.

8 Q And item No. 7, white crystal substance in plastic  
9 bag, so no particular marking for this plastic bag, just a  
10 plastic bag like item 5. No drugs found.

11 A Yes, sir.

12 Q You wouldn't be able to answer any of those questions  
13 who --

14 A I wasn't there during the search warrant.

15 Q -- what, where, when, how.

16 A No, sir.

17 Q Under the house, from the vase, from the wooden box.

18 A No, sir.

19 Q Okay. So as to those items where no drugs are found  
20 to the extent they're claimed to have come from Mr. Bragg  
21 or some way having to do with him, you didn't find any  
22 drugs.

23 A I don't -- what are you trying to ask me?

24 Q You didn't find any drugs on several of these items.

25 A In those particular -- in those particular items no

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

1 controlled or prescription substances were detected.

2 Q So, now, for the items that you did say you found  
3 various amounts of methamphetamine --

4 A Uh-huh.

5 Q -- like, for instance, item 3, pink crystal substance,  
6 results methamphetamine found, as you testified

7 8.09 grams --

8 A Uh-huh.

9 Q All right. Do you know whether that came from under  
10 the house?

11 A I wasn't there for the search warrant.

12 Q Do you know whether that came from in the house?

13 A I wasn't there for the search warrant.

14 Q If it came from within the house do you know what  
15 location in the house?

16 A I wasn't there for the search warrant.

17 Q Do you know who brought it to the house?

18 A I wasn't there for the search warrant or before or how  
19 it got in the house or what it was doing there or anything.

20 Q And your answers would be the same for all the other  
21 items where you say you found methamphetamine.

22 A Yes, sir.

23 Q And on the marijuana do we need to go through all of  
24 those questions again?

25 A I don't.

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

- 1 Q You don't know when, who got them, where they were,  
2 nothing.
- 3 A No, sir.
- 4 Q Okay. You said that you've testified 28 times in a  
5 courtroom.
- 6 A Yes, sir.
- 7 Q Just like you're -- this is 29 or 28?
- 8 A This is 29.
- 9 Q Twenty-nine. And how many of those times have you  
10 testified for somebody other than the police?
- 11 A None.
- 12 Q None.
- 13 A Zero.
- 14 Q Zero for 29 at this point taking the other side.
- 15 A Yes.
- 16 Q The -- where is your -- where is the place you do  
17 these things?
- 18 A My office?
- 19 Q Yes, ma'am.
- 20 A In the sheriff's office.
- 21 Q In the Spartanburg County Sheriff's Office?
- 22 A Yes, sir.
- 23 Q Are you an employee of the sheriff's office?
- 24 A I am, yes, sir.
- 25 Q Sheriff Wright pays your salary.

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

- 1 A Probably doesn't come out of his pocket.
- 2 Q Well, the county does through -- asking.
- 3 A Yeah.
- 4 Q I doubt he does.
- 5 A The county pays it, yes, sir.
- 6 Q Okay. All right. And so do you have anybody to help
- 7 you?
- 8 A What do you mean by help you?
- 9 Q Well, I mean, you stated that you -- it's part of your
- 10 job -- and that I think you said you had -- I forget the
- 11 number of cases you've worked on.
- 12 A Uh-huh.
- 13 Q But it's a lot, a lot of cases.
- 14 A Yes.
- 15 Q A lot more times than you've testified in court.
- 16 A Yes, sir.
- 17 Q So like when you get a BEST bag like this --
- 18 A Yes, sir.
- 19 Q -- I mean, do you have to do all the work, or do you
- 20 have technicians and assistants that can help you?
- 21 A No. I do all the work.
- 22 Q You have to do it all.
- 23 A Yes, sir.
- 24 Q So it comes down to you.
- 25 A Yes, sir.

Mary Elizabeth Stuart  
Cross-examination by Mr. Harris

1 Q So you have to put a lot of faith in the people that  
2 send you things that they've properly documented  
3 everything, or it affects the integrity of your work.

4 A Yes, sir.

5 Q And you've testified that these BEST bags are supposed  
6 to be properly sealed so you can tell if somebody had tried  
7 to get into the bag, is that right?

8 A Yes, sir.

9 Q And you've stated, although not -- do I understand  
10 your testimony in regard to this particular BEST bag, for  
11 instance, that just as a general rule you would not accept  
12 a BEST bag that had looked like it had been tampered with?

13 A Yes, sir.

14 Q But can you state specifically in this case that this  
15 bag -- other than your general rule when you always -- you  
16 never deviate from the general rule -- that this bag was  
17 not tampered with?

18 A Yes, I can, sir. Before I open any bag for testing I  
19 put my initials, the date and the letters OK. And that  
20 tells me before I open it, and so I can testify in court,  
21 that it was sealed before I opened it.

22 Q So if you did the proper documentation.

23 A I did the proper --

24 Q I understand you say you did. If you did, then you  
25 can know. That's how you can know. But you don't remember

Mary Elizabeth Stuart  
Redirect examination by Mr. Hunter

1 the bag, this particular bag.

2 A Well, sir, that's why because I work so many cases,

3 it's why we have these policies and practices in place.

4 That's why if the bag is sealed I write my initials, the

5 date and letters OK, so that when I'm sitting on the stand

6 in a case that's several years old I can say I know it was

7 sealed because of my initials, the date, and letters OK are

8 on it.

9 Q And just like say, for instance, I mean, the items

10 have to get in a bag, right? They have to -- somebody --

11 you don't put them in there.

12 A No, sir.

13 Q Somebody has to get them in there.

14 A Yes, sir.

15 Q They have to get them from somewhere.

16 A Yes, sir.

17 Q And so what goes in the bag is only as good as the

18 procedures and the policies and the documentation that was

19 followed to gather the items. Would that be fair?

20 A Sure.

21 Q Thank you. I believe that's all I have for you.

22 Appreciate it.

23 REDIRECT EXAMINATION

24 BY MR. HUNTER

25 Q I believe he said you always testified 29 times for

Mary Elizabeth Stuart  
Redirect examination by Mr. Hunter

1 the police.

2 A Uh-huh.

3 Q Have you ever testified in court just like today that  
4 during your analysis you did not find controlled substances  
5 or prescriptions?

6 A If I don't find it, I don't find it. And, yes, I've  
7 testified to that.

8 Q So it doesn't matter if you work for the police or  
9 anybody else.

10 A My entire job rests on the fact that I'm trustworthy  
11 and I do my job the way I'm supposed to and tell the truth  
12 and use all the practices in place to make things correct.

13 Q How many forensic chemists does the sheriff's office  
14 employ?

15 A There's two of us.

16 Q Okay. And so when things in they're either separated  
17 to either you -- or who is the other person?

18 A Lieutenant Ashley Harris.

19 Q Okay. And how long has he been doing that?

20 A Fourteen years, I believe.

21 Q As far as the specifics when you're asked -- are you  
22 ever asked in any of the cases -- the 3,000 you've done or  
23 28 you testified to -- are you able to answer unless you're  
24 out at the search warrant, are you able to answer who took  
25 the items?

Mary Elizabeth Stuart  
Recross-examination by Mr. Harris

1 A Unless I'm at the search warrant there's really no  
2 reason for me to even know.

3 Q Okay. So for all of those times he asked you and you  
4 answered I wasn't at the search warrant, that would be your  
5 answer for your other 3,000 cases if you weren't at the  
6 search warrant?

7 A If I wasn't at the search warrant, yes, sir.

8 Q Okay. Thank you.

9 RECROSS-EXAMINATION

10 BY MR. HARRIS

11 Q Are you -- on this -- and please understand I'm just  
12 asking questions here.

13 A Sure.

14 Q As part of the BEST evidence protocol, in your  
15 expertise and experience are you familiar with a concept  
16 called the 2-person rule?

17 MR. HUNTER: Your Honor, outside the scope of  
18 redirect, Your Honor.

19 THE COURT: Sustained.

20 You may step down.

21 MR. HUNTER: The state would call Jack Westmoreland.

22 JACK WESTMORELAND, having been  
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. HUNTER

25 Q Mr. Westmoreland, obviously your name is Jack

Jack Westmoreland  
Direct examination by Mr. Hunter

- 1 Westmoreland.
- 2 A It is.
- 3 Q And how are you currently employed?
- 4 A Spartanburg County Sheriff's Office.
- 5 Q For how long have you been employed?
- 6 A For over 28 years.
- 7 Q And during 2009 what were your duties at the sheriff's
- 8 office?
- 9 A I was assigned to evidence.
- 10 Q Okay. In this case -- what are the duties of the
- 11 evidence officer?
- 12 A We take in evidence. We log it in and enter it into
- 13 the computer system and keep it in a secured environment
- 14 which is locked.
- 15 Q How is evidence entered into -- or how does evidence
- 16 come to you?
- 17 A Either by a drop box or handed to us over the window.
- 18 Q Okay. Do you fill out forms?
- 19 A I do.
- 20 Q Do you actually take the evidence -- or if you look at
- 21 the evidence and it's tampered with would you take it?
- 22 A I will not take it.
- 23 Q Did you actually perform any duties in the case here
- 24 today?
- 25 A I did.

Jack Westmoreland  
Direct examination by Mr. Hunter

1 Q Okay. And what exactly did you perform?

2 A I took in a BEST bag on a form C.

3 Q Okay. And what was the BEST -- what was the BEST bag?

4 A This is it right here.

5 Q So you're looking at State's Exhibit 1.

6 A Yes, sir.

7 Q Is that the bag that you took in on this case?

8 A I did.

9 Q And what date did you take this in?

10 A I took it on 11/19 of '09.

11 Q Okay. And would you have taken it if it was tampered  
12 with?

13 A I would not have.

14 Q And what did you do with the bag?

15 A I entered it into the computer system. I put a  
16 sticker on it, logged it into evidence and put it in the  
17 drug room.

18 Q Okay. Is what you do with all your BEST bags?

19 A I do.

20 Q Okay. State's Exhibit 13 I believe is -- do you  
21 recognize that item?

22 A I do.

23 Q And how do you recognize that item?

24 A My handwriting on the bag.

25 Q What did you do with that item?

Jack westmoreland  
Direct examination by Mr. Hunter

- 1 A I took it into evidence.
- 2 Q And what date did you take it into evidence?
- 3 A On the same date, 11/19 of '09.
- 4 Q And what do you do with the bags once you take them  
5 into evidence?
- 6 A It gets placed into the drug room after it's been  
7 entered into the computer system.
- 8 Q who has access to the evidence room?
- 9 A Just the evidence officers.
- 10 Q Anybody else have access?
- 11 A Besides the sheriff, no.
- 12 Q who can actually come into the evidence locker?
- 13 A Myself and the chemist.
- 14 Q okay. And in this case when you had drugs where did  
15 you place the drugs?
- 16 A In the drug room.
- 17 Q okay. And other than you and the chemist does anybody  
18 else have access to this room?
- 19 A No.
- 20 Q okay. And did you do that in this case?
- 21 A I did.
- 22 Q With both State's Exhibit 1 and State's Exhibit 13?
- 23 A I did.
- 24 Q okay. And was either tampered with when you received  
25 or when you put into evidence?

Jack Westmoreland  
Cross-examination by Mr. Harris

1 A When I received it they were both sealed.

2 Q Okay.

3 MR. HUNTER: Your Honor, at this time the state would  
4 proceed to offer State's Exhibit 1 and 13 into evidence.

5 MR. HARRIS: Your Honor, I object on the grounds  
6 that -- as previously expressed to the Court in motions.

7 THE COURT: All right. I overrule the objection.

8 (BEST bag marked State's Exhibit No. 1; bag with  
9 marijuana marked State's Exhibit No. 13.)

10 Q Please answer any questions Mr. Harris may have for  
11 you.

12 CROSS-EXAMINATION

13 BY MR. HARRIS

14 Q Deputy --

15 A Yes, sir.

16 Q -- good afternoon. The -- is it correct that you  
17 received from what you refer to as the drop box two  
18 different packages relating to this case?

19 A Yes, sir.

20 Q One was this brown bag.

21 A Correct.

22 Q Like a grocery bag, I guess. And the other was the  
23 plastic BEST bag.

24 A Correct.

25 Q Is that right?

Jack Westmoreland  
Cross-examination by Mr. Harris

1 A Yes, sir.

2 Q And is it correct that basically all you did was took  
3 it -- pursuant to your job, your description, you just took  
4 that from that, this drop box, and put it in a room --

5 A Correct.

6 Q -- where y'all store evidence.

7 A Yes, sir.

8 Q So you never personally got either of the items from a  
9 human being, from hand to hand.

10 A Not that I remember, sir, no.

11 Q Okay. And, I mean, they were placed in a place. And  
12 you just collected them and you -- do you recall if you  
13 got, collected other items that were in the drop box on the  
14 same day, same time?

15 A If it's my day to take items in, I would have, yes.

16 Q Okay.

17 A It's like -- the drop box is like a secured metal box  
18 with a key in it that only the evidence officers have keys  
19 to.

20 Q Right, right. But, I mean, you wouldn't have dealt  
21 with a person. You would have just unlocked the box --

22 A Not that I can remember, no.

23 Q -- and got whatever was in there. And then the same  
24 thing. You would have just taken it in the evidence room  
25 and put it wherever you put it on a shelf or whatever. And

Jack Westmoreland  
Cross-examination by Mr. Harris

1 that was your only involvement with it.

2 A Correct.

3 Q Okay. But is it correct that -- that you are -- you  
4 do have a standard form to deal with this.

5 A Have a B and C form, yes, sir.

6 Q And have you -- like, for instance, with the brown  
7 bag, have you -- do you have B and C forms for that?

8 A Yes, sir.

9 Q Okay. And is it correct like for the brown bag there  
10 is on form B -- states that G. Watson employed by S.C.S.O.,  
11 Spartanburg County Sheriff's Office? Is what that stands  
12 for -- S.C.S.O.

13 A Correct.

14 Q That G. Watson employed by the Spartanburg County  
15 Sheriff's Department on 11/18/2009, "I seized from Norman  
16 Bragg, Benjamin Hines, pursuant to the search warrant at or  
17 near [REDACTED] certain items."

18 A Correct.

19 Q And those items supposedly are in that bag.

20 A Yes, sir.

21 Q So the way that you got the items from the drop box  
22 was that it should have been accompanied by some paperwork  
23 saying how those items got in there.

24 A Yes.

25 Q And the form B is the -- that's how you do that.

Jack Westmoreland  
Cross-examination by Mr. Harris

- 1 A Yes, sir.
- 2 Q And so for this particular item it's claimed these  
3 items were seized from two people.
- 4 A According to the paperwork, yes, sir.
- 5 Q All right. Pursuant to a search warrant at [REDACTED]  
6 [REDACTED]
- 7 A That's what it states.
- 8 Q Okay. And then you do a form C, is that right?
- 9 A I do.
- 10 Q And you simply say in your form C related to this case  
11 that you -- you took possession of -- from the drop box of  
12 this item originally seized by G. Watson. And is that your  
13 writing G -- is that G.P.M.?
- 14 A Yes, sir.
- 15 Q That stands for green plant material?
- 16 A Correct. It was the next day when I received it, the  
17 19th.
- 18 Q I'm sorry?
- 19 A I took in it the 19th. So it was in the drop box.
- 20 Q Okay. And so you're not -- you're simply saying  
21 Watson because that's the only name that was on the form B.
- 22 A Correct.
- 23 Q So you would not be aware of whether Deputy Luther,  
24 Watson, Roper, Wilde or anybody else had found or seized  
25 any of these items.

Jack Westmoreland  
Redirect examination by Mr. Hunter

1 A Correct.

2 Q You only know what's on the form.

3 A Correct.

4 Q Thank you. No further questions.

5 REDIRECT EXAMINATION

6 BY MR. HUNTER

7 Q Would that be your same answer for every other case  
8 you've done as an evidence officer?

9 A Correct.

10 MR. HARRIS: Nothing further.

11 THE WITNESS: Thank you, sir.

12 MR. HUNTER: Your Honor, may Ms. Stuart be excused?  
13 She has a child.

14 MR. HARRIS: No objection.

15 THE COURT: She may be.

16 (Whereupon, the witness was excused.)

17 MR. HUNTER: Do you want me to go ahead? I have one  
18 final witness.

19 THE COURT: We will take it up in the morning. We are  
20 going to break for the afternoon.

21 I'll ask the jury to keep in mind my caution  
22 previously given you, and that is don't talk about the  
23 case. You can't discuss it with family members. You can't  
24 even discuss it among yourselves unless you're involved in  
25 jury deliberations, and that time has not yet come.

1           So have a good evening. Please report to your jury  
2 room at 9:30 in the morning -- 9:30 in the morning.

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

5           MR. HUNTER: May I release Officer Watson? He has a  
6 SWAT he has to teach tomorrow.

7           THE COURT: He may be.

8           (Bench conference held off the record.)

9           THE COURT: The Bragg case is in recess until 9:30 in  
10 the morning.

11           END OF PROCEEDINGS MARCH 19, 2012

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Paul Anthony Norris  
Direct examination by Mr. Hunter

1 (Proceedings March 20, 2012)

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

4 THE COURT: Are we ready for the jury?

5 MR. HUNTER: Yes, sir.

6 MR. HARRIS: Yes, sir, Your Honor.

7 THE COURT: All right. Bring them in.

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

10 THE COURT: Good morning, ladies and gentlemen.

11 When we recessed yesterday the state was in the midst  
12 of their presentation. So we'll continue with that  
13 presentation this morning.

14 Mr. Hunter.

15 MR. HUNTER: Your Honor the state would call its final  
16 witness, Paul Norris.

17 PAUL ANTHONY NORRIS, having  
18 been first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. HUNTER

20 Q Please state your name.

21 A It's Paul Anthony Norris.

22 Q And how are you currently employed?

23 A I am employed with the Spartanburg County Sheriff's  
24 Office, narcotics investigator.

25 Q Did you receive an undergrad degree?

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 A I did. I have degree, undergrad degree, in marine  
2 science.

3 Q And what did you do with that degree?

4 A I've worked for a company called Southland Fisheries  
5 out of Columbia, South Carolina, for about nine years as a  
6 lead biologist in the agriculture field.

7 Q Okay. And after that did you have a career change?

8 A I did. I went to the -- went to the sheriff's  
9 department, Spartanburg County Sheriff's Office in 2000 --  
10 in September of 2000.

11 THE COURT REPORTER: I can't hear him.

12 THE COURT: Excuse me. Can you get a little bit  
13 closer to the microphone and use it, please, sir?

14 THE WITNESS: Yes, sir.

15 BY MR. HUNTER

16 Q What type of training did you receive to become a  
17 police officer?

18 A I graduated the South Carolina Criminal Justice  
19 Academy in 2001.

20 Q Okay. And at that point did you go to work for the  
21 sheriff's office?

22 A I did.

23 Q How long have you been working there?

24 A It will be 12 years in September.

25 Q Okay. Where did you first start working for the

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 sheriff's office?

2 A I was assigned to uniform patrol about four or four  
3 and a half years. And then from there I was assigned to  
4 the carbreaking task force, and the end of 2004 and then  
5 from there went to C.I.D., which is the criminal  
6 investigation division, and worked property crimes and  
7 white collar. And then in April of 2006 started in the  
8 narcotics division.

9 Q So as of today you have six years of experience in  
10 narcotics?

11 A Yes, sir.

12 Q Okay. Have you attended any basic narcotics courses?

13 A I have. One of them would be the basic class that is  
14 taught by the regional counter drug training academy which  
15 is out of Meridian, Mississippi. It's a 2-week class.

16 Q And does that class cover the manufacture and sale,  
17 use, packaging, pricing of multiple drugs?

18 A It does.

19 Q Does it include meth?

20 A Yes, sir, it does.

21 Q What other basic courses have you taken?

22 A I've also went through the basic 2-week D.E.A. class  
23 in 2009.

24 Q And where was that located?

25 A In Charleston, South Carolina.

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 Q Is that a separate course from the one you had?

2 A Yes, sir, it is.

3 Q And how long was that?

4 A It's a 2-week class.

5 Q Did that also include information on the manufacture  
6 and sale and use and packaging and pricing of drugs  
7 including meth?

8 A Yes, sir, it did.

9 Q Okay. Have you taken any other classes since then?

10 A Yes. In May of 2010 I took a 40-hour course for meth  
11 investigation and indoor marijuana grows. That's a 40-hour  
12 course for the regional counter drug training academy,  
13 again, in Meridian, Mississippi.

14 In October of 2010, is a clandestine lab, meth lab,  
15 class. Also, a weapons of mass destruction certification.  
16 That's a 52-hour course. And then I've also been in a  
17 workshop in March of 2011 in reference to meth lab  
18 investigations.

19 Q And in those -- in that 5-day course, the 52-hour  
20 course, the meth-lab workshop, do you also learn the sale,  
21 use, packaging of meth in those courses?

22 A Yes, sir, you do.

23 Q In fact, those -- those were meth lab and meth  
24 specific courses.

25 A They were.

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 Q Do you have to get recertified in any of these.  
2 courses?

3 A Yes, sir. In February of 2011 the recertification for  
4 the meth lab recertification through the D.E.A. was in  
5 February of 2011. And then I'll be -- another  
6 recertification is coming up in April of 2012.

7 Q And what is your current duty at the sheriff's office?

8 A Mainly my duty right now is, again, it's narcotics  
9 investigation. And since about two thousand -- January of  
10 2011 I've been assigned to handle all meth complaints that  
11 come into the sheriff's office.

12 Q Okay. Based on your training and experience in these  
13 courses have you ever given any presentations concerning  
14 methamphetamine?

15 A I have. Recently I just gave a presentation to the  
16 South Carolina Officer Letter Association [sic] in  
17 reference to identification of meth labs that they may come  
18 across in their duties.

19 Q In your 12 years of experience with the law  
20 enforcement, including your six years of narcotics, have  
21 you ever come across meth cases?

22 A Yes, sir, I have.

23 Q Approximately how many times?

24 A Hundreds.

25 Q Okay. And that would include the sale, pricing and

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 use and paraphernalia of those as well?

2 A Yes, sir.

3 Q And that's with meth?

4 A Yes, sir, that's correct.

5 Q Okay. Have you ever acted as the primary agent in an  
6 undercover buy situation?

7 A I have.

8 Q Okay. What's your duties there?

9 A It would be basically in reference to the use of C.I.  
10 maybe to make a purchase. You direct that C.I. in  
11 reference to an individual that you may be purchasing from  
12 that day.

13 Q And as an officer do you have to be aware of the  
14 pricing and packaging when dealing with a meth lab?

15 MR. HARRIS: Object to the leading questions.

16 THE COURT: Rephrase it.

17 BY MR. HUNTER

18 Q As an officer what do you have to be aware of when you  
19 are working undercover buys?

20 A You need to know, one, what you're purchasing, and,  
21 two, the price and the amount that you're going to be  
22 making a purchase of.

23 Q Okay. And how many times have you done that?

24 A Again, 6-year career, hundreds of times.

25 Q How many times have you done that with meth?

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 A Again, probably a hundred times.

2 Q Okay.

3 MR. HUNTER: Your Honor, at this time the state would  
4 offer Investigator Paul Norris as an expert in the sale,  
5 packaging and paraphernalia use, as well as pricing, of  
6 methamphetamine.

7 THE COURT: Any objection?

8 MR. HARRIS: Your Honor, I'm not aware that there's a  
9 recognized specialty or expert designation for such a  
10 thing, but I assume the witness might be able to answer  
11 some questions about methamphetamine.

12 THE COURT: Well, do you object to the questions?  
13 He's obviously going to ask questions with regard to that  
14 expertise. Are you going to object to them based upon his  
15 failure to --

16 MR. HARRIS: Since there's no such thing really, I  
17 would object.

18 THE COURT: All right. Overrule your objection.

19 You may continue.

20 BY MR. HUNTER

21 Q I just want to be clear. This case is a November of  
22 2009, search warrant. Were you at that search warrant?

23 A No, sir, I was not.

24 Q Did you have anything involved in the case with Mr.  
25 Bragg?

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 A No, not at all.

2 Q Let me show you State's Exhibit 9. Will you please  
3 explain to the jury what that is?

4 A This is what we commonly see or call is a meth pipe.

5 THE COURT: Excuse me just a minute.

6 Don't turn your back to the court reporter, please,  
7 sir.

8 THE WITNESS: I'm sorry.

9 BY MR. HUNTER

10 A It's a -- what we consider in narcotics as a meth  
11 pipe. It's paraphernalia. It's something that could be  
12 used to smoke methamphetamine.

13 would you like me to -- how it works?

14 Q Hold on one second.

15 A All right.

16 Q Let me show you what's been admitted as State's  
17 Exhibits 4, 11 and 14. Can you briefly explain what those  
18 items are as well?

19 A I'm going -- I'll start with 14. And it's a M & M  
20 container. And inside the container, again, it's a -- what  
21 we would consider sort of a makeshift type pipe that could  
22 be used to smoke methamphetamine -- glass pipe.

23 Four, again, looks like a makeshift type glass utensil  
24 or pipe that could be used to smoke methamphetamine.

25 And No. 11 -- it appears that this one is broken or

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 has melted on one end. Again, another makeshift type pipe  
2 that's been used to smoke methamphetamine.

3 Q Just the pipe.

4 A I'm sorry.

5 Q How can you tell the difference between a meth pipe  
6 and other pipes?

7 A Usually -- there's two different pipes that are  
8 usually used for like crack cocaine or something like that.  
9 They usually use a filter-type system. Chore Boy is what  
10 they call it. They'll stick it in, or a filter system.  
11 And usually with meth pipes it's a nonfilter.

12 Q Okay. What is the Chore Boy?

13 A Chore Boy is a name brand. It's actually a scrubbing  
14 pad that you can buy at convince stores or grocery stores  
15 or something.

16 Q Okay. Are there other pipes used to smoke substances?

17 A Marijuana pipes. That's also a glass pipe, usually a  
18 little different design in the way it's packaging or the  
19 way they package the marijuana into the pipe itself, but  
20 yeah.

21 Q Show you again what's marked in bags as State's  
22 Exhibit 11, as well as State's Exhibit 10. Can you explain  
23 to the jury what those items are?

24 A Eleven --

25 MR. HARRIS: Your Honor, I don't want to be picky

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 about it, but I think the witness must first lay a  
2 foundation that he knows before he can explain what they  
3 are -- that he knows what they are.

4 THE COURT: Okay. Rephrase your question.

5 BY MR. HUNTER

6 Q Investigator Norris, what is State's Exhibit 11 and  
7 State's Exhibit 14, I believe?

8 A Eleven looks like it's a semi tech digital scale. And  
9 then No. 10 is a, also a, digital scale.

10 Q Do you come in contact with those in your training and  
11 experience --

12 A I do.

13 Q -- as a law enforcement? Okay. What are they used  
14 for?

15 A Mainly in the drug trade it's used for distribution of  
16 narcotics. You could -- let's say you buy something in  
17 large quantities. You may want to repackage to a smaller  
18 quantity for resale. And then you would use a digital  
19 scale for -- to weigh out what you're going to sell.

20 Q Show you what's been premarked State's Exhibit 8.  
21 It's actually admitted into evidence. Excuse me. There  
22 are two parts of State's Exhibit 7. As far as the pipe  
23 that was laying there, what is that?

24 A Again, it's a glass pipe that can be used to smoke  
25 methamphetamine. It looks like it's melted on the back

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 side of it with a hole open on the other end.

2 Q Is that consistent with the other pipes that you  
3 looked at?

4 A It is, yes.

5 Q Okay. The other two bags that are laying there -- I  
6 believe it's State's Exhibit 7 and 11 -- do you  
7 recognize --

8 A Yes.

9 Q -- what those items are?

10 A Seven is -- would be -- if you don't mind, can I take  
11 it out?

12 Q That's fine.

13 A These are small sealable bags. They're commonly used  
14 in distribution of narcotics.

15 Q Okay. Of all narcotics?

16 A Of all narcotics. Could be marijuana, meth or cocaine  
17 or crack cocaine.

18 Q And State's Exhibit -- is that 11?

19 A That's seven. And then No. 8 is the same thing. It's  
20 just different size bags for different distribution  
21 weights.

22 It looks like that's a little bit bigger bag. And  
23 then you have a smaller bag, it looks like, and given  
24 another sealable bag that could be used for distribution of  
25 narcotics.

Paul Anthony Norris  
Direct examination by Mr. Hunter

1 Q One final exhibit, State's Exhibit 2. What is that  
2 item?

3 A It is a glass vase with cows on it, and inside looks  
4 like a crystal, a pink crystal, substance.

5 Q Have you come into contact with items that look like  
6 that during your training and experience?

7 A I have.

8 Q And what is it?

9 A It appears to me to be methamphetamine that has  
10 been --

11 MR. HARRIS: Your Honor, I object. There's no way  
12 that this witness can identify what that substance is other  
13 than to describe it.

14 There's been a -- he's supposed to have been presented  
15 as an expert lab witness that came in. I don't recall any  
16 testimony about that being tested or any -- or any  
17 testimony being given by that witness what it was.

18 THE COURT: Overrule the objection.

19 BY MR. HUNTER

20 A Appears to be methamphetamine that's been used  
21 probably as a dye or something to put in it to make it that  
22 color -- that color like strawberry meth. They sell it  
23 that way.

24 Q Okay. Please answer any questions Mr. Harris may have  
25 for you.

Paul Anthony Norris  
Cross-examination by Mr. Harris

1 CROSS-EXAMINATION

2 BY MR. HARRIS

3 Q Are you aware -- you're with the sheriff's department,  
4 you established.

5 A Yes, I am.

6 Q And you were here all day yesterday.

7 A Yes, sir.

8 Q Is that right?

9 A Well, since I -- about 3:45.

10 Q About 3:45 yesterday.

11 A Yes, sir.

12 Q So you heard the testimony of the lab person.

13 A Yeah, Lieutenant Beth Stuart, yes.

14 Q And you heard the testimony of Deputy Westmoreland,  
15 the evidence custodian.

16 A Yes, sir.

17 Q Did you hear the testimony of Deputy Watson?

18 A Pieces of it. I didn't hear the entire testimony. I  
19 came in while he was on the stand.

20 Q Okay. Not enough to really gain --

21 A No, sir.

22 Q -- any full appreciation of what his involvement was  
23 in this case.

24 A No, sir.

25 Q And what about Deputy, then Deputy, Wilde?

Paul Anthony Norris  
Cross-examination by Mr. Harris

- 1 A I heard none of his testimony.
- 2 Q Okay. You've testified that you have no investigative  
3 involvement in the case on trial here today.
- 4 A That is correct, yes, sir.
- 5 Q You didn't go out to this location to view the scene.
- 6 A No, sir, I did not.
- 7 Q You didn't see where any of these items were.
- 8 A No, sir.
- 9 Q You didn't see where any of these items were in  
10 relation to other items.
- 11 A No, sir.
- 12 Q You didn't see any -- where any of these items were in  
13 relation to Mr. Bragg himself.
- 14 A No, sir.
- 15 Q You didn't see where any of these items were in  
16 relation to Mr. Hines.
- 17 A No, sir.
- 18 Q You didn't see where any of these items were in  
19 relation to any of other people that may have been present.
- 20 A No, sir.
- 21 Q Are you aware of any documentation done by your  
22 department, the Spartanburg County Sheriff's Department, in  
23 the investigation of this case, documentation that would  
24 exist by way of photographs that would show how these  
25 things looked and where they were placed before they

Paul Anthony Norris  
Cross-examination by Mr. Harris

- 1 allegedly were seized?
- 2 A No, sir, I do not.
- 3 Q Are you aware of any documentation, meaning by way of  
4 photographs or video or any other form of recording device,  
5 showing the property --
- 6 A No, sir.
- 7 Q -- where this allegedly was?
- 8 A No, sir.
- 9 Q Any of the cars that were there?
- 10 A No, sir.
- 11 Q The underneath side of the house?
- 12 A No, sir.
- 13 Q The back side of the house?
- 14 A No, sir.
- 15 Q The front side of the house?
- 16 A No, sir.
- 17 Q Inside the house?
- 18 A No, sir.
- 19 Q Thank you.
- 20 MR. HARRIS: No further questions.
- 21 THE COURT: You may step down.
- 22 MR. HUNTER: Your Honor, at this time the state rests.
- 23 THE COURT: All right: Ladies and gentlemen, that is  
24 all of the testimony to be offered by the state.  
25 Before we go further I've got some matters to address

1 with the lawyers. It should take only a few moments. So  
2 I'll ask you to please go to your jury room. Do not yet  
3 begin any discussions of the case. I'll bring you back  
4 after that break.

5 (The following takes place outside the presence of the  
6 jury.)

7 THE COURT: Any motions or other matters to address,  
8 Mr. Harris?

9 MR. HARRIS: May it please the Court, Your Honor, yes.  
10 The state having rested, the defense at this time  
11 would move for a directed verdict of acquittal upon the  
12 grounds, bearing in mind the appropriate standard of view  
13 for this Court -- a directed verdict of acquittal for the  
14 charge contained in the indictment, trafficking  
15 methamphetamine more than ten grams, on the grounds that  
16 the state has failed to produce evidence which raises more  
17 than a mere suspicion that Mr. Bragg himself knew and  
18 exercised dominion and control over any of the quantities  
19 of drugs that have been entered into evidence.

20 Along with this motion, Your Honor, mindful that the  
21 state to prove the charge contained in the indictment must  
22 prove the quantity that Mr. Bragg knew about and exercised  
23 dominion and control over that, the state has failed to  
24 establish the quantity that can be attributed to Mr. Bragg,  
25 if any quantity can be said to have been proven to be in

1 his actual or constructive possession.

2 THE COURT: Mr. Hunter.

3 MR. HUNTER: Your Honor, we would just submit to the  
4 Court that viewing the evidence in the light most favorable  
5 to the state we presented enough evidence that -- residence  
6 was searched and 23.69 grams of methamphetamine and that  
7 Mr. Bragg was in constructive possession of that  
8 methamphetamine, Your Honor.

9 MR. HARRIS: Your Honor, may I say just very briefly?

10 Now, I want to make clear that I take exception to the  
11 characterization that the state has proven that this was  
12 Mr. Bragg's residence.

13 They've proven that Mr. Bragg went to the front door  
14 of it and that he was located there and that he said that  
15 he had some understanding that there was marijuana  
16 somewhere on that property, but they have not proven that  
17 he's the legal owner of that residence or that he resided  
18 there.

19 THE COURT: Okay. Motion for a directed verdict is  
20 denied.

21 Does the defendant wish to testify or offer any  
22 evidence?

23 MR. HARRIS: I've discussed that matter with him, Your  
24 Honor, and he's indicated he does not wish to testify.

25 THE COURT: All right. Mr. Bragg, your lawyer tells

1 me that you've talked to him about your right to testify,  
2 as well as not. He says you've indicated to him you do not  
3 wish to. Is that true?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you had plenty of time to think about  
6 your decision as to whether or not you'll testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand you have a right to  
9 testify, as well as to remain silent if you prefer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you wish to testify or call any other  
12 witness or introduce any other evidence, now is the only  
13 time that you will have to do that. Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Sir?

16 THE DEFENDANT: I don't wish to call anybody.

17 THE COURT: Okay. But you understand that now is the  
18 only opportunity that you have to present evidence if you  
19 have any evidence you wish to present?

20 THE DEFENDANT: Yes, sir.

21 (Pause.)

22 THE DEFENDANT: No, sir.

23 THE COURT: No, sir? What is that in response to?

24 THE DEFENDANT: I don't want to call anybody. I  
25 understand.

1 THE COURT: Okay. Do you understand that if you elect  
2 not to testify or produce any witness I'm going to tell the  
3 jury they can't hold that against you, as I already have --  
4 that they can't consider that in any way in their  
5 deliberations or in their determination as to whether or  
6 not you're guilty.

7 of course if you wish to testify and you take the  
8 witness stand you have to answer all of the questions that  
9 are asked even if the responses to the questions might tend  
10 to prove you guilty. But you've had plenty of time to  
11 reflect upon your decision as to whether or not you'll  
12 testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you and Mr. Harris have discussed the  
15 advantages and disadvantages of testifying, as well as not  
16 testifying?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And you appreciate what those advantages  
19 and disadvantages are?

20 THE DEFENDANT: I understand.

21 THE COURT: And you've made a decision?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And what is your decision?

24 THE DEFENDANT: I don't want to testify.

25 THE COURT: And is that a decision that you made of

1 your own free will and accord?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Has anybody forced you or coerced you into  
4 it?

5 THE DEFENDANT: No, sir.

6 THE COURT: You're satisfied with that decision?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any other witness that you'd  
9 like for Mr. Harris to call?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. Any requests for instructions  
12 from the state?

13 MR. HUNTER: Nothing from the state, Your Honor.

14 MR. HARRIS: I have no special requests, Your Honor.

15 THE COURT: All right. Are y'all ready to proceed?

16 MR. HUNTER: Yes, Your Honor.

17 MR. HARRIS: Yes, sir.

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

19 (Bench conference held off the record.)

20 THE COURT: We will be at ease for a few minutes.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Bring the jury in, please.

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

25 THE COURT: All right. Ladies and gentlemen, as you

## Closing arguments

1 know, the state has rested in their presentation. So we'll  
2 now proceed with any to be offered by the defense.

3 Mr. Harris.

4 MR. HARRIS: Your Honor, the defense rests and are  
5 prepared for closing arguments.

6 THE COURT: All right. Ladies and gentlemen, that is  
7 all of the testimony and evidence to be offered in the  
8 trial of the case.

9 What remains to be done are the lawyers' final  
10 summations, after which I'll instruct you on the law. And  
11 then you can begin with your deliberations.

12 So please give the lawyers your attention now as they  
13 give you their final summations.

14 Mr. Hunter.

15 MR. HUNTER: May it please the court.

16 Ladies and gentlemen of the jury, Norman Bragg, the  
17 man sitting right here next to Mr. Harris, is guilty of  
18 trafficking in methamphetamine in an amount between 10 and  
19 28 grams.

20 First I want to talk to you about the law, the law of  
21 trafficking and the other laws associated with the trial.

22 We stood up here before you before we started the  
23 trial, myself and Mr. Harris. And Judge Cole is going to  
24 talk to you after we both sit down. He's going to talk to  
25 you about the burden of proof, reasonable doubt, different

## Closing arguments

1 versions of evidence. It'll be probably another 30 minutes  
2 he will talk to you all about the law. And I just want to  
3 hit brief points in that because he's the one that you'll  
4 need to listen to what the law is.

5        Trafficking in methamphetamine or trafficking in any  
6 other drug. With controlled substances there are three  
7 levels of crimes. There's possession, and then there's a  
8 level of possession with intent to distribute,  
9 manufacturing or distribution, and then there's the level  
10 of trafficking.

11        For possession you have to prove that a defendant,  
12 Norman Bragg, had in his actual or constructive possession  
13 an amount of controlled substance. Methamphetamine is a  
14 Schedule II controlled substance.

15        The PWID manufacturing and distribution level you have  
16 to prove that they either made it or sold it or intended to  
17 sell it, that substance, an amount of methamphetamine.

18        Now, trafficking includes all of that. You either had  
19 it, you sold it, you made it, or you intended to sell it.  
20 For trafficking we have to prove that it was over a certain  
21 amount. So anything less than ten grams would have to fall  
22 in the other two categories. But if it's over ten grams it  
23 falls in the trafficking category.

24        I know usually when you hear trafficking you think of  
25 Mexican cartels and large kilos and large amounts. In

## Closing arguments

1 South Carolina trafficking can start at ten grams.

2 I'll talk to you about, a little bit about, knowing  
3 and actual, constructive possession. Actual possession is  
4 what you actually have in your pocket. I'm in actual  
5 possession of my keys, my pen. Stuff around you right  
6 here, you're in actual possession of it.

7 Constructive possession is when you have dominion and  
8 control over a substance. That -- my house in Duncan,  
9 everything that's there I have constructive possession of  
10 it. Even though I'm not there I still have constructive  
11 possession of it.

12 Gary Watson was in the military. If he's never sent  
13 overseas he's still in constructive possession of all of  
14 the items in his house. You can be 2 feet away from it and  
15 you can be miles away from it, but you're still in  
16 constructive possession of what's in your house.

17 I have the burden of proof. They don't have to  
18 present any evidence. I have to prove to you beyond a  
19 reasonable doubt -- not all doubt, not some doubt but a  
20 reasonable doubt.

21 And he's right. That is the highest burden we have in  
22 this court. But it's a burden that the solicitors,  
23 prosecutors all around the country use every day when they  
24 come into this courtroom and when juries find someone  
25 guilty. It's a burden that can be met and it's a burden

## Closing arguments

1 that was met in this case.

2 I want to talk to you a little bit about Paul's  
3 testimony, Beth's testimony and Jack's testimony, because  
4 neither of those three were at [REDACTED]

5 You heard the chemist, Beth. You also heard Jack, the  
6 evidence technician. This case was just like all the other  
7 cases they'd ever had. Beth tested over 3,000 substances,  
8 28 times in court. Unless she's actually at the scene she  
9 has no personal knowledge of who brings this stuff to the  
10 evidence lab.

11 Unless Jack Westmoreland is at the scene he has no  
12 personal knowledge in this case or any other case they've  
13 ever worked.

14 You heard Beth's testimony. Undergrad degree, College  
15 of Charleston, graduate degree, nine years of experience  
16 testing and analyzing substances.

17 You even heard the testimony on some of this stuff,  
18 some of these items in here, that tested negative. No  
19 controlled substances or prescription substances found.

20 They'd have you believe that her 29 times of testimony  
21 all for the police. Why does she say no substance is  
22 found? The integrity as a law enforcement officer, as the  
23 forensic chemist, requires her to. But some of the  
24 substances did have meth, a total of 23.69 grams of meth  
25 all located at [REDACTED]

## Closing arguments

1           You'll get to see some of these items. You'll get to  
2 take these items back with you into the jury room. Look at  
3 them and feel them. Look at the evidence.

4           He's right when he stood up here and said -- and y'all  
5 were sworn -- do not prejudge the case. Don't prejudge the  
6 officer; don't prejudge the testimony. Keep an open mind.  
7 But you have your common sense about you. You always have  
8 your common sense before the case, after the case now.  
9 what does your common sense tell you?

10           Deputy Watson approaches the house, knocks on the  
11 door. And here's what he feels as the back door closed.  
12 He goes around to the back of the house. [REDACTED]  
13 Road in Chesnee here in Spartanburg County.

14           what does he find coming out from underneath that  
15 house -- underneath the house? Norman Bragg. Norman  
16 stumbles and throws something on the ground. It's  
17 marijuana.

18           Then Deputy Wilde after reading him his Miranda rights  
19 asked him do you have more marijuana. Yes, I have  
20 marijuana but I'm not going to tell you where it is.

21           So what's the prudent thing to do? Go get a search  
22 warrant. That's what they did. And they left two of their  
23 own officers in their same unit, in fact, their boss at the  
24 scene.

25           when they got back to the scene approximately an hour

## Closing arguments

1 and 15 minutes later those two gentlemen were still there.  
2 Does your common sense tell you that they left, or did they  
3 stay and do their job and secure the scene?

4 We didn't have the testimony. I'll admit that. I  
5 didn't put them up. They did not testify. They said  
6 nothing. But what does your common sense tell you?

7 It's a funny thing he found him underneath that house,  
8 because guess what else he found underneath that house?  
9 This bag. Pretty empty now except for some little  
10 packaging and a lighter. And this white brief case, semi  
11 white brief case.

12 Guess what was in this bag. Guess what was in this  
13 case. Baggies -- baggies of a crystal white substance  
14 tested by Beth Stuart. Some of those baggies may not have  
15 tested as meth. She testified to that. But a lot of them  
16 did.

17 MR. HARRIS: Your Honor, I object. I just can't let  
18 the solicitor suggest to the jury something that absolutely  
19 is not in evidence.

20 There's no -- been no evidence whatsoever as to which  
21 of the items described by the chemist came from that black  
22 bag. Nothing.

23 THE COURT: Overrule the objection.

24 Go ahead.

25 MR. HUNTER: And he's right. I can't tell you which

## Closing arguments

1 one of these items came from that bag. But there were bags  
2 of white substances, brown substances, found in this. Six  
3 bags in here. I believe she testified four items did not  
4 have meth. Six bags found in here and some bags found in  
5 there.

6 what does your common sense tell you? what else was  
7 located in there? He removed the bags of marijuana in  
8 here, but bags of green plant-like material found in there,  
9 all of which tested to be marijuana, that same marijuana  
10 that he admitted to the officer I had on the property,  
11 found in this black bag under the house, exact location  
12 where he was.

13 Mr. Hines wasn't under the house; the neighbor wasn't  
14 under the house; the meth fairy wasn't under the house.  
15 Norman Bragg was.

16 when they patted him down at his arrest this was in  
17 his pocket, and this is why I had Mr. Norris come and  
18 testify. It's a meth pipe -- not a marijuana pipe. It's a  
19 meth pipe. You'll need to look at that when you go back,  
20 along with the other four or five meth pipes located in the  
21 house. One M & M jar, glass pipe's broken. Not marijuana  
22 pipes. Meth pipes.

23 They also found scales commonly used in the  
24 distribution of drugs to weigh out the drugs. In fact,  
25 this is the one that still works. You get to look at it.

## Closing arguments

1 You get to see what's in there.

2 Mr. Bragg was storing meth at this residence. Inside  
3 the house after the search warrant was executed this glass  
4 vase. I suggest not actually looking or putting your nose  
5 in there or grabbing what's in there. But from Paul  
6 Norris' testimony and from Beth Stuart I think you heard  
7 from her that there was a pink crystal or rock-like  
8 substance tested to be 8.06 grams of methamphetamine in his  
9 living room. And it's his house.

10 He's the one who went inside the house when officers  
11 arrived. He's the one found underneath the house when  
12 officers went to the back yard.

13 Mr. Hines wasn't in the house. Mr. Hines was outside  
14 in the garage. Never went in the house. When they  
15 arrested him, do you have any more marijuana, yes, but I'm  
16 not going to tell you where it is.

17 What does common sense tell you? Is that the guy who  
18 lives there? I have more marijuana but I'm not going to  
19 tell you where it is. What does your common sense tell  
20 you?

21 I know a big deal was made of seven officers  
22 searching. You heard from Matt Wilde. Now he's with the  
23 F.B.I. they use at least ten officers to search. Couldn't  
24 have brought all seven officers in here. We'd still be  
25 going.

## Closing arguments

1           The job duty of the return officer is for other  
2 officers to find the evidence, not touch it, not take it in  
3 their possession, but to then call him. He is the one who  
4 comes over and takes possession of it.

5           Multiple bags of meth are found under the house and in  
6 the house, the garage. The same with the marijuana. You  
7 do that so one person is actually taking control. If all  
8 seven took control all seven would have to come and  
9 testify. It's called the chain of custody. One officer,  
10 Deputy Watson, one officer with 14 years of experience.

11          What else is found in the house? Baggies. I made  
12 sure that Investigator Norris told you these can be used  
13 for any purpose, but in the drug trade it's for the  
14 packaging and selling of drugs. That was meth, marijuana,  
15 cocaine or whatever. These are used in the packaging and  
16 selling of drugs.

17          Mr. Harris was questioning Deputy Watson, and Deputy  
18 Watson and Deputy Wilde both said we left Deputy Roper and  
19 Sergeant Luther at the house to secure the house. We came  
20 back. Deputy Roper and Sergeant Luther were still at the  
21 house as they were supposed to be. We then executed the  
22 search warrant.

23          These were the items found in the search warrant,  
24 along with this black bag that actually had the meth pipe  
25 in it found at [REDACTED]

## Closing arguments

1           Again, this all boils down to your common sense. Who  
2 had all of these items there? If you believe some of the  
3 questioning Deputy Roper and Sergeant Luther were the ones  
4 at the house. They could have put it there. Like I said  
5 earlier, the meth fairy couldn't have dropped all of this  
6 evidence there.

7           What does your common sense tell you? Who had these  
8 items in that house? I submit to you that Norman Bragg.

9           And now is your time to judge once Ricky stands up and  
10 says his peace and Judge Cole charges you is the law, now  
11 is your time to judge. Now is your time to remove that  
12 cloak of innocence. And now is your time to find him  
13 guilty of trafficking in methamphetamine in an amount of  
14 23.69 grams, between 10 and 28 obviously.

15           Norman Bragg is guilty. This was his meth. Thank  
16 you.

17           MR. HARRIS: Your Honor, could I ask the assistant  
18 solicitor to return the exhibits back to the table? I  
19 won't be needing them.

20           THE COURT: Okay.

21           MR. HARRIS: May it please the Court, Your Honor.

22           THE COURT: Mr. Harris.

23           MR. HARRIS: Thank you, Mr. Hunter.

24           The problem with the state's case, the best way to sum  
25 it up, and we'll describe it in a little more is

## Closing arguments

1   incapsulated in the remarks that the assistant solicitor  
2   just made to you boiled down to its essentials.

3           The appeal that was just made to you by the assistant  
4   solicitor was, folks, can't you just assume the facts that  
5   are necessary for us to have proved. Well, let's go over  
6   that again, because I think that it goes to the heart of  
7   the problem that I predicted for you in my opening remarks  
8   yesterday.

9           Any time an assistant solicitor comes before you and  
10   says things like without detail, without documentation, in  
11   other words, the words that we like to use in court without  
12   proof, proof, you know, that they are legally obligated to  
13   present.

14           They instead would say, you know, use your common  
15   sense. Well, it is true. You should use your common sense  
16   about everything you do, and you certainly don't leave your  
17   common sense behind when you come for jury duty.

18           But nor do you leave behind your intelligence and your  
19   ability to listen and your ability to understand that the  
20   rules that apply in this courtroom to this case require,  
21   yes, the use of your common sense but also the use of your  
22   intelligence and your ability to understand the law and the  
23   requirements of the law and make sure -- demand I would say  
24   is necessary -- you, the jury, demand that the state had  
25   proven its case, proven its case with proof beyond a

## Closing arguments

1 reasonable doubt.

2       So in another context I'd agree with the continual  
3 references to common sense, but in this case it's code for  
4 forgive me for not proving anything. See, that's the  
5 problem with the state's case. Forgive me for not proving  
6 that which is essential for me to prove.

7       Now he might, the assistant solicitor might, could  
8 have proven this case. I don't know. But they didn't.  
9 And you, the jury, can't assume for them that the proof  
10 exists when it had not been presented.

11       You can't consider anything other than what has  
12 happened in this courtroom, or I would say more importantly  
13 has not happened. You can't consider anything you haven't  
14 heard in this courtroom, or, more importantly, you have to  
15 consider what hasn't been presented.

16       And nor has there been any explanation of any kind of  
17 why it hasn't been presented when it apparently would have  
18 been so easy to bring other witnesses forward. Or maybe,  
19 maybe missing witnesses means there's something about what  
20 those witnesses may have been forced to say that the state  
21 didn't like very much.

22       We start again because it's so important with what we  
23 started with yesterday. The people that wrote the  
24 Constitution of the United States set in motion a system of  
25 justice that has lasted until now and that we hope will

## Closing arguments

1 last forever until we find away we can improve on it  
2 anyway.

3 And that system said that the starting point in any  
4 criminal case, no matter how serious, was that people that  
5 were accused of crimes by the state, by the government,  
6 were presumed to be not guilty of those crimes, like  
7 Mr. Bragg in this case by law, by the law you are sworn to  
8 uphold, is considered innocent of the charge contained in  
9 the indictment.

10 That innocence cannot be taken away from him by  
11 anybody, you, the jury, or the Court or anybody, until and  
12 unless the state has met the required standard of proof.  
13 That's what we often call in court the burden of proof.  
14 The state bears the burden of proof, and the state only.

15 And what is that burden? As we discussed yesterday,  
16 it is proof -- not assumption and not speculation but  
17 proof, hard facts, evidence -- beyond a reasonable doubt.

18 The folks that wrote the constitution wrote it in that  
19 fashion and put those concepts in there. And it was no  
20 accident. It was intentional.

21 The founders who wrote the constitution knew how  
22 dangerous it was for the government to accuse individuals  
23 and not be required to prove a case in court like what's  
24 being attempted here to prove someone guilty without the  
25 proof. That is not supposed to happen in this country.

## Closing arguments.

1           You're the only folks that are standing between doing  
2 what the solicitor is asking you to do, which is convict  
3 without the adequate -- without adequate proof and not  
4 convict and doing what is envisioned by our system if it  
5 works correctly.

6           The founding fathers knew and intended for it to be  
7 very difficult to meet the required standard of proof.  
8 Therefore, it should be very demanding for the state to  
9 meet its burden of proof. The state should be required in  
10 every instance, in every case, to bring forth all facts and  
11 evidence that would prove the case. And their failure to  
12 do so should be fatal to that case.

13          This jury should demand in the name of the  
14 Constitution of the United States and for its proper  
15 function, should demand that all of the witnesses have been  
16 brought before you, should demand that all of the proof  
17 have been brought before you before you would say that one  
18 of your fellow citizens is guilty beyond a reasonable  
19 doubt.

20          So I'm asking you to demand that of the state, but I'm  
21 not asking you to do anything extraordinary. I'm asking  
22 you to do only what the law requires.

23          His Honor will give you instructions on the law in  
24 just a few moments, and I have no doubt that you will hear  
25 something along these lines about reasonable doubt and the

## Closing arguments

1 burden of proof, that the state has to prove each and every  
2 element of the crime charged against the defendant,  
3 Mr. Bragg, beyond a reasonable doubt.

4 A reasonable doubt is the kind of doubt that would  
5 make a reasonable person hesitate to act. It is a high  
6 standard of proof.

7 It does not require proof beyond all possible doubt.  
8 why do they say that? It's very true, because although the  
9 constitution requires a very demanding, rigorous burden of  
10 proof, it's not requiring the impossible be done. But  
11 we're not nearly, nearly to that stage in this case,  
12 because in a moment we're going to tip off so many things  
13 that the state could have done and should have done in this  
14 investigation, and therefore in this courtroom, that it  
15 will make your head spin.

16 We're not talking about requiring a burden in this  
17 case that's impossible to meet. We're talking about doing  
18 what you would think would be the simplest investigative  
19 steps. But if you don't do the proper investigation you're  
20 not going to have the proper evidence in court. It's just  
21 that simple. It falls like dominoes. If you don't gather  
22 the evidence you can't possibly present it in court.

23 But does that mean you should be excused by the jury  
24 for not presenting it? No. The benefit of the doubt in a  
25 criminal case goes to who? The accused person, not to the

## Closing arguments

1 state. So you cannot assume the proof that the state  
2 should have presented to you.

3 why is this important? Because as you start to look  
4 at what has to be proven you have to start thinking to  
5 yourself have I heard the evidence that would make me  
6 beyond a reasonable doubt say they've proven that element,  
7 that element of the crime, that element of the crime.

8 They have to prove for this case, the trafficking  
9 case, knowledge, dominion and control. These are legal  
10 phrases that the judge will explain to you. Knowledge of  
11 what was there, dominion and control over the place and the  
12 items that they claim were there. They have to prove the  
13 quantity that was possessed.

14 Remember the indictment, what they charged. And the  
15 assistant solicitor explained there is essentially three  
16 levels of drug crimes in our statutes.

17 One is possession; the other is possession with intent  
18 to distribute or distribution; the other is trafficking.

19 Trafficking requires as an essential element that you,  
20 the jury, find beyond a reasonable doubt -- that high  
21 standard -- that any quantity of drugs that you might find  
22 beyond a reasonable doubt, again, were in the possession of  
23 Mr. Bragg are of ten grams or more. And if they haven't  
24 proven the quantity they haven't proven the charge against  
25 him.

## Closing arguments

1           That's why we took such trouble to point out that they  
2 haven't proven at all in the least bit what quantity of  
3 drugs are alleged to have come from under the house. Have  
4 they? Have you heard any evidence whatsoever, anybody  
5 getting on the witness stand and saying in this bag there  
6 were these bags, and these bags were weighed and these that  
7 were in that bag weighed this much? No.

8           As a matter of fact, you've not heard anything like  
9 that about any of the bags, about this bag. Like they pull  
10 it out, you know. They get the BEST bag and they rip it  
11 open and they pull it out -- the chemist -- and says, look,  
12 I tested this and I know because it was properly  
13 documented. I know that this bag here, say the one with  
14 8 grams, this bag here came from this location and this is  
15 the person that got it and this is how it looked. This is  
16 where it was located. No. You have nothing like that.  
17 You have nothing like that for any of the quantities.

18           And, more importantly, you have nothing like that for  
19 those quantities of drugs that they swore up and down when  
20 they submitted it to the lab were drugs that turned out not  
21 to be drugs at all. Well, that's a failure of proof.

22           Could they have given you that kind of documentation?  
23 Could they have given you that kind of detail to make the  
24 case convincing enough for you to at least consider whether  
25 they've met their burden of proof? It's really hard to

## Closing arguments

1 say.

2 But you would -- they tout their years of experience  
3 and expertise very highly. They make a big point in court  
4 of saying how experienced they are and how much training  
5 they have had. In other words, hey, we're good at our job,  
6 you know.

7 Well, you listened to the witnesses, and the kind of  
8 testimony that they gave, they didn't document anything,  
9 did they? Think about it. Think about it in your jury  
10 deliberations. They didn't document anything they did.

11 Did they take photographs of this supposed crime  
12 scene? I mean simple photographs so they could come into  
13 court and show you, the jury, here's the house, here's the  
14 property, here's the layout of the place, here's where we  
15 went up to the front door, here's where I went around back,  
16 here's the back side of the house, here's that place where  
17 Mr. Bragg supposedly was crawling out from under it, here's  
18 the picture of Mr. Bragg all dirty from being under the  
19 house, here's a picture of where that little bag of  
20 marijuana was. See, right there. See, you can believe me  
21 as a witness -- not me, but them.

22 They should have been able to say you can believe me  
23 as a witness. That means I have credibility as a witness,  
24 I have believability as a witness because I can back up my  
25 testimony, I can, as we say, corroborate what I'm telling

## Closing arguments

1 you, because I documented it. See, I'm a 14-year veteran  
2 of the police department and I documented every move I  
3 made. And there is a picture of what was on the ground,  
4 there's a picture of Mr. Bragg all dirty from being under  
5 the house, here's where he came out from under the house,  
6 here's where the house -- looked, here's what Mr. Hines  
7 looked like.

8       went into the house seven of them. Here's where this  
9 was found. See, I took a picture of it laying there,  
10 wherever it may be. Here's the picture of that. Here's a  
11 picture of it in relation to this.

12       And then, you know, they could write it down. They  
13 could say this quantity right here was taken from this and  
14 we traced it. You know, the police could be telling you  
15 this. could say, like say, whatever was like found under  
16 the house, here's who got it, here's exactly what it was,  
17 here's exactly how it looked before we repackaged it to  
18 send it to SLED or to send it to the lab and here's how we  
19 traced it to go all the way to the lab.

20       And you could have a lab person come in and say, oh,  
21 yeah, in this right here, and pull out this bag and say  
22 this bag came from that black bag and it weighed this much  
23 and it had methamphetamine in it, or it didn't. And they  
24 could do that for every single item. But they didn't do it  
25 for any item, any of them.

## Closing arguments

1           Why didn't they document all of that so they could  
2 come into court and prove their case? I don't know why  
3 they didn't do it.

4           There is an attitude that seems to be prevailing here.  
5 It has to be said of kind of we don't have to do anything,  
6 we're not, you know, we say he's guilty. You know, I mean  
7 easy for the assistant solicitor to storm half way across  
8 the room and say Mr. Bragg is guilty.

9           Well, except that's no proof of anything, you know.  
10 And then I come before you and say where's the proof. Why  
11 didn't they document anything? Why don't you know, for  
12 instance, why don't you know who the legal owner of that  
13 location, [REDACTED] that they're talking about, why  
14 don't you have proof before you right now of who the legal  
15 owner of that property is?

16           Do you think that would be hard to get with the  
17 resources that the state has? Why didn't they have  
18 somebody come in here if they want to claim Mr. Bragg is  
19 guilty because he was at that location -- you know, forget  
20 about all the other requirements. Why didn't they have  
21 somebody come in here, and I swear to tell the truth.

22           All right. Did you look at the records to determine  
23 who the legal owner of that property was? Yes, I did.  
24 Where did you go to find that? Well, I went to the  
25 property office here in Spartanburg County, the official

## Closing arguments

1 records, the documentation of it. And who is the legal  
2 owner of that property? Why, it's Norman Adger Bragg. Why  
3 didn't they do that? Simple thing to do.

4 It would have provided the necessary proof about this  
5 concept of dominion and control and knowledge. It would  
6 have provided you at least a lot better proof than you've  
7 got now.

8 But they didn't do it. And why didn't they do it?  
9 Maybe because they did look and they couldn't find anything  
10 to back their case up, or they just figured they were just  
11 too good to do that, just like we'll just take it and  
12 casual approach, and then how dare anybody ever to give  
13 Mr. Bragg a fair trial.

14 why didn't they bring before you any proof of what  
15 Mr. Bragg's connection to the property was? Yes, I realize  
16 there was testimony that they say that they saw Mr. Bragg  
17 go in the place, and come out of the place apparently  
18 according to their testimony, their version of it. Went in  
19 and came out right away just about.

20 why didn't they bring people from around there? Where  
21 is Mr. Hines? Why didn't they bring Mr. Hines in? What's  
22 Mr. Hines' connection to this? What was he doing there?

23 You know, you remember the testimony of Jack  
24 Westmoreland, the evidence custodian. And I asked  
25 Mr. Westmoreland. I said isn't there some paperwork that

## Closing arguments

1 goes along with you getting this out of this drop box. He  
2 said, yeah, we have paperwork.

3 Now, the state didn't want to ask him about any  
4 paperwork. And isn't it true that that paperwork says that  
5 these items were seized from this, these people, at this  
6 location? Yes, it does say that. And I said and it names  
7 two people that these items supposedly were seized from,  
8 Mr. Hines and Mr. Bragg. Yes, that's true.

9 But yet in court they want you to think that all of  
10 this has to be put on Mr. Bragg when they themselves in  
11 their paperwork were putting it on two people.

12 Now, what -- and that goes back to the weight and the  
13 proof about the weight. How much, if any, can be proven to  
14 be in the actual or constructive possession under the  
15 dominion and control of Mr. Bragg and how much Mr. Hines?

16 Well, here's the problem. You can't just like the  
17 assistant solicitor would say, you know, well, just assume  
18 that it was Mr. Bragg's, or assume at least ten grams of it  
19 was Mr. Bragg. Well, you can't assume that. See, you have  
20 to have proof. You're demanding proof. And they haven't  
21 provided any proof of that.

22 I mean, right now to this very minute do you know how  
23 much methamphetamine, if any, was found in the black bag  
24 under the house as opposed to any in the house? No, you  
25 don't because there's no evidence of it. There could have

## Closing arguments

1 been had there been proper documentation. There again,  
2 there's no evidence of it.

3 what have they really if they've proved anything --  
4 let's just try to, you know, play the assistant solicitor's  
5 game for a little bit and say if they've proven anything in  
6 sum total what have they possibly proven.

7 They may just trying to give them the benefit of the  
8 doubt -- you're not supposed to, but I'm just for argument  
9 sake saying even if we gave them, if we reversed the tables  
10 and gave the state, the benefit of the doubt, what have  
11 they proven? Mr. Bragg had a very small quantity of  
12 marijuana in his hand that supposedly was thrown down on  
13 the ground in the back yard.

14 Now, there's no documentation of that, but we have to  
15 believe Officer Watson on that. He had a small bag of  
16 marijuana in his hand. He had a glass pipe in his pocket,  
17 in his front pocket. No drugs, but he had a glass pipe in  
18 his pocket; and that he allegedly made a statement that he  
19 was aware that there was some more marijuana located  
20 somewhere on the property.

21 That's the sum total giving them the benefit of the  
22 doubt of what they have proven against Mr. Bragg. That's  
23 not though what they've charged him with.

24 I'd have a lot harder argument to make were Mr. Bragg  
25 on trial for possession of marijuana. I concede that. But

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1 that's not what they've charged him with. And in a sense  
2 they've gotten a little greedy, and they were trying to  
3 charge Mr. Bragg with methamphetamine, and not just  
4 possessing it and not just possessing it with intent to do  
5 something with it, but trafficking meth. So they've  
6 charged the highest crime, and we know they have the very  
7 demanding burden of proof.

8 Folks, I've just been -- I don't know. I'm getting  
9 ready to wrap up you'll be glad to know. There is a little  
10 more coming. His Honor is going to instruct you about the  
11 law, and that is a very important part of this case,  
12 because I spent a great deal of time talking about the law  
13 myself. But what he says about the law, what His Honor  
14 says about the law, that's what is to guide you.

15 If the state had met its burden of proof of proving  
16 the charge of trafficking methamphetamine more than ten  
17 grams, if that were so, I submit to you, Ladies and  
18 gentlemen, that I may have tried to get up here and talk  
19 for 20 or 30 minutes, but you wouldn't have listened  
20 because I would have had nothing to say.

21 If the state really had proven its case how could I  
22 have possibly poked holes in it? When I was  
23 cross-examining those witnesses yesterday and today if you  
24 believed that I was bringing out very important and  
25 disturbing points about what hadn't been done and what

## Jury charge

1 hadn't been kept up with, if they had the kind of case  
2 they're supposed to have in this courtroom, I wouldn't have  
3 been able to poke holes in those witnesses' testimony.

4 It's up to you to decide what to do now that you know  
5 that, what you do with when confronted with the fact that  
6 the state has brought this charge in the indictment.

7 You know what the lack of evidence, the lack of  
8 documentation, the lack of proof has been. In that  
9 situation are you willing to do what the assistant  
10 solicitor is asking you to do, which is give them a pass  
11 and assume proof that they haven't presented, or will you  
12 do, ladies and gentlemen, with all respect, what the  
13 constitution requires you to do, which is simply to  
14 recognize there hasn't been convincing enough proof to  
15 prove what they are charging.

16 Maybe you could have proof of some other crime but not  
17 this crime. But since we're dealing only with this crime  
18 and since they haven't been convincing enough about this  
19 crime your verdict should and must in the interest of  
20 justice be not guilty. And I ask you for that verdict. I  
21 thank you for your time and attention.

22 THE COURT: Madam forelady and ladies and gentlemen,  
23 you of course have heard and seen all of the evidence and  
24 now the final summations of the lawyers. So I'm going to  
25 instruct you on the law that's applicable in the case.

Jury charge

1 Then you'll be asked to go back and begin with your  
2 deliberations.

3 It is your exclusive duty to determine what the facts  
4 are. You do that through your own common sense examination  
5 and evaluation of all of the testimony and other evidence  
6 received during the trial of the case.

7 You 12 jurors alone will decide what weight, value and  
8 effect to give to any particular witness' testimony or  
9 other evidence in the case. Your sole objective is to  
10 simply reach the truth in the matter, and by doing that you  
11 will have fulfilled your obligations as jurors, and that is  
12 to give both the state and the defendant a fair and  
13 impartial trial.

14 Now, in this case, as you are aware, the defendant has  
15 been accused by the prosecutor of having committed the  
16 crime of trafficking in methamphetamine.

17 The allegations setting forth that charge are  
18 contained in the indictment. The indictment alleges, as I  
19 have stated, that Mr. Norman Adger Bragg did here in  
20 Spartanburg County on or about November the 18th of 2009  
21 knowingly have in his actual or constructive possession ten  
22 grams or more of methamphetamine.

23 As to those allegations and as to that charge he's  
24 entered a plea of not guilty. The plea of not guilty has  
25 placed upon the state the burden of proving the allegations

## Jury charge

1 they have set forth, the burden of proving the essential  
2 elements of the crime, the burden of proving the  
3 defendant's guilt to your satisfaction beyond a reasonable  
4 doubt.

5 The burden is never upon a defendant to prove that he  
6 or she is not guilty or to prove that he or she is  
7 innocent, because, as I've told you, in some cases that  
8 might not even be possible.

9 The burden is always upon the state because they made  
10 the accusation to prove the defendant's guilt beyond a  
11 reasonable doubt.

12 It is an important and cardinal rule of law that every  
13 defendant in the trial of a case, no matter how serious the  
14 offense might be for which that person stands charged, is  
15 always to be presumed innocent of the charge.

16 That presumption of innocence remains with this  
17 defendant, as it does with any, from the time that he is  
18 placed under arrest and throughout the course of the  
19 criminal process and even throughout the course of the  
20 actual trial.

21 As I told you, that presumption of innocence will be  
22 with Mr. Bragg as you go back to begin your deliberations  
23 in the case. And that presumption of innocence will be  
24 with him in that jury room, and it'll be with him forever  
25 unless you 12 jurors determine that he's no longer entitled

## Jury charge

1 to the presumption of innocence.

2 In other words, after you have carefully considered  
3 all of the evidence in the case and exercised good judgment  
4 and common sense conscientiously applied to the testimony  
5 and evidence, if you determine his guilt has been proven  
6 beyond a reasonable doubt, then he's no longer entitled to  
7 the presumption of innocence. But it's only if, unless and  
8 until you are satisfied of his guilt beyond a reasonable  
9 doubt that the presumption of innocence would no longer be  
10 applicable.

11 Now, while the state does have the burden of proving  
12 the defendant's guilt beyond a reasonable doubt, that  
13 doesn't mean that they have to prove his guilt beyond all  
14 doubt or beyond any possible doubt. But it does require  
15 the state to prove his guilt to your satisfaction beyond a  
16 reasonable doubt.

17 The term reasonable doubt should be given its plain  
18 and ordinary meaning. A reasonable is the kind of doubt  
19 that would cause a reasonable person to hesitate to act  
20 upon the information provided.

21 A defendant in a criminal trial is entitled to any  
22 reasonable doubt that arises from the evidence or lack of  
23 evidence in a case. And if upon any factual issue  
24 essential to a finding of a verdict of guilty you have some  
25 reasonable doubt as to how that issue should be resolved it

## Jury charge

1 would be your duty to resolve that doubt in favor of the  
2 defendant. And therefore if upon your consideration of the  
3 whole case you have a reasonable doubt as to his guilt, you  
4 must resolve that reasonable doubt in his favor and return  
5 a verdict of not guilty.

6 And at the same time, after you've carefully  
7 considered all of the evidence in the case and you've  
8 decided those facts and you've applied the law, if you have  
9 no reasonable doubt as to his guilt, then it would be your  
10 corresponding duty to find him guilty where proof of that  
11 guilt has been established beyond a reasonable doubt.

12 Now, the same law that provides that you are the  
13 judges of the facts also provides that I am the judge of  
14 the law. And that simply means that nobody's going to tell  
15 you how to arrive at your determination of fact in this  
16 case.

17 As I have already told you, you do that through the  
18 exercise of good judgment and common sense conscientiously  
19 applied to the testimony and evidence in the case.

20 You must however under your oath as a juror accept the  
21 law as I provide it to you as being the law that you are to  
22 apply in the case. In other words, you're not to concern  
23 yourself with what you thought the law was before you came  
24 to serve as juror this week or what you think it ought to  
25 be.

## Jury charge

1 Under your oath as a juror you simply accept the law  
2 as I provide it to you as being the law that you are to  
3 apply in the case. And then you simply take that law and  
4 you apply it to the facts as you 12 jurors determine those  
5 facts to be based upon your common sense examination of the  
6 testimony and evidence in the case.

7 Now, because you are the sole judges of the facts you  
8 are therefore necessarily the sole judges of the  
9 credibility of each witness that has testified. You 12  
10 jurors alone will decide what weight, value and effect to  
11 give to any particular witness' testimony or even portions  
12 of that testimony. But there are several factors which you  
13 should consider in arriving at your assessment as to the  
14 credibility of a witness, and I'm going to list those  
15 factors for you.

16 You should consider the demeanor of the witness, that  
17 is how the witness appeared to you when the witness  
18 testified from the witness stand. You should consider  
19 whether or not the testimony of a witness is consistent, or  
20 is it inconsistent with that witness' own testimony or  
21 other testimony and other evidence presented during the  
22 trial.

23 You should also consider how the witness came to know  
24 the facts to which that witness has testified. In other  
25 words, what was that witness' opportunity and ability to

## Jury charge

1 perceive the existence of those facts to which that witness  
2 has testified by having previously used his or her senses.  
3 And then what is that witness' ability to be able to come  
4 into court and to accurately recollect to you as to what  
5 they have previously perceived.

6 You should also consider any bias or prejudice or  
7 interest that a witness might have with regard to the case  
8 in determining the credibility of a witness.

9 You may also consider whether or not the testimony of  
10 a witness is strengthened, or is weakened by other  
11 testimony or other evidence received during the course of  
12 the trial.

13 Now, because you are the judges of the facts and  
14 because you are the judges of the credibility of each  
15 witness you are permitted to believe as much or as little  
16 of what a witness has testified to as you deem is  
17 appropriate.

18 Therefore, you can believe everything that a witness  
19 testified to. You may choose to believe none of it. You  
20 may believe some portion of a witness' testimony and reject  
21 some other portion of that same witness' testimony.

22 In a given case you could believe one witness as  
23 opposed to several, or several as opposed to one. But  
24 whatever your good judgment and common sense tells you is  
25 the most believable and credible testimony is the testimony

## Jury charge

1 you should accept. And you should reject any testimony or  
2 other evidence that you find not to be credible or  
3 believable. Again, your sole objective is to simply reach  
4 the truth in the matter. And by doing that you will have  
5 fulfilled your obligations as jurors.

6 Now, while there are various forms of evidence such as  
7 testimony, photographs, documents, charts and other types  
8 of physical exhibits, there are really only two types of  
9 evidence. Either or both of those types of evidence may be  
10 used to prove any fact in issue. But the two types of  
11 evidence are direct evidence and circumstantial evidence.

12 Direct evidence is the testimony of a person who  
13 testifies from actual knowledge of the fact. In other  
14 words, it's testimony by a person who has perceived the  
15 existence of some fact by means of their senses and then  
16 they come into court and they testify as to what they have  
17 previously seen or heard, or felt for that matter.

18 Circumstantial evidence, on the other hand, is the  
19 proof of some other fact or set of facts which taken either  
20 singly or collected may prove the existence of a fact in  
21 question as a necessary consequence. That is through an  
22 inference.

23 An inference is simply a deduction of fact that may  
24 logically and reasonably be drawn from the proof of some  
25 other fact or set of facts. In other words, it's not a

## Jury charge

1 fact proven by the direct testimony of a person based upon  
2 their own personal perception, but it is a conclusion which  
3 might reasonably be drawn from the proof of other facts.

4 In other words, you may infer that a particular event  
5 occurred or that a particular fact exists based upon the  
6 proof of sufficient factual circumstances which would  
7 reasonably warrant your arriving at a particular  
8 conclusion.

9 Please understand however that the law makes no  
10 distinction between the weight or value to be given to  
11 direct evidence as opposed to circumstantial evidence, nor  
12 is a greater degree of certainty required of circumstantial  
13 evidence as opposed to direct evidence.

14 whatever the type of evidence used to prove any fact  
15 in issue, you should consider all of the evidence presented  
16 during the trial. And after carefully considering that  
17 evidence and weighing it in your minds if you are not  
18 convinced of the guilty of the defendant beyond a  
19 reasonable doubt, then you must resolve that doubt in his  
20 favor and find him not guilty.

21 Now, in this case, as you know, the defendant is  
22 charged with trafficking in methamphetamine. That's a  
23 statutory criminal offense. It's set forth in section  
24 44-53-375 of the Code of Laws.

25 That particular code section provides that any person

## Jury charge

1 who knowingly is in actual or constructive possession of  
2 ten grams or more of methamphetamine is guilty of the crime  
3 known as trafficking in methamphetamine.

4 Now, before a person may be found guilty of a crime  
5 based upon a possession of a substance it must be proven  
6 beyond a reasonable doubt that that person did knowingly or  
7 intentionally have in his actual or constructive possession  
8 the substance which is alleged to have been possessed. In  
9 this case that would be methamphetamine.

10 Knowing within the meaning of the statute means to  
11 have knowledge of the fact. It is an act which is done  
12 wilfully, purposefully and consciously.

13 Intentionally is defined as purposefully, that is by  
14 aim or design and not by accident or inadvertence. It may  
15 be further defined as the state of a person's mind which  
16 directs his actions towards a specific object or goal.

17 Actual possession of a substance occurs when the  
18 substance is shown to have been in the actual physical  
19 custody or control of the person charged with possession so  
20 long as it is also shown they have knowledge of its  
21 presence.

22 Constructive possession of a substance, on the other  
23 hand, occurs when a person, although not in actual physical  
24 custody of the substance, exercises dominion and control  
25 over the substance or has the right to exercise dominion

## Jury charge

1 and control over the substance or intends to exercise  
2 dominion and control over the substance.

3 And a person has possession of a substance within the  
4 meaning of the law when he has both the power and the  
5 intent to control the disposition or use of that substance.

6 The act of possession, as well as the element of  
7 knowledge, may be proven by either direct evidence or  
8 circumstantial evidence or by a combination of both types  
9 of evidence. And possession of a substance may be jointly  
10 shared by two or more persons.

11 You are permitted to infer the act of possession of a  
12 substance, as well as the element of knowledge, from  
13 evidence of acts, declarations or conduct of the person  
14 charged with possession, as well as any other circumstances  
15 established by the evidence in the case which would  
16 reasonably warrant your arriving at a particular  
17 conclusion.

18 You are instructed however that proof of mere presence  
19 of the defendant at or near a location where a quantity of  
20 methamphetamine is found is not sufficient by itself to  
21 prove the defendant guilty of possessing the substance.

22 A defendant's mere presence where a quantity of  
23 methamphetamine is located, even with knowledge of its  
24 presence, is not sufficient standing alone to prove the  
25 crime of possession. And neither does the mere association

## Jury charge

1 with a person who commits a crime make the defendant guilty  
2 of any crime committed by that other person.

3 If after your review of the evidence presented in this  
4 case you determine that the state has only proven that the  
5 defendant was merely present at or near a location where a  
6 quantity of methamphetamine was located but has failed to  
7 prove the defendant had in his actual or constructive  
8 possession ten grams or more of methamphetamine beyond a  
9 reasonable doubt, then you must find the defendant not  
10 guilty of the crime of trafficking as is alleged in the  
11 indictment.

12 And on the other hand, after you have carefully  
13 reviewed all of the evidence in the case and you have  
14 decided the facts and applied the law, if you determine  
15 that the defendant has -- excuse me -- the state has proven  
16 beyond a reasonable doubt that the defendant did knowingly  
17 have in his actual or constructive possession ten grams or  
18 more of methamphetamine, then your verdict would be guilty  
19 of trafficking as it is alleged in the indictment.

20 Now, ladies and gentlemen, as I told you at the outset  
21 of this case, and I further emphasize to you, the fact that  
22 a defendant does not testify during the course of a  
23 criminal trial is not a circumstance or fact which you may  
24 consider in any way during your deliberations or in your  
25 determination as to whether or not his guilt has been

## Jury charge

1 proven beyond a reasonable doubt. You may not permit such  
2 a fact to weigh in the slightest degree against a  
3 defendant.

4 As I've stated, the burden is upon the state to prove  
5 his guilt beyond a reasonable doubt. The burden is not  
6 upon a defendant to prove anything. And therefore you are  
7 not to draw any inference nor reach any conclusion from the  
8 fact that a defendant does not testify during the trial,  
9 nor may that fact even be discussed by you while you are  
10 engaged in your deliberations in this case.

11 Now, ladies and gentlemen, I am not in any way  
12 concerned with what your decision is, but you are  
13 instructed that the verdict must be unanimous. So all 12  
14 of you must be in agreement.

15 Madam forelady, as you know, you're going to be called  
16 upon to preside over the jury deliberations simply to  
17 ensure that they are carried out in some orderly fashion.  
18 But all should be participating, because, as I say, the  
19 verdict is intended to be the consensus opinion. And it  
20 must be unanimous. So all 12 are going to have to be in  
21 agreement.

22 Now, Madam Forelady, after you and your fellow jurors  
23 have reached a decision in the case I'm going to ask you to  
24 indicate that decision on the back of the indictment.  
25 You'll see -- it's folded now, so it's on the back. If it

## Jury charge

1 were open it would be the lower left-hand corner. But  
2 you'll see the word verdict. It's beneath that word that  
3 you are to indicate the jury's decision. Then sign your  
4 name as the foreperson and place the appropriate date on  
5 the verdict form. You're the only juror that needs to sign  
6 the verdict form.

7 In this case you have two potential or possible  
8 verdict forms, and those two forms are guilty and not  
9 guilty. So whatever your decision is, indicate it in the  
10 space provided, sign your name as the foreperson and place  
11 the appropriate date.

12 Now, during the course of your deliberations there may  
13 come a time as you discuss the evidence in order to  
14 determine the facts, you may wonder if there's something  
15 else that you can have like, well, what about so and so,  
16 can we get that in the jury room, that might help us  
17 resolve the matter.

18 No additional evidence may be received now that you  
19 are going back to begin with your deliberation. So even if  
20 some potential item of evidence existed you couldn't have  
21 it even if it were to be obtained and brought to you. No  
22 additional evidence can be received now that you're going  
23 back to deliberate.

24 I'm never permitted to answer questions that relate to  
25 evidence or the facts in the case because that's your

## Jury charge

1 prerogative. That's a decision that you have to make.

2       However if you have a question about the testimony or  
3 the evidence and you think that that question can be  
4 answered by having testimony replayed in whole or in part,  
5 we can bring you back into the courtroom to have a witness'  
6 testimony reheard in its entirety or in just some portion  
7 if that's all you need.

8       I don't have transcripts to send back with you, but if  
9 you have need of rehearing testimony if you will, let me  
10 know we'll bring you back into the courtroom to have that  
11 testimony replayed.

12       If at any time you ever have a question about the law  
13 that is applicable, I am permitted to answer those  
14 questions. So if you need to -- for me to reinstruct you  
15 on the law I'm providing or if you need a further  
16 explanation or some clarification of what I've provided,  
17 let me know. And I'll be happy to provide you with that  
18 additional instruction, explanation or clarification.

19       Madam Forelady, if at any time you need to direct some  
20 question or comment to me if you'll write it on a piece of  
21 paper, give it to the bailiff, he'll provide it to me and  
22 I'll respond accordingly.

23       After you've reached a decision and you've indicated  
24 that decision on the back of the indictment as I've  
25 indicated, you hold onto the indictment. But you let the

Jury charge

1 bailiff know by knocking on the door that you've reached a  
2 decision. And then he'll bring you back into the courtroom  
3 for us to receive that decision.

4 You will maintain possession of the verdict form.  
5 I'll receive it after you are seated, and then you'll  
6 provide it to me after entry into the courtroom.

7 If you have any -- if we have any smokers -- I don't  
8 know if we have any smokers. If we do, you can smoke, but  
9 you can't smoke in the jury room. You have to go outside  
10 for that purpose. So if anybody needs to smoke, let the  
11 bailiff know. He'll take you outside.

12 You are instructed however that if any juror is absent  
13 for an authorized purpose the deliberations have to stop.  
14 They may only be presumed when all 12 jurors are present so  
15 that all may participate.

16 Now, as far as your deliberations go, I don't know how  
17 long they will take. You don't either because you haven't  
18 started. It could be a short time, could be a long time,  
19 could be intermediate.

20 Right now it's not quite lunchtime, but you may think  
21 it is. In any event, it usually takes about an hour for  
22 lunch to be ordered, prepared and brought to the jury room.  
23 It might be an hour and a little over -- five or ten  
24 minutes.

25 So just keep that timeframe in mind as you go back to

## Jury charge

1 begin deliberations. If you get to a point --  
2 understanding that's a timeframe -- where you think it's  
3 appropriate to order lunch, send word by way of the bailiff  
4 to me and we'll send the clerk in to take your lunch  
5 orders.

6 I think that covers everything, but if it does not I'm  
7 sure one of these lawyers will remind me that I have  
8 forgotten something. If that's the case I'll bring you  
9 back to provide further instruction.

10 So right now with the exception of Mr. Ravan I'm going  
11 to ask the 12 primary jurors to please retire to your jury  
12 room. But do not yet begin deliberations. I've got to  
13 address some matters with the lawyers.

14 If I need to bring you back, I will. If I don't, I  
15 won't. But you will begin your deliberations when  
16 instructed to do so by the bailiff, and that will be after  
17 he brings to the jury room all of the exhibits which have  
18 been introduced.

19 And to you, Madam Forelady, he'll also bring the  
20 indictment which will serve as the verdict form.

21 So please retire but await my instruction as to when  
22 to begin.

23 (Whereupon, the jury retired to deliberate at  
24 11:37 a.m.)

25 (Whereupon, the alternate juror was excused.)

## Jury charge

1 THE COURT: Are there any exceptions taken to the  
2 instruction or requests for additions to the instruction by  
3 the state?

4 MR. HUNTER: None from the state, Your Honor.

5 THE COURT: The defendant?

6 MR. HARRIS: No, Your Honor.

7 THE COURT: Let me ask y'all to verify the exhibits,  
8 please, before they go back.

9 (Pause.)

10 THE COURT: All the exhibits are accounted for?

11 MR. HUNTER: Yes, from the state.

12 THE COURT: Send them back and tell the jury to  
13 deliberate.

14 (Whereupon, a recess was taken.)

15 THE COURT: All right. Bring the jury in, please.

16 (Whereupon, the jury returned to the courtroom at  
17 12:55 p.m.)

18 THE COURT: Madam forelady, I have your note wherein  
19 you are asking for me to reexplain or reread the  
20 instruction as it relates to the charge of trafficking --

21 THE FOREPERSON: Yes, sir.

22 THE COURT: -- in methamphetamine.

23 section 44-53-375(c) of the Code of Laws of South  
24 Carolina provides that any person who is in actual or  
25 constructive possession of ten grams or more of

## Jury charge

1 methamphetamine is guilty of the crime of trafficking in  
2 methamphetamine.

3       Before a person may be deemed to be in possession of a  
4 substance it must be proven beyond a reasonable doubt that  
5 the person did knowingly or intentionally have in his  
6 actual or constructive possession the substance which is  
7 alleged to have been possessed. In this case that would be  
8 methamphetamine.

9       Knowing is defined as having knowledge of the fact.  
10 It is an act which is done wilfully, purposefully and  
11 consciously.

12       Intentionally refers to purposeful conduct, that is it  
13 is conduct -- it's an act done by aim or design and not by  
14 accident or inadvertence. It may be further defined as the  
15 state of a person's mind which directs his actions towards  
16 a specific object or goal.

17       Actual possession of a substance occurs when the  
18 substance is shown to have been in the actual physical  
19 custody of the person charged with possession so long as it  
20 is further shown that he had knowledge of its presence.

21       Constructive possession of a substance, on the other  
22 hand, occurs when a person, although in actual physical  
23 custody of the item, exercises dominion and control over  
24 the substance or has the right to exercise dominion and  
25 control over the substance.

## Jury charge

1           A person has possession of a substance in the meaning  
2 of the law when he has both the power and the intent to  
3 control the disposition or use of the substance. And the  
4 act of possession, as well as the element of knowledge, may  
5 be proven by either direct evidence or circumstantial  
6 evidence or by a combination of both types of evidence.  
7 And possession of a substance may be jointly shared by two  
8 or more persons.

9           And you are permitted to infer the act of possession  
10 of a substance, as well as the element of knowledge, from  
11 evidence of acts, declarations or conduct of the defendant  
12 or person charged with possession, as well as any other  
13 circumstances established by the evidence in the case which  
14 would reasonably warrant your arriving at that conclusion.

15           Proof of mere presence of the defendant at or near a  
16 location where a quantity of methamphetamine is found is  
17 not sufficient by itself to prove the defendant guilty of  
18 possessing the substance.

19           A defendant's mere presence where a quantity of  
20 methamphetamine is located even with knowledge of its  
21 presence is not sufficient standing alone to prove his  
22 possession of it.

23           In order to prove the defendant to be guilty of the  
24 crime of trafficking in methamphetamine it must be proven  
25 beyond a reasonable doubt that the defendant did have in

## Jury charge

1 his actual or constructive possession ten grams or more of  
2 methamphetamine. Okay.

3 THE FOREPERSON: Thank you, Your Honor.

4 THE COURT: If I can provide any additional  
5 clarification, please let me know. I'll be happy to do so.

6 You may retire to your jury room and continue your  
7 deliberations.

8 Your lunch has been ordered. So it will be brought to  
9 you just as soon as it's prepared and delivered.

10 (Whereupon, the jury retired to deliberate at  
11 1:00 p.m.)

12 THE COURT: Are there are any objections or exceptions  
13 taken to the additional instruction?

14 MR. HUNTER: None from the state, Your Honor.

15 MR. HARRIS: No, Your Honor.

16 THE COURT: We will continue to be at ease while the  
17 jury is deliberating.

18 (Question from the jury marked Court's Exhibit No. 2.)

19 (Whereupon, a recess was taken.)

20 THE COURT: I understand the jury has reached a  
21 decision.

22 Are we ready to receive it?

23 MR. HUNTER: Yes, Your Honor.

24 MR. HARRIS: Yes, Your Honor.

25 THE COURT: Okay. Bring them in.

verdict

1 (Whereupon, the jury returned to the courtroom at  
2 2:32 p.m. to report its verdict.)

3 THE COURT: Madam Forelady, have you and your fellow  
4 jurors reached a unanimous decision?

5 THE FOREPERSON: Yes, Your Honor, we have.

6 THE COURT: Have you indicated that decision on the  
7 back of the indictment as requested?

8 THE FOREPERSON: Yes, sir.

9 THE COURT: Did you sign it and date it?

10 THE FOREPERSON: I did.

11 THE COURT: If you will, please hand that form up by  
12 way of the bailiff.

13 You may publish the verdict.

14 THE CLERK: In the State of South Carolina, in the  
15 County of Spartanburg, in the Court of General Sessions,  
16 the State of South Carolina vs. Norman Adger Bragg, as to  
17 Indictment No. 2010-GS-42-1821 for trafficking in  
18 methamphetamine, the jury unanimously finds the defendant  
19 guilty.

20 Ladies and gentlemen of the jury, is this your verdict  
21 and still your verdict? If so, please raise your right  
22 hand.

23 (Whereupon, all jurors responded in the affirmative.)

24 THE COURT: Are there any other matters to address  
25 with the jury present?

## Sentence

1 MR. HUNTER: Nothing from the state, Your Honor.

2 MR. HARRIS: No, Your Honor.

3 THE COURT: Does the defendant wish to have the jury  
4 polled?

5 MR. HARRIS: No, Your Honor.

6 THE COURT: Okay.

7 (Whereupon, the trial jury was excused.)

8 THE COURT: Okay. Anything further on behalf of the  
9 state?

10 MR. HUNTER: Nothing on behalf of the state, Your  
11 Honor.

12 THE COURT: Mr. Harris.

13 MR. HARRIS: Your Honor, we recognize the verdict.

14 I've informed Mr. Bragg of the Court's virtual lack of  
15 discretion in sentencing in this matter. He's aware of  
16 that. He's prepared for sentencing.

17 MR. HUNTER: Your Honor, just for the record, I have  
18 passed up six previous convictions of Mr. Bragg, thus  
19 making this a third offense for trafficking  
20 methamphetamine.

21 THE COURT: All right. Mr. Harris, have you seen  
22 these -- apparently certified -- copies of the indictments  
23 which the solicitor contends are prior convictions of  
24 Mr. Bragg?

25 MR. HARRIS: I have not, Your Honor.

Sentence

1 THE COURT: Well, look at those and let him look at  
2 them. I don't see that there's any issue about it, but let  
3 him look at them to be sure they're all accurate.

4 (Pause.)

5 THE COURT: All right. Anything further on behalf of  
6 the defendant?

7 MR. HARRIS: Your Honor, I'd just state that I have  
8 reviewed myself the certified copies of the indictments and  
9 the attached sentencing sheets from prior offenses, what  
10 the state alleges to be prior offenses. I've gone over  
11 those as best I can with Mr. Bragg.

12 He -- it does appear to me that he had one court date  
13 on March 31st of 2004 where he pled guilty to several  
14 different indictments for various drug offenses, some of  
15 which are described as first offenses, some of which are  
16 described as second offenses, all but two of which have  
17 offense dates clustered in August of 2003 but on different  
18 dates, and two of which have January of 2004 offense dates.

19 And I have just looking at them advised Mr. Bragg that  
20 it would be my opinion that those would constitute at least  
21 two prior offenses.

22 THE COURT: All right. Well, it does not appear that  
23 there's any issue as to this being a third or subsequent  
24 offense based upon having eight prior convictions.

25 Mr. Bragg, is there anything else you'd like to add to

## Sentence

1 what your lawyer has told me?

2 THE DEFENDANT: I don't know what to say.

3 THE COURT: All right. On Indictment 2010-1821,  
4 that's the indictment for trafficking in methamphetamine  
5 third or subsequent offense, ten grams or more, wherein you  
6 have been found guilty by the jury of that offense, the  
7 sentence of the court is you, Norman Adger Bragg, be  
8 confined to the South Carolina Department of Corrections  
9 for a period of 30 years and pay a fine of \$50,000.

10 You have a right to appeal the verdict of the jury and  
11 the sentence of the court. You have to file any notice of  
12 your intention to appeal within ten days of today's date.

13 (Copy of Indictment No. 2003-GS-42-3857 marked Court's  
14 Exhibit No. 3; copy of Indictment No. 2003-GS-42-3859  
15 marked Court's Exhibit No. 4; copy of Indictment No.  
16 2003-GS-42-3860 marked Court's Exhibit No. 5; copy of  
17 Indictment No. 2003-GS-42-3858 marked Court's Exhibit No.  
18 6; copy of Indictment No. 2003-GS-42-1583 marked Court's  
19 Exhibit No. 7; copy of Indictment No. 2003-GS-42-1584  
20 marked Court's Exhibit No. 8; question from the jury marked  
21 Court's Exhibit No. 9.)

22 END OF REQUESTED TRANSCRIPT OF RECORD

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## Certificate

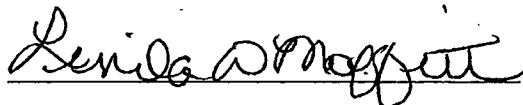
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 19th and 20th days of March 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 18, 2012



Linda D. Moffitt  
Circuit Court Reporter

WITNESSES

1. SENTENCE MADE  
SPTBG CO SHERIFF'S OFFICE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND  
FINE CARD MADE

8. TRAFFIC VIOLATION  
ARREST WARRANT NUMBER

M420468

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3/25/12

VERDICT

Guilty

Foreperson of Petit Jury

Date: 3-20-12

262

DOCKET NO.

10-GS-42-1821

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

MAR 29 2010

TERM

THE STATE

vs.

NORMAN ADGER BRAGG

Indictment for

TRAFFICKING IN METHAMPHETAMINE

SC Code: 44-53-375

FILED  
CLERK OF COURT  
SPARTANBURG COUNTY  
2010 APR -1 PM 4:30

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

## INDICTMENT

At a Court of General Sessions, convened on MAR 25 2010, the  
Grand Jurors of Spartanburg County present upon their oath:

**TRAFFICKING IN METHAMPHETAMINE**

That Norman Adger Bragg did in Spartanburg County on or about November 18, 2009, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (10) ten grams of Methamphetamine, a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
ASSISTANT SOLICITOR

# Computer

COUNTY OF SPARTANBURG  
 STATE VS.  
Norman Adger Bragg  
 AKA: \_\_\_\_\_  
 Race: WHITE Sex: M Age: 46  
 DOB: \_\_\_\_\_ SS#: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City, State, Zip: \_\_\_\_\_  
 DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

INDICTMENT/CASE#: 2010GS4201821  
 A/W#: M420468  
 Date of Offense: 11/18/2009  
 S.C. Code § : 44-53-0375(C)  
 CDR Code #: 0349

### 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  PLEADS  
 TO: Drugs / Trafficking in Meth 10-28 grams 3rd offense (25-30 years. & \$50K fine) NS NP

in violation of § 44-53-0375(C) of the S.C. Code of Laws, bearing CDR Code # 0452  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentation to Grand Jury. \_\_\_\_\_ (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
 ATTEST: J. E. [Signature] 77317 [Signature] [Signature] 2750

HUNTER, JAMES EDWAR 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 30 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ 50,000; 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 Services 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 the 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 (Criminal 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 Employment  
 Payment Terms: \_\_\_\_\_ Obtain GED   
 Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling

Recipient: \_\_\_\_\_

*Fine:		\$ 50,000.00
§ 14-1-206 (Assessments 107.5%)		\$ 53,750.00
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 100.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3,119.40
TOTAL		\$ 107,099.40

Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

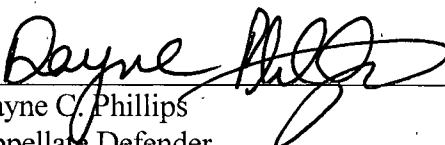
Clerk of Court/ Deputy Clerk [Signature]  
 Court Reporter: [Signature]  
 SCCA/217 (03/2011)

Presiding Judge [Signature]  
 Judge Code: 2053  
 Sentence Date: March 30, 2012

## 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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

This 15<sup>th</sup> day of March,

  
Dayne C. Phillips  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Spartanburg County  
J. Derham Cole, Circuit Court Judge

RECEIVED  
MAR 15 2013  
SOUTH CAROLINA COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

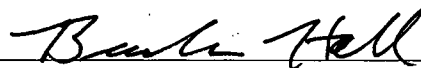
NORMAN ADGER BRAGG,

APPELLANT

Appellate Case No. 2012-211547

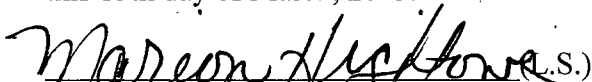
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and on Mr. Norman Adger Bragg, #300947 at Lieber Correctional Institution PO Box 205 Ridgeville, SC 29472 this 15th day of March, 2013.



Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 15th day of March, 2013.

  
Notary Public for South Carolina

My Commission Expires: October 30, 2022