

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THERRON R. RICHARDSON,

APPELLANT

APPELLATE CASE NO. 2012-213431

RECORD ON APPEAL

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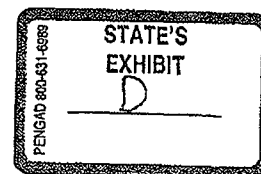
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) COURT OF GENERAL SESSIONS
State of South Carolina,)
Plaintiff,)
vs.) 11-GS-10-2320 et al
Therron Richardson,)
Defendant.)



TRANSCRIPT OF HEARING

The within Hearing was held on May 9, 2012, before The Honorable R. Markley Dennis, Jr. in Courtroom 3A of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

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1 THE COURT: Ms. Penn, have you filed
2 yours?

3 ALICIA PENN: No, Your Honor.

4 THE COURT: Okay, I will give you
5 this and you can file it when we finish.

6 ALICIA PENN: Thank you.

7 THE COURT: Thank you so much. Or
8 we can file it. We'll take care of that.

9 ALICIA PENN: Your Honor, before
10 we begin, I believe that my client would like
11 to be heard.

12 THE COURT: Sure.

13 ALICIA PENN: It is my under-
14 standing that he wishes to fire me and have the
15 court grant him another attorney.

16 THE COURT: Okay. Mr. Richardson,
17 I'll ---

18 DEFENDANT: Yes, sir.

19 THE COURT: --- be happy to hear from
20 you.

21 DEFENDANT: Yes. Prior to me coming
22 here today, I put in two Motions with the Clerk
23 of Court's department to have them filed.

24 THE COURT: Yes, sir.

25 DEFENDANT: One is a Motion of

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1 suppression that I've written up myself, that
2 I ---

3 THE COURT: Yes, sir.

4 DEFENDANT: --- would like to be
5 heard.

6 THE COURT: Well, you can't be heard
7 because we don't recognize hybrid representa-
8 tion, where you have a lawyer and then you want
9 to be the lawyer with a lawyer. Well, let me
10 ask you a question. I'm assuming something.

11 DEFENDANT: Yes, sir?

12 THE COURT: It may be an incorrect
13 assumption. Did you graduate from law school?

14 DEFENDANT: No, sir.

15 THE COURT: Have you ever been to law
16 school?

17 DEFENDANT: No, sir.

18 THE COURT: Have you ever finished
19 college?

20 DEFENDANT: No, sir.

21 THE COURT: Have you ever tried a
22 case?

23 DEFENDANT: No, sir.

24 THE COURT: Well, then it would be
25 hybrid representation. You certainly have a

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1 right to represent yourself but in order to do
2 that I'd have to first remove your lawyers. I
3 don't know about your brief, but that's your
4 Motion for suppression that your lawyer has
5 filed right now and that's what we are going to
6 hear. I don't know what -- why do you want to
7 fire your lawyer?

8 DEFENDANT: Because I feel that there
9 are certain things that are missing out there.
10 The suppression Motion that she's written ---

11 THE COURT: Like what?

12 DEFENDANT: One is a statement that
13 was written by one of the witnesses.

14 THE COURT: What has that got to do
15 with suppression?

16 DEFENDANT: Because, I mean, really
17 because she can tell ---

18 THE COURT: No, sir. Suppression
19 deals with whether or not your Constitutional
20 rights were violated. What somebody said
21 doesn't have anything to do with that. So I
22 don't know what you're talking about. Tell me
23 how it relates to a Constitutional issue.

24 DEFENDANT: And also ---

25 THE COURT: No, don't go -- don't go

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1 "also." Tell me how that statement relates to
2 a Constitutional issue that you're claiming.

3 DEFENDANT: It doesn't but ---

4 THE COURT: Okay. Thank you, sir.

5 It has nothing to do with the suppression then.

6 Because what -- the reason that you're

7 suppressing it is that the -- that the actions

8 of the State violated your Constitutional

9 rights. So if it doesn't relate to that, it has

10 no merit or bearing on the suppression hearing.

11 DEFENDANT: That's true.

12 THE COURT: So your Motion has --

13 that you filed proves and confirms that you

14 really and truly don't need to represent

15 yourself.

16 DEFENDANT: Really, it has to --

17 the Motion has to do with counsel.

18 THE COURT: Well, you are not arguing

19 that because I'm not -- I haven't dismissed your

20 counsel. If you want me to dismiss your

21 counsel, I will really go through that and then

22 you can represent yourself. This case is

23 scheduled to be called, we're going to call a

24 jury this afternoon. So you've got to be ready

25 to go. Are you ready to try your case?

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1 DEFENDANT: I mean, not -- not as of
2 today.

3 THE COURT: Well, that's what's
4 happened. Ms. Penn is, she's ready. Ms. Ford
5 has been working with her.. So your lawyers are
6 ready to go. We have a jury pool coming this
7 afternoon to pick your jury and you can -- if
8 you want me to terminate them and you represent
9 yourself, okay. I would advise you strongly and
10 strongly against that.

11 But if that's what you believe is in
12 your best interest, you have the right to
13 represent yourself. But that would be a serious
14 mistake.

15 But this case is going forward, sir.
16 Okay? Today.

17 Now, do you want me to fire your lawyer
18 or remove your lawyers?

19 DEFENDANT: (Affirmative nod), I mean
20 if I am going to get another counsel.

21 THE COURT: You're not going to get
22 another counsel. You either are going to try
23 the case yourself or Ms. Penn is going to
24 represent you.

25 And let me say something to you. You

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1 may not agree with your lawyer. I understand
2 that. That happens every day. It happened for
3 twenty-one years when I was practicing law, from
4 time to time people didn't agree with me either.
5 But that's not what lawyers do. We are not
6 supposed to agree with you. We are supposed to
7 tell you our honest sincere opinions of
8 something. Then we zealously represent you as
9 advocates.

10 It's hard for a person who has never
11 been trained in this profession or never done it
12 to understand -- and I can tell you something --
13 and, for instance, I don't know what they have
14 said to you, nor do I want to know, nor am I
15 entitled to know. But I told people 'You're
16 making a serious mistake. You have a better
17 shot at entering a guilty plea, and they've got
18 enough evidence to convict you, in my opinion.'
19 That would make people mad.

20 So I am just telling you, if you want
21 to represent yourself, I'll be happy to hear
22 you. Otherwise, we're wasting time because Ms.
23 Penn is ready to argue your motion. She's
24 briefed it totally and completely and very, very
25 ably I might add.

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1 I don't see any case citations. Do you
2 have any case citations? Do you have copies of
3 the cases that you are relying on?

4 DEFENDANT: For the Motion that I've
5 written?

6 THE COURT: Yeah, do you have -- you
7 have the cases that you're relying on?

8 DEFENDANT: Yes.

9 THE COURT: Based on your -- based on
10 what? Based on your training?

11 DEFENDANT: No.

12 THE COURT: Your reading?

13 DEFENDANT: Yes, sir.

14 THE COURT: Well, I'll be happy to
15 consider it if you want me to dismiss Ms. Penn.
16 Then she can take her brief away. But that
17 means that your Motion is based on yours, and
18 you've already said one aspect of it doesn't
19 have anything to do with your Constitutional
20 rights. So you've already cut your support in
21 half.

22 DEFENDANT: I would still like for
23 my motion to be heard.

24 THE COURT: What Motion?

25 DEFENDANT: My Motion to suppress.

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1 THE COURT: Your Motion is denied
2 because you can't have hybrid representation.
3 I've told you that. So I've heard it. Denied.
4 Now, what?

5 DEFENDANT: (No verbal response).

6 THE COURT: Now what? You want to
7 fire your lawyer?

8 DEFENDANT: No.

9 THE COURT: Okay. Thank you, sir.
10 We resolved that, I think, at least for the
11 moment. You are Therron Richardson?

12 DEFENDANT: Therron Richardson.

13 THE COURT: Therron Richardson?

14 DEFENDANT: Yes, sir.

15 THE COURT: Okay. All right. I'll
16 be happy to hear from you on your Motion. Let
17 me state now for the record that the briefs
18 filed and all memoranda filed in conjunction
19 with them -- for and against the Motion -- are
20 incorporated fully for purposes of review. The
21 positions that each of you have stated, the
22 support given in your memoranda, you may rely
23 fully on that for purposes of review. It is not
24 necessary that you argue each aspect of it, but
25 I'll now hear from you as to which one -- you

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1 can highlight all or portions, whichever one
2 that you want to do.

3 ALICIA PENN: Your Honor, thank
4 you. Just briefly, could we please put on the
5 record that my client is refusing to be dressed
6 out?

7 THE COURT: Okay. That's his right.
8 No problem.

9 ALICIA PENN: He ---

10 THE COURT: I assume that he is going
11 to continue to do that for trial purposes?

12 ALICIA PENN: I would assume so,
13 Your Honor.

14 THE COURT: Okay, because that --
15 is that what you wish to do? You want to be
16 dressed in your prison garb?

17 DEFENDANT: Yes, sir.

18 THE COURT: Okay. You understand
19 that the -- the detriment of that?

20 DEFENDANT: Yes, sir.

21 THE COURT: And it is your choice?

22 DEFENDANT: Yes, sir.

23 THE COURT: And that certainly is not
24 the advice of counsel, is it?

25 DEFENDANT: No, sir.

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1 THE COURT: And you understand that
2 your counsel's obligation is to do everything
3 that she can to advise you properly and
4 consistently with and -- and provide an adequate
5 defense. Do you understand that that may hinder
6 that?

7 DEFENDANT: Yes, sir.

8 THE COURT: But that is what you
9 choose to do and you elect to do?

10 DEFENDANT: Yes, sir.

11 THE COURT: Okay. Thank you.

12 ALICIA PENN: Your Honor, also
13 we're under ---

14 THE COURT: And you understand about
15 PCR, the post-conviction relief application?

16 DEFENDANT: Yes.

17 THE COURT: You understand that that
18 may be -- that what we did may damage your right
19 to claim that as an ineffective aspect, because
20 you told your lawyer that's what you want to do?

21 DEFENDANT: Yes, sir.

22 THE COURT: Okay. Good. Let the
23 record reflect that he fully understands about
24 post-conviction relief as well. Thank you.

25 ALICIA PENN: Your Honor, it is

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1 our Motion but I believe that it's the State's
2 burden to show that the warrant was ---

3 THE COURT: Be happy to -- I agree.
4 Be happy to hear from you -- from them.

5 MANUEL FERGUSON, SOLICITOR: Thank
6 you, Your Honor. If I could just give you a
7 quick background on what happened.

8 THE COURT: Sure. Let me ask a
9 question. Can we agree on the factual
10 recitation? It seems to be similar as to what
11 brings us here, or do we need to take testimony
12 for your purposes of cross-examining someone.

13 ALICIA PENN: Your Honor, I
14 believe that for certain points we need to take
15 testimony.

16 THE COURT: All right, I will let --
17 you can go ahead and make a brief statement and
18 then present your witnesses.

19 MANUEL FERGUSON, SOLICITOR: Thank
20 you, Your Honor. On October 17th, 2010, a 911
21 emergency call was received from dispatch.

22 THE COURT: And I have read the
23 factual recitation.

24 MANUEL FERGUSON, SOLICITOR: Thank
25 you, Your Honor. The State acknowledges -- you

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1 just want a summary, Your Honor?

2 THE COURT: Yeah, I think that's
3 the best thing to do. Then you can argue the
4 strength or weaknesses.

5 SOLICITOR FERGUSON: Before we --
6 to put it all in chronological order, we will
7 play the 911 tape and then ---

8 THE COURT: Okay. The 911 tape, do
9 you agree that this is the 911 tape?

10 ALICIA PENN: Yes, Your Honor.

11 THE COURT: All right. What's being
12 played will be Court's Exhibit 1 for purposes of
13 this Motion. We will need to get a copy of it.

14 (SO ENTERED AS COURT'S EXHIBIT 1)

15 (911 TAPE PLAYING)

16 SOLICITOR FERGUSON: The State calls
17 Officer Bowen.

18 (WITNESS TAKES STAND)

19 ROBERT JASON BOWEN, being duly sworn to
20 tell the truth, the whole truth and nothing but
21 the truth, testified, as follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR FERGUSON:

24 Q. Good morning -- is it Deputy Bowen?

25 A. Yes, sir.

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1 Q. Deputy Bowen, where do you currently work?

2 A. I work for the Charleston County Sheriff's
3 Office.

4 Q. How long have you been there?

5 A. Right at ten years.

6 Q. What are your current duties?

7 A. My current duties is that I am assigned to
8 the detective division.

9 Q. The detective division?

10 A. Yes.

11 Q. Were those your duties back in October of
12 2010?

13 A. No, they weren't. I was on patrol.

14 Q. On patrol?

15 A. (Affirmative nod).

16 Q. And what does a patrol officer do?

17 A. Basically we patrol our district, we
18 actively seek out anyone committing crimes or
19 criminal activity. We also respond to calls
20 as we are dispatched.

21 Q. And did the exercise of those duties as a
22 patrol officer bring you to Avenue
23 on October 17th, 2010?

24 A. Yes, it did.

25 Q. Is that in Charleston County?

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1 A. It is.

2 Q. What, if anything, occurred that brought
3 you to that address?

4 A. We were dispatched to an in-progress
5 domestic violence call.

6 Q. All right. What did you learn as a result
7 of that dispatch call?

8 A. During dispatch we learned that it was
9 ongoing, a female had called in and said that
10 her boyfriend had choked her and that she had
11 locked herself in a room inside the house for
12 her safety.

13 Q. All right. Have you ever responded to a
14 call of this nature before, a domestic call?

15 A. Yes.

16 Q. All right. What is your main goal when
17 you respond to this type of call?

18 A. Our primary goal is person safety.

19 Q. Were you the only officer to arrive on
20 the scene?

21 A. No.

22 Q. Who else was with you?

23 A. Deputy Alexander with the Sheriff's
24 office was also dispatched and arrived shortly
25 behind me.

1 Q. And so what happened when you and Deputy
2 Alexander got to the house at ?

3 A. We arrived almost simultaneously. We
4 approached the house. I approached the front
5 door. Deputy Alexander stood just off for
6 cover. I attempted to make contact at the
7 front door.

8 Q. At the front door?

9 A. Yes.

10 SOLICITOR FERGUSON: Your Honor,
11 may I approach?

12 THE COURT: Yes, you may.

13 DIRECT EXAMINATION CONTINUED

14 BY MANUEL FERGUSON, SOLICITOR:

15 Q. I am handing you what's been marked as

16 ---

17 SOLICITOR FERGUSON: (Tenders
18 document to be marked as an exhibit).

19 COURT REPORTER: State's Exhibit 1
20 for this hearing, for identification.

21 THE COURT: State's Exhibit 1 is a
22 photograph. Thank you.

23 DIRECT EXAMINATION CONTINUED

24 BY MANUEL FERGUSON, SOLICITOR:

25 Q. Deputy Bowen, I am handing you what has

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1 been marked as State's Exhibit 1. Do you
2 recognize that?

3 A. Yeah, it was the front door that day.

4 Q. Is that an accurate depiction of how the
5 front door looked on October 17th, 2010?

6 A. Yes, it is.

7 Q. All right. What, if anything, did you
8 notice about the front door that caused you
9 concern, if anything?

10 A. That day when I had approached the front
11 door, immediately I had noticed that instead
12 of having a doorknob that it had a key-type
13 deadbolt. That's highly unusual for a front
14 door. And the attitude, the fact that we're
15 going to an in-progress domestic call, one of
16 the things that we are trained about with
17 domestics is that it is about control. So
18 I was afraid that somebody was somehow
19 controlling the caller, maybe keeping her
20 locked in the residence. And -- it was just
21 highly unusual.

22 Q. All right. Now, where again was Deputy
23 Alexander when you approached the front door?

24 A. Deputy Alexander was on the scene. I
25 don't believe that he came up on the porch

1 with me.

2 Q. Okay. When you knocked on the door, did
3 you get a response?

4 A. I did not.

5 Q. So what did you do next?

6 A. After we'd knocked on the door several
7 times, with increasing intensity and loudness,
8 once we didn't get any kind of response at the
9 front door, we would start to essentially
10 cover the house, going around to see if there
11 were any open windows or any other doors.

12 Q. All right. Did you find any method of
13 getting inside the house?

14 A. Uh, there was a side door that also had
15 that same type of locking mechanism with no
16 doorknob, and Deputy Alexander discovered a
17 sliding glass door in the rear that was
18 partially open.

19 Q. When you got to that glass door, did you
20 radio dispatch to tell them anything?

21 A. We did. We always -- before we enter any
22 type of house or whenever we discover an
23 unsecured door, we always radio dispatch and
24 they secure the radio so that nobody can
25 transmit but us.

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1 Q. What is the reason for that?

2 A. Basically our safety. It's a high risk
3 situation. If we're going to make entry into
4 a building with an unsecured door, it gives
5 the radio fully to us in case we need to make
6 an emergency transmission.

7 Q. Did you enter the house that day?

8 A. We did.

9 Q. What was the purpose of entering the
10 house?

11 A. Based on the radio call, our purpose was
12 to try and secure the scene, get the scene
13 under control, make sure that if there was
14 anybody harmed -- beginning, ensuring their
15 safety and get them medical attention.

16 Q. So you looked for people when you were
17 inside the house?

18 A. Correct.

19 Q. Did you look inside the bathroom?

20 A. Yes.

21 Q. Did you look in the bedroom?

22 A. Yes.

23 Q. Did you look under the bed?

24 A. Yeah.

25 Q. Why would you look in those areas?

- 1 A. Those are all places that people can be.
2 Any room in the house, we have to know who is
3 in that house so that they are not a danger to
4 us and they're not a danger to other people in
5 the house.
- 6 Q. Where people could be hiding?
- 7 A. Yes.
- 8 Q. Did you look in bookbags?
- 9 A. No.
- 10 Q. Did you look in small drawers?
- 11 A. No, we didn't.
- 12 Q. Did you look in coat pockets or anything?
- 13 A. No.
- 14 Q. Why not?
- 15 A. A person couldn't be in those places.
- 16 Q. Did you find anyone in the house?
- 17 A. No, we didn't.
- 18 Q. When you didn't find anyone in the house,
19 did you make any efforts with dispatch to try
20 to find out where the 911 caller may have
21 been?
- 22 A. Yeah. We started communicating with
23 dispatch. Our supervisor was also on the way
24 in. We briefed her immediately that we
25 weren't finding anybody. Because of the

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1 nature of the call, we were still concerned
2 about an injured party or a party in danger.
3 So we started notifying dispatch that we had
4 not located anybody, trying to have them call
5 that person back or somehow get us another
6 location.

7 Q. Okay. Now, before you started calling
8 dispatch and when you were looking in the room
9 back in the bedroom and the living room, did
10 you find anything unusual.

11 A. Yeah. We found a ---

12 Q. What, if anything, unusual did you find
13 or did you see?

14 A. When we went into what would have been
15 essentially the master bedroom, the bathroom
16 in that master bedroom I noticed -- one of the
17 things that we do is that we look behind the
18 shower curtain, to make sure that nobody is
19 hiding in there. As we went in and out, I
20 noticed a scale with white power residue on
21 it, on the counter. I noticed a razor blade
22 next to that. We also look inside the closet,
23 because somebody could stand in a closet. We
24 noticed a safe on the floor. It was closed
25 but there was money strewn in front of it.

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1 Additionally we noticed money in an open bank
2 bag lying on the floor. When we looked under
3 the bed in the master bedroom, we noticed
4 several guns lying on the floor.

5 Q. Okay. Now, as a result of what you saw,
6 what did you then do?

7 A. Well, once we determined that we didn't
8 have anybody in the house, we just maintained
9 the scene, secured it and waited for Sergeant
10 York to arrive on the scene, to brief her
11 about the additional things that we had seen,
12 and tried to continue any efforts to locate
13 the ---

14 Q. When you briefed Sergeant York on the
15 things that you'd found, what did she instruct
16 you to do?

17 A. She basically instructed us to just
18 maintain the scene, maintain scene security,
19 and that she would be making followup contacts
20 from there.

21 Q. Did she in fact contact another part of
22 the Charleston County Sheriff's Office?

23 A. She did. She made a call to our metro
24 drug investigation unit.

25 Q. All right. Were you able to make contact

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1 with the Defendant while you were at the
2 house?

3 A. At one point I did.

4 Q. How so?

5 A. He called the house and identified him-
6 self. At first, the house received a phone
7 call from a male subject. Because we were
8 there and still trying to locate people, I
9 answered the phone. Initially the person
10 identified themselves as "Mark." I said, you
11 know, 'We're at Mr. Richardson's house, can
12 you get in touch with him? We need to contact
13 him.'

14 The we got a call back and the caller ID
15 had shown a blocked number. The caller
16 identified themselves as Therron Richardson
17 and I asked him to return to the house.

18 Q. Did he ever return to the house?

19 A. No.

20 Q. Thank you.

21 SOLICITOR FERGUSON: Please answer
22 any questions that defense counsel may have.

23 THE COURT: You may cross-examine,
24 Ms. Penn.

25 ALICIA PENN: Thank you, Your

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1 Honor.

2 CROSS EXAMINATION

3 BY ALICIA PENN:

4 Q. Deputy Bowen, you responded to the call
5 at 11:15.

6 A. That sounds right; yes, ma'am.

7 Q. And you got to the home at 11:24. So it
8 took you about nine minutes to get to the
9 house?

10 A. Yes, ma'am.

11 Q. On your way to the house, did you turn on
12 your blue lights?

13 A. I don't recall. It's -- I don't recall.

14 Q. Did you turn on your sirens?

15 A. I don't recall.

16 Q. When you normally respond to a domestic
17 call, do you turn on your blue lights and
18 sirens?

19 A. It depends on the nature of the call and
20 our distance from the call.

21 Q. Did you obey the speed limit on your way
22 to the house?

23 A. If I had not activated my blue lights and
24 sirens, I would have had to. Yes.

25 Q. But you're just not sure on this day

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1 whether you did or not?

2 A. I am not.

3 Q. Now, you testified earlier that over the
4 -- you heard -- it was your impression that
5 you responded to the phone, that a female had
6 called in and said that she ---

7 A. That was the information that we were
8 given.

9 Q. How did you get that information?

10 A. From our dispatch center.

11 Q. From your dispatch center?

12 A. Correct.

13 Q. Would you recognize the dispatch record-
14 ing if we played it back to you?

15 A. Yes.

16 THE COURT: Are you going to play
17 something? You have to have a CD of it if you
18 are.

19 ALICIA PENN: Your Honor, this
20 is the dispatch that we received via e-mail.

21 THE COURT: I understand but you're
22 going to have to mark something if you're
23 going to play it. If you want that to be
24 played in the courtroom, I have to have
25 something to make it a part of the record.

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1 ALICIA PENN: We do have a CD,
2 Your Honor.

3 THE COURT: Good. We're good to
4 go.

5 COURT REPORTER: State's Exhibit 2.

6 THE COURT: Court's Exhibit 2. You
7 don't have to play that one, we just have to
8 have a copy to mark for the record. Thank
9 you. Assuming that it is the same.

10 ALICIA PENN: Yes, sir. Thank
11 you.

12 (DISPATCH CALL PLAYING)

13 CROSS EXAMINATION CONTINUED

14 BY ALICIA PENN:

15 Q. Can you hear that?

16 A. Yes.

17 Q. And this is the recording of that time?

18 A. Yes.

19 Q. (Audio playing) -- would you remember at
20 what point as you're driving do you think that
21 you heard that she was being choked? Was that
22 towards the end or towards the beginning of
23 the tape?

24 A. I can't remember, I was driving and
25 listening.

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1 Q. I will just play it for you and you can
2 tell me when to hit stop.

3 A. Okay.

4 Q. (Audio playing) -- that was your voice
5 right then?

6 A. The person that was asking if we were
7 there, that's me, correct.

8 Q. And you're 133?

9 A. Right.

10 Q. (Audio playing) -- I just played all of
11 it. Anywhere in there do you hear anyone say,
12 a female saying that she was being choked?

13 A. No.

14 Q. And the only thing that you knew when you
15 were responding is that it was a domestic?

16 A. That's right. And, well, dispatch did
17 advise us that she had locked herself in a
18 room.

19 Q. Earlier you said that when you got to the
20 house that you went up to the front door. Was
21 Deputy Alexander with you or was he covering
22 you?

23 A. We went -- we both approached the house
24 about the same time.

25 Q. Did you approach it with your guns drawn?

- 1 A. No, ma'am.
- 2 Q. And when you got to the house it was
- 3 11:20?
- 4 A. That sounds about right.
- 5 Q. The middle of the day?
- 6 A. (No verbal response).
- 7 Q. It wasn't, say, 1:00 o'clock in the
- 8 morning or at night?
- 9 A. That's correct.
- 10 Q. When you got to the house, did you see
- 11 anybody fleeing the house?
- 12 A. No.
- 13 Q. Did you see -- from your first view of
- 14 the home, did you see any broken windows?
- 15 A. No.
- 16 Q. Any bullet holes in the house?
- 17 A. No.
- 18 Q. Any footprint marks on the door?
- 19 A. No.
- 20 Q. Did you hear any screaming from inside
- 21 the house?
- 22 A. No.
- 23 Q. Any nosie, feet running?
- 24 A. No.
- 25 Q. Toilets flushing?

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1 A. No.

2 Q. And after you knocked on the front door,
3 you and Deputy Alexander split up?

4 A. Correct.

5 Q. You went to look at a truck in the
6 driveway?

7 A. I went around that side of the house, the
8 driveway side, and I noticed the truck.
9 Because we were still trying to make contact,
10 I did radio in to dispatch the truck's --
11 there was a phone number on the truck, a
12 business number. I gave that to them to
13 possibly try as an alternate number.

14 Q. You stayed with the truck and Deputy
15 Alexander went around to the back?

16 A. (Affirmative nod).

17 Q. Went around to the back and eventually
18 found the door?

19 A. Correct.

20 Q. And when you radioed dispatch, you told
21 them about the truck?

22 A. Yes.

23 Q. You said that there was a truck, 'please
24 try this alternate number', there was another
25 number?

1 A. Right.

2 Q. And you gave them the number?

3 A. Um-humm.

4 Q. And you also gave them the license plate
5 number?

6 A. Yes.

7 Q. And the time -- and while you're doing
8 this, over dispatch at 11:28 you heard Deputy
9 Alexander from the back say, 'Come around
10 back. There's an open door.'

11 A. That's correct.

12 Q. You found this out while relaying
13 information about the truck over dispatch?

14 A. That's correct.

15 Q. Then how -- once -- right before you went
16 into the house, you asked for the radio to be
17 put on emergency status.

18 A. Yes.

19 Q. And that was around 11:28. Does that
20 sound right?

21 A. Yeah.

22 Q. And as you were going through the house,
23 the emergency status was only on for about
24 twelve seconds. Does that sound right to you?

25 A. Yeah.

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1 Q. And after you cleared the house and the
2 radio stops, dispatch stops going beep-beep-
3 beep, like it does when you put it in
4 emergency status, you said over dispatch,
5 "Looks like nobody is here."

6 A. Yes.

7 Q. So you knew within twelve seconds that
8 nobody was in the house?

9 A. Yes. A protective sweep is a very quick
10 dynamic action.

11 Q. And when you were clearing the house or
12 as soon as you walked into the back door, you
13 didn't hear any noises?

14 A. No, we didn't.

15 Q. No footsteps?

16 A. No.

17 Q. No yelling?

18 A. That's correct.

19 Q. No fighting?

20 A. That's correct.

21 Q. No banging on doors?

22 A. That's correct.

23 Q. Nobody screaming, 'Come help me. I'm
24 here. Let me out.'

25 A. That's correct.

1 Q. Earlier you testified that the fact that
2 the front door had a key-operated deadbolt was
3 unusual?

4 A. Yes, instead of a doorknob. Not in
5 addition to. That was the only thing on the
6 door.

7 Q. Sure. Was there anything to indicate
8 that key-operated deadbolt had somehow been
9 tampered with?

10 A. No.

11 Q. It was just a part of the door?

12 A. Correct.

13 Q. It's unusual but it's still just part of
14 the door?

15 A. That's right.

16 ALICIA PENN: Court's indulgence?

17 THE COURT: Certainly.

18 CROSS EXAMINATION CONTINUED

19 BY ALICIA PENN:

20 Q. Let's step back a little bit, Officer,
21 Deputy Bowen. When you first walked into the
22 house, were any of the windows open?

23 A. No.

24 Q. The windows were closed?

25 A. Yes.

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1 Q. Were the shades drawn or where the blinds
2 closed?

3 A. (Affirmative nod) as best I recall,
4 because I don't remember being able to see
5 inside.

6 Q. And when you were going through the
7 house, were the doors inside the house open or
8 closed?

9 A. I believe at least most of them were
10 open.

11 Q. Do you remember any of them being closed?

12 A. I think the secondary bathroom door was
13 closed.

14 Q. And when you opened that door, did you
15 have to force it open?

16 A. No.

17 Q. Nothing was locked?

18 A. No. That's the reason for the ability to
19 do it so quickly.

20 Q. And you never located people in the
21 house?

22 A. No, we didn't.

23 Q. You did ask for the call to be
24 triangulated.

25 A. I asked dispatch to try and make some

1 effort to locate her and then reestablish
2 contact.

3 Q. And it's your opinion that when they did
4 that that the call was triangulated to Romney
5 Street?

6 A. Yes.

7 Q. Romney Street is twenty minutes away from
8 Old Fort Avenue?

9 A. That's correct.

10 Q. Did you respond to Romney Street?

11 A. I didn't.

12 Q. Did Detective Alexander respond to Romney
13 Street?

14 A. No, he didn't.

15 Q. If that door in the back had not been
16 opened, would you and Deputy Alexander have
17 gone in the house anyway?

18 A. Probably. With our supervisor's
19 permission and after having advised her based
20 on the nature of that call, an in-progress
21 domestic, with somebody so afraid that they'd
22 locked themselves in a room. It is incumbent
23 upon us to make sure that nobody has been
24 harmed or is actively being harmed in that
25 residence.

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1 Q. But when you got there, beside the 911
2 call itself, nothing else alerted you that
3 there might be an emergency in the house?

4 A. Well, aside from the 911 call.

5 Q. Just the 911 call?

6 A. That's correct.

7 ALICIA PENN: Thank you very
8 much. No further questions.

9 THE COURT: Redirect, Solicitor?

10 SOLICITOR FERGUSON: Yes, Your
11 Honor.

12 REDIRECT EXAMINATION

13 BY MANUEL FERGUSON, SOLICITOR:

14 Q. Did the fact that the front door of the
15 house had a deadbolt style lock on it and no
16 doorknob, did that alert you to anything?

17 A. Yeah. It was -- it was very unusual and
18 my mindset was primarily in the domestic call
19 mode. It -- I thought that it might be some
20 type of control.

21 Q. And there was no way for you to get in?
22 You testified that there was no way for you to
23 get into the house from the front door?

24 A. That's correct.

25 Q. Because it was locked?

1 A. That's correct.

2 Q. And the side door was locked with the
3 same deadbolt style?

4 A. That's correct.

5 Q. So no one could get in, and possibly
6 nobody could get out?

7 A. That's correct.

8 Q. Could you please go over for us, quickly,
9 what is the difference between a protective
10 sweep and a search for a person?

11 A. It is essentially the same thing. - A
12 protective sweep, you -- it's not like we are
13 in there searching for a person who has a
14 warrant. We are there to make sure that
15 nobody is there who is either going to harm us
16 or who has harmed a person, or that the person
17 who has been harmed is not there.

18 Q. So if I do a protective sweep, that's for
19 your safety?

20 A. It is for our safety but also to locate
21 any victims.

22 Q. So after you do the protective sweep, you
23 can continue to search more thoroughly without
24 worrying about somebody jumping up and ---

25 A. That's correct.

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1 Q. --- attacking you?

2 A. Yes.

3 Q. So after you do a protective sweep, you
4 do a search for a person?

5 A. Yes. Again, we're looking for a
6 potential victim. The fact that we didn't
7 hear anything, she could have been unconscious
8 -lying somewhere.

9 Q. Let's talk quickly about the Romney
10 Street call. When did you realize that the
11 call may have come from Romney Street?

12 A. At some point later on, and it may have
13 been on the phone with dispatch, dispatch
14 indicated to us that they had an indication
15 that the call had come from Romney Street.

16 Q. Is that after you entered the residence?

17 A. Yes.

18 Q. And on the dispatch call that we just
19 heard, did you hear the dispatcher say "a
20 heated domestic"?

21 A. Yes.

22 Q. Did you hear the dispatcher say that
23 there was a hang-up?

24 A. Yes, we did know that they had lost
25 connection and couldn't reestablish it.

1 Q. So when you got to the scene, you knew
2 that there was a heated domestic and that the
3 caller had hung up?

4 A. Correct.

5 Q. Before you got there?

6 A. That's correct.

7 Q. You also testified that you didn't hear
8 anything?

9 A. That's right.

10 Q. When you respond to a domestic, a heated
11 domestic, and you don't hear anything, as an
12 officer what does that tell you? What goes
13 through your mind?

14 A. It just tells me that I can't hear
15 anything from inside that house to tell me
16 what is going on. It doesn't mean that
17 everything is safe.

18 Q. What could it mean?

19 A. It could mean that the victim is either
20 unconscious or is being quiet because she is
21 afraid. Domestic fear plays largely into a
22 domestic violence situation, fear and control.
23 If the suspect's -- or the other partner is
24 doing something to make the victim stay quiet,
25 because they know that we're on the scene.

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1 SOLICITOR FERGUSON: If I may
2 approach?

3 THE COURT: Yes, sir.

4 COURT REPORTER: State's Exhibit 2
5 for identification.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR FERGUSON:

8 Q. I am handing you what has been marked as
9 State's Exhibit 2 for identification purposes.
10 Do you know what that is?

11 A. Looking at it, it looks to be some type
12 of dispatch report from the Charleston Police
13 Department.

14 Q. Is that commonly known as a CAD report?

15 A. Yes.

16 Q. What is the date on that CAD report?

17 A. It says "Date Received - October 17th,
18 2010."

19 Q. Is there a time?

20 A. 11:16 a.m.

21 Q. Is that around the same time as this
22 domestic call at Old Fort?

23 A. It is.

24 Q. Is there a caller identified in that one?

25 A. (Upon review), yes. Barbara Grant.

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1 Q. What is the street?

2 A. North Romney Street.

3 Q. So according to that CAD report, someone
4 named Barbara Grant was at Romney
5 Street.

6 ALICIA PENN: Your Honor, at this
7 point I would like to object. I don't see
8 what Officer Bowen has to do with the CAD
9 report, with someone named Barbara Grant.

10 THE COURT: I don't know what it
11 has to do with it either. I don't think that
12 it has anything to do with anything other than
13 that was what -- that a person was there at
14 102 at 11:16, allegedly. I don't know. I
15 don't know what it has to do with anything.

16 ALICIA PENN: Your Honor, I
17 would ---

18 THE COURT: Well, he has testified
19 that the call -- that the relationship (sic)
20 was triangulated to a Romney Street address.
21 That's the significance of the Romney. But as
22 to what it is and whether or not they were
23 there doesn't have anything to do with the
24 issues that I have. They still have notice of
25 some location other than this, which should

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4]

1 put somebody on notice that maybe we have a
2 problem here. Maybe we are in the wrong
3 place.

4 ALICIA PENN: Thank you.

5 THE COURT: Okay. There are lots
6 of ways to look at that. Solicitor, remember
7 to whom you're trying that. We don't -- I
8 understand the risk in what they face. He
9 doesn't need to tell me that he's looking for
10 injured people. I kinda can surmise that.

11 SOLICITOR FERGUSON: Then I have
12 no further questions.

13 THE COURT: Thank you, sir. Any
14 recross?

15 ALICIA PENN: No recross, Your
16 Honor.

17 THE COURT: All right. You may
18 come down. Thank you, sir.

19 (WITNESS TAKES STAND)

20 THE COURT: Do you have any
21 additional witnesses?

22 SOLICITOR FERGUSON: No, Your
23 Honor.

24 THE COURT: Do you have any
25 witnesses?

1 ALICIA PENN: Yes, Your Honor,
2 we do.

3 THE COURT: You may proceed.

4 ALICIA PENN: The defense calls
5 Deputy Alexander. Your Honor, I subpoenaed
6 Deputy Alexander. I don't know why he is not
7 here.

8 THE COURT: Solicitor, can you
9 address that for me?

10 SOLICITOR FERGUSON: Uh, ---

11 THE COURT: Better find out where
12 he is.

13 SOLICITOR FERGUSON: We will have
14 him here, Your Honor. We just didn't know
15 that we would need him for this hearing.

16 THE COURT: Well, he better have an
17 explanation for why he is not sitting in this
18 courtroom, because he is ignoring a court
19 Order. I don't think that is a wise move for
20 Deputy Alexander -- given this week.

21 ALICIA PENN: Your Honor, in the
22 meantime we can call another witness.

23 THE COURT: Sure.

24 ALICIA PENN: The State (sic)
25 calls -- the defense calls Tim Ketcham from

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1 ADT.

2 THE COURT: Have you switched
3 sides?

4 ALICIA PENN: Apparently.

5 THE COURT: I have done that one
6 many times, Ms. Penn, in my life. I'm only
7 teasing you.

8 (WITNESS TAKES STAND)

9 TIMOTHY KETCHAM, being duly sworn to
10 tell the truth, the whole truth and nothing
11 but the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY ALICIA PENN:

14 Q. Hi, Mr. Ketcham. Thank you for being
15 here. Excuse me while I set up. Mr. Ketcham,
16 tell us a little bit about what you do with
17 ADT.

18 A. I am currently a district installation
19 manager.

20 Q. And how long have you been with ADT?

21 A. Fourteen years.

22 Q. How did you start?

23 A. I started as a field installation
24 technician.

25 Q. Now, you have materials that you got from

1 ADT about Therron Richardson's account?

2 A. Yes, I do.

3 Q. When did he have an account with ADT?

4 A. I don't know exactly when it was sold but
5 I do have copies of the contract. You have
6 copies of that, as well.

7 Q. I do. Do you have copies with you?

8 A. I think that they are in the back.

9 Q. Do you want me to get them for you?

10 A. If you don't mind, please.

11 Q. (Tenders), ---

12 A. Thank you.

13 Q. Are these your materials?

14 A. Yes, ma'am.

15 Q. And can you tell us when Mr. Richardson's
16 contract with ADT began?

17 A. April 25th, '08.

18 Q. And it was still active October 17th,
19 2010?

20 A. Yes, ma'am.

21 Q. Tell us a little bit about what that
22 package included?

23 A. It's got a control panel, a touch pad
24 which is all built into this particular unit,
25 it's got two door/window sensors -- I take

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1 that back. I think that there are three,
2 total. It looks like an extra window -- a
3 couple of window sensors, there's two in the
4 dining room and one in the bedroom two, one
5 in bedroom three, so that's a total of four
6 windows that were connected. One motion
7 detector. And it looks like a smoke detector
8 in a hallway. Of course, a keychain fob
9 remote in this particular application.

10 Q. Thank you. Talk to us a little bit about
11 how his alarm system worked, how it was set up
12 to work.

13 A. How the system is set up to work is that
14 you can arm the system via a code and a keypad
15 or via the key fob remote; in this particular
16 case, he does have that application. You arm
17 the system and it allows you, normally, a
18 certain amount of time to exit the premise.
19 You have a certain amount of time when you
20 enter the premises to deactivate the system.

21 Q. If your alarm is set, what would make the
22 alarm go off?

23 A. A violation of a point.

24 Q. That could mean a door being opened?

25 A. A door being opened.

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1 Q. And let me direct you to your/ADT's
2 records of what happened on October 17th,
3 2010.

4 ALICIA PENN: Could I mark this as
5 Defendant's ---

6 COURT REPORTER: Defendant's
7 Exhibit 1 for identification.

8 SOLICITOR FERGUSON: Could I take
9 a look at that?

10 ALICIA PENN: Sorry, (tenders to
11 Solicitor).

12 THE COURT: Sure.

13 SOLICITOR FERGUSON: (Upon review,
14 returns item to Ms. Penn).

15 DIRECT EXAMINATION CONTINUED

16 BY ALICIA PENN:

17 Q. I am showing you what has been marked as
18 Defense Exhibit 1. Can you tell us what this
19 is?

20 A. It is an event history report for the
21 events that occurred on 10-17-2010 at 11:29,
22 12:53 for thirty seconds.

23 ALICIA PENN: Your Honor, at
24 this point the defense would move to enter
25 this as Defense Exhibit 1.

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1 THE COURT: Any objection?

2 SOLICITOR FERGUSON: No objection,
3 Your Honor.

4 THE COURT: Without objection, it
5 is admitted.

6 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

7 THE COURT: Just have him testify
8 about it. I will have it if I need to look at
9 it, Ms. Penn. Thank you very much. We can
10 bypass that. I am familiar with what it is.

11 ALICIA PENN: Yes, Your Honor.

12 THE COURT: Just get to the
13 significant parts of it. Please, ma'am.

14 ALICIA PENN: Yes, Your Honor.

15 DIRECT EXAMINATION CONTINUED

16 BY ALICIA PENN:

17 Q. Tim, at 11:29, can you please tell us
18 what happened?

19 A. At 11:29:52 we got an alert from zone
20 three, which generated an alarm at the
21 premise, which initiated a two-way voice
22 listening feature on this control panel.

23 Q. And for those of us who don't work for
24 ADT, that basically means a burglar alarm
25 was set off?

1 A. That's correct.

2 Q. And what -- what -- how did ADT respond
3 to this burglar alarm?

4 A. The next line, it say the listening
5 device opened up a two-way communication
6 between our central station and the device.
7 Then, of course, it did not -- then we got
8 a listen-in start, then we've got a history
9 that the two-way did not activate, so it
10 obviously didn't hold the line. Then an
11 answering machine, they actually picked up the
12 phone and began to communicate via telephone.

13 Q. So at 11:31 ADT called the home and they
14 received an answering machine.

15 A. Yes, ma'am.

16 Q. Then at eleven -- please tell us what you
17 did at 11:32.

18 A. At 11:32:07, it looks like they were able
19 to get in contact with a Therron Richardson.

20 Q. And normally when somebody calls and asks
21 about an account, ADT is supposed to ask for a
22 passcode?

23 A. Yes, ma'am.

24 Q. And they did not in this case?

25 A. I was not privy to that information.

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1 Q. On the record or on the reporting, ADT
2 does not ask for a passcode?

3 A. That's correct.

4 Q. So it really could have been anyone
5 calling?

6 A. That's correct.

7 Q. Now, what -- kinda lay out for us what
8 happens after that?

9 A. In normal operations or like in this
10 case?

11 Q. What happened in this particular
12 incident?

13 A. In this particular incidence, shortly
14 after that we got another alarm, zone nine,
15 that the two-way once again had began to
16 initiate, that the listen-in had started.

17 Then at 11:33:05, they spoke to Mr.
18 Therron Richardson, which stated to disregard,
19 stated that everything was okay. That is at
20 11:33:05.

21 Q. At 11:33:05, Mr. Richardson -- there was
22 no passcode given?

23 A. There still was no passcode given.

24 Q. So in short what happens is that after
25 the alarm is set off -- and correct me if I

1 make a mistake. After the alarm was set off
2 the first time, at 11:29, they reset it. So
3 the alarm was still on; then it gets set off
4 again?

5 A. That's correct. A point can trip
6 multiple times. In this particular case we
7 had a zone three and it looks like it was
8 reset at that point in time. Then we received
9 a signal from zone nine, which is another
10 area. It generated the call all over again,
11 generated the process all over again.

12 Q. And at 12:51, the ADT operator called the
13 home number and Deputy Bowen answered the
14 phone?

15 A. Yes. ADT got a call from dispatch,
16 Operator 30, saying that the officer will
17 disregard further contact per Deputy Bowen.

18 Q. I'm sorry. Let me refer you to 12:51:08.

19 A. Yes.

20 Q. ADT called the premise?

21 A. Yes.

22 Q. And at 12:51, Deputy Bowen answered the
23 phone?

24 A. Deputy Bowen answered the phone and
25 stated that he was on the scene.

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1 Q. Deputy Bowen answered Therron
2 Richardson's home phone inside the house
3 at 12:51?

4 A. According to this it appears like it
5 would be the home phone.

6 ALICIA PENN: Thank you very
7 much. I have no further questions. Please
8 answer whatever Mr. Ferguson may ask you.

9 CROSS EXAMINATION

10 BY SOLICITOR FERGUSON:

11 Q. You didn't generate this report, did you?

12 A. No, sir.

13 Q. Were you employed with ADT on October
14 17th, 2010?

15 A. Yes, sir.

16 Q. Were you in any way associated with the
17 events that occurred at this location on that
18 date?

19 A. No, sir.

20 Q. So the basis of your knowledge, really,
21 is just what you're seeing in front of you?

22 A. That's correct, sir.

23 Q. You can't tell us who answered the phone.
24 You can't say that it was Therron ---

25 THE COURT: Solicitor, you -- this

1 isn't a jury. Of course he can't. He wasn't
2 there.

3 SOLICITOR FERGUSON: Yes, sir.

4 THE COURT: The report speaks for
5 itself. It is what it is.

6 SOLICITOR FERGUSON: Thank you,
7 Your Honor.

8 CROSS EXAMINATION CONTINUED

9 BY SOLICITOR FERGUSON:

10 Q. Do you know where zone three is in the
11 house?

12 A. I do not, sir.

13 Q. You also testified that there was a
14 motion detector?

15 A. There is a motion in the premise.

16 Q. What does that mean?

17 A. That there is a motion in the premises,
18 there is a motion detector inside the
19 premises.

20 Q. Oh. There is a motion detector inside
21 the premise?

22 A. (Affirmative nod).

23 Q. Could that have set the alarm off?

24 A. It could, yes.

25 Q. The timing on these reports that you made

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1 reference to earlier, do you know if those are
2 the times that were entered into the computer
3 or the time that it actually happened?

4 A. These are the times it happened. The
5 computer generates the time at the time the
6 events are coming in.

7 SOLICITOR FERGUSON: No further
8 questions.

9 THE COURT: Any redirect?

10 ALICIA PENN: Yes, sir, just
11 briefly.

12 REDIRECT EXAMINATION

13 BY ALICIA PENN:

14 Q. Once the alarm goes off when it is set
15 off, is it a quiet/silent alarm?

16 A. In most cases there is an enunciation at
17 the premise.

18 Q. For the rest of us, "enunciation" means
19 that there is a noise?

20 A. It emits a noise, yes.

21 Q. Thank you.

22 ALICIA PENN: No further
23 questions.

24 THE COURT: Recross?

25 SOLICITOR FERGUSON: None, Your

1 Honor.

2 THE COURT: You may come down.

3 ALICIA PENN: Your Honor, the
4 defense calls Tonia Mallette.

5 (WITNESS TAKES STAND)

6 TONIA MALLETTE, being duly sworn to
7 tell the truth, the whole truth and nothing
8 but the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY ALICIA PENN:

11 Q. I'm sorry. Please tell me how you
12 pronounce your last name again.

13 A. Mallette (ma-let).

14 Q. Ms. Mallette, please tell the court who
15 you are and what your job is.

16 A. My name is Tonia Malette. My title is
17 Analyst and I work with the Charleston County
18 911 Consolidated center. One of my functions
19 is that I answer subpoenas for telephone calls
20 and radio transmissions and/or CAD, computer
21 generated, reports.

22 ALICIA PENN: (Tenders document
23 to court reporter to be marked as exhibit).

24 COURT REPORTER: Defendant's
25 Exhibit 2 for identification.

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1 DIRECT EXAMINATION CONTINUED

2 BY ALICIA PENN:

3 Q. Ms. Mallette, I am handing you
4 Defendant's Exhibit 2. Can you please take
5 a look at it?

6 A. Yes.

7 Q. Do you recognize that?

8 A. I do.

9 Q. What is that?

10 A. It is a CAD report.

11 Q. Can you explain what that means?

12 A. It is a written copy of an incident, in
13 this it is a domestic 911 call stemming from a
14 caller needing law enforcement assistance.

15 Q. Looking at that report, can you tell what
16 time the call came in?

17 A. Yes, the call was received at 11:09 a.m.

18 Q. And can you tell from what number that
19 the call was received?

20 A. According to the report it was 843- -

21 6.

22 Q. How was that number obtained?

23 A. This number was obtained by the
24 dispatcher questionnaire, when she asked the
25 caller to advise of the number that she is

1 calling from, so that if they were to get
2 disconnected from the system she would be able
3 to call her back.

4 Q. So that number is from when the
5 dispatcher says over her mic, 'tell me your
6 number' and somebody answers?

7 A. Yes.

8 Q. What about the number under the ANI/ALI
9 section?

10 A. This is a cell phone number. The "A"
11 indicates the number automatically -- this is
12 the number that -- there are two numbers.
13 There is the tower number and there is also an
14 alternate phone number. The alternate number
15 is usually the call back number. In this case
16 it says it was a 911 number. Anytime that we
17 see the 911 preceding this type of number, it
18 let's us know that it is a disconnected cell
19 phone.

20 Q. And how soon after you get that
21 information could you place that cell phone?

22 A. Immediately -- it depends on the tower
23 that the cell phone is coming from -- closest
24 to. I'm sorry.

25 Q. When you say immediately, do you mean as

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1 soon as a person calls?

2 A. Yes.

3 Q. And can you tell from that report what
4 tower this went to?

5 A. I can't.

6 Q. So how do you find that out?

7 A. It's displayed on the -- it's a little
8 screen. It's displayed on the screen.

9 Q. So a 911 operator can tell, as soon as
10 she gets the call, what tower that cell phone
11 call is coming from?

12 A. Correct.

13 ALICIA PENN: Court's indulgence.

14 THE COURT: Yes, ma'am.

15 ALICIA PENN: No further
16 questions. Please answer any questions that
17 Mr. Ferguson has.

18 THE COURT: You may cross-examine.

19 SOLICITOR FERGUSON: Thank you,
20 Your Honor.

21 CROSS EXAMINATION

22 BY SOLICITOR FERGUSON:

23 Q. Ms. Mallette, you testified that that 637
24 number came from what the caller told the
25 dispatch operator what number that she could

1 call back if they needed to, dispatch?

2 A. Right, that's what she said.

3 Q. Ms. Mallette, I want to play for you the
4 call and I want you to let me know -- I want
5 to -- if I may approach -- I want to play for
6 you the call and, if you could, let me know
7 when she identifies the 637 number.

8 THE COURT: Solicitor, wait a
9 minute. We don't have a jury. Has this
10 witness heard this call?

11 SOLICITOR FERGUSON: Ms. Mallette

12 ---

13 THE COURT: I don't remember. Is
14 it not on there? Is that why you're playing
15 it for her?

16 SOLICITOR FERGUSON: I don't
17 believe that it is.

18 THE COURT: Well, she doesn't know
19 that. I mean, you don't have to do that.

20 SOLICITOR FERGUSON: Okay.

21 CROSS EXAMINATION CONTINUED

22 BY SOLICITOR FERGUSON:

23 Q. Ms. Mallette, did you hear the 911 call?

24 A. I did.

25 Q. Did you hear the 637 number ---

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1 A. I believe that the dispatcher asked, 'can
2 I get your number' and she said, "It's a
3 disconnected cell phone."

4 Q. Right. So that 637 number came from
5 Deputy Bowen, not from the 911 caller.

6 THE COURT: She doesn't know that.
7 She didn't take the call. So -- you can argue
8 that to me, but she doesn't know.

9 SOLICITOR FERGUSON: All right.

10 THE COURT: She can't testify to
11 that, unless you -- do you have independent
12 knowledge of the number?

13 THE WITNESS: I don't.

14 THE COURT: Okay. It's in the
15 report.

16 SOLICITOR FERGUSON: Thank you,
17 Your Honor.

18 THE COURT: Thank you, sir.

19 SOLICITOR FERGUSON: No further
20 questions.

21 THE COURT: All right. Redirect?

22 ALICIA PENN: No redirect, Your
23 Honor.

24 THE COURT: Thank you. You may
25 come down. Thank you, ma'am.

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1 (WITNESS STEPS DOWN)

2 THE COURT: Call your next witness.

3 ALICIA PENN: The defense calls

4 Detective Plyler.

5 (WITNESS TAKES STAND)

6 THOMAS PLYLER, being duly sworn to
7 tell the truth, the whole truth and nothing
8 but the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY ALICIA PENN:

11 Q. Good afternoon, Detective Plyler.

12 A. Good afternoon.

13 Q. At what time did you get this search
14 warrant?

15 A. I obtained this search warrant from Judge
16 Koontz at approximately at 1330 or ten-forty
17 (sic) hours in the afternoon.

18 Q. What is that for people who don't know
19 military time?

20 A. I'm sorry. That's about 1:30.

21 THE COURT: I know what time it is.
22 All right, he got the search warrant. What
23 else is he going to testify to that is germane
24 to the seizure of the property?

25 ALICIA PENN: That was it, Your

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1 Honor.

2 THE COURT: That's fine. It speaks
3 for itself. Thank you.

4 ALICIA PENN: I have no further
5 questions.

6 THE COURT: Thank you. Appreciate
7 you being here, you may step down. I kinda
8 figured that it was later.

9 (WITNESS STEPS DOWN)

10 ALICIA PENN: Your Honor, the
11 only other witness that I would call is Deputy
12 Alexander.

13 THE COURT: And what is the status
14 of Deputy Alexander?

15 SOLICITOR FERGUSON: Your Honor,
16 we had asked Deputy Alexander to be here ---

17 THE COURT: I understand. But she
18 used the magic word, it's called a subpoena.

19 SOLICITOR FERGUSON: Yes, Your
20 Honor.

21 THE COURT: I want to find out --
22 do you have a copy of the subpoena that was
23 served on him, Ms. Penn?

24 ALICIA PENN: I'm sorry, Your
25 Honor?

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1 THE COURT: Do you have a copy of
2 his subpoena?

3 ALICIA PENN: I do, Your Honor.

4 THE COURT: Could I see it?

5 ALICIA PENN: Yes, Your Honor,
6 (tendering).

7 THE COURT: When he comes here, I
8 want to find out from him what his explanation
9 is. We will be at-ease. We need a break any-
10 way, so that's good. That's what I thought,
11 it was 9:00 a.m., returned. Did you talk with
12 him, did you give him permission?

13 ALICIA PENN: Your Honor, I have
14 to admit that I did not contact him. I
15 thought that the State would call him.

16 THE COURT: I understand that but
17 you subpoenaed him for May the 9th?

18 ALICIA PENN: Yes, sir.

19 THE COURT: Last I checked, that --
20 if you didn't talk to him, he had a duty to
21 talk to you, I think, to avoid being here and
22 sitting in the courtroom every day. That's
23 what it means. Maybe he needs to be educated.

24 (BRIEF RECESS)

25 (DEFENDANT PRESENT)

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1 SOLICITOR FERGUSON: Your Honor,
2 Deputy Alexander is here.

3 THE COURT: Good.

4 ALICIA PENN: Your Honor, the
5 defense calls Deputy Alexander.

6 THE COURT: Thank you. Deputy
7 Alexander, before you take the stand, I want
8 to ask you a question. I looked at a subpoena
9 that has you subpoenaed for Monday, to remain
10 until the case was resolved. Is there an
11 explanation of why you weren't here this
12 morning?

13 DEPUTY ALEXANDER: Sir, I was
14 told by the Solicitor to be here at 2:00.

15 THE COURT: I understand but the
16 subpoena that I saw wasn't from the Solicitor,
17 it was from the defendant.

18 DEPUTY ALEXANDER: Yes, sir.
19 Apparently I got confused about there being
20 two ---

21 THE COURT: Be careful, because the
22 next time if that should happen, that would
23 create -- you could be punished for that, sir,
24 because as you know, and I know that I'm
25 preaching to the choir, so to speak, but you

1 know that's an Order of the Court.

2 DEPUTY ALEXANDER: Yes, sir.

3 THE COURT: And while I -- I know
4 that I did it as a lawyer. My witnesses would
5 call me, that I'd subpoenaed and I'd say, 'No,
6 I will call you and give you how much time you
7 need to be here.' We worked at it. They
8 stayed in touch with me and that's what you
9 have to do. So the next time, make sure that
10 you know who the subpoena is from. I know
11 that it is confusing.

12 DEPUTY ALEXANDER: Yes, sir.

13 THE COURT: But you should have had
14 direct contact with Ms. Penn and let her know
15 and only not have been here if she told you
16 that you didn't have to be here. Okay? Thank
17 you, sir.

18 DEPUTY ALEXANDER: I would like
19 to apologize, sir.

20 THE COURT: No problem. I just --
21 it's a problem that could create -- I just
22 happened to be a lawyer and I remember that
23 it -- it happened to be the editor of the
24 newspaper and a lot of -- in my small
25 community in Berkeley County, Moncks Corner.

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1 He was subpoenaed to be a juror but he had
2 other things to do. Judge Kennan (phonetic)
3 was the trial judge and he found out about
4 fifteen days in the jail, and the next time he
5 would answer that. So some of them would do
6 it, but I just -- I thank you for coming.

7 DEPUTY ALEXANDER: It won't
8 happen again.

9 THE COURT: Thank you very much,
10 sir. I'm sorry to interrupt you here this
11 morning, your day, sir.

12 (WITNESS TAKES STAND)

13 JULIUS D. ALEXANDER, being duly
14 sworn to tell the truth, the whole truth and
15 nothing but the truth, testified, as follows:

16 DIRECT EXAMINATION

17 BY ALICIA PENN:

18 Q. Good afternoon, Deputy Alexander.

19 A. How you doing?

20 Q. What time did you -- tell us a little bit
21 about how you responded to a call to dispatch
22 on October 17th, 2010.

23 A. Consolidated Dispatch in Charleston
24 County dispatched myself and Jason Bowen.

25 Q. And you were responding to a report ---

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1 A. A domestic ---

2 Q. --- of a domestic ---

3 A. --- disturbance.

4 Q. You got that call at 11:15?

5 A. Yes.

6 Q. And you got to the home at 11:24?

7 A. Yes.

8 Q. Do you remember when you drove to the
9 house, did you drive the speed limit?

10 A. Not directly the speed limit, probably a
11 little bit over.

12 Q. Like three or five over?

13 A. Something to that nature.

14 Q. Something within the confines of the law?

15 A. Yes.

16 Q. And did you have your siren on?

17 A. No, ma'am.

18 Q. Did you have your blue lights on?

19 A. No, ma'am.

20 Q. And when you got to the house, what did
21 you ---

22 THE COURT: Ms. Penn, let me ---

23 ALICIA PENN: Yes, sir.

24 THE COURT: Officer, thank you very
25 much. Can I quote that the next time, that

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1 three to five is okay.

2 THE WITNESS: (Laughter).

3 THE COURT: Thank you. Excuse me
4 for interrupting. Thank you, sir.

5 DIRECT EXAMINATION CONTINUED

6 BY ALICIA PENN:

7 Q. When you got to the house, you met Deputy
8 Bowen there?

9 A. Yes, ma'am.

10 Q. At first, you both went to the front
11 door?

12 A. Yes, ma'am.

13 Q. And you knocked on the door?

14 A. Yes, ma'am.

15 Q. And nobody answered?

16 A. No, ma'am.

17 Q. Then you separated from Deputy Bowen?

18 A. Yes, ma'am.

19 Q. And you went to the back door?

20 A. Yes, ma'am.

21 Q. How long was it before you went to the
22 back door?

23 A. Hummm.

24 Q. Would you say that it was about four
25 minutes?

1 A. I'd say roughly. Yes, ma'am.

2 Q. So you'd say that you responded at 11:24
3 and at 11:28 that you were at the back door?

4 A. Yes, ma'am.

5 Q. And when you got to the back door, you
6 say that it was open?

7 A. Yes, ma'am, it was just a little tiny
8 crack that you could see it was opened,
9 disconnected from the actual main frame of
10 the door. I could tell that it was open.

11 Q. You could basically see the gap?

12 A. Right.

13 Q. How much would you think that gap was?

14 A. Maybe half an inch or smaller.

15 Q. And when you went to open the door, the
16 door opened right away?

17 A. Yes, it just slid right open.

18 Q. Let me back up a little bit. When you
19 were walking around the house in that four
20 minutes, did you notice that the windows had
21 their blinds drawn or their curtains drawn?

22 A. I don't recall.

23 Q. Do you remember if you were able to look
24 into the house?

25 A. I believe that the windows were closed

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1 and that the blinds were shut but, going back
2 to that day, I don't recall exactly whether
3 the windows were open or whether the blinds
4 were open or not.

5 Q. And when you got to the house, did you
6 see anybody outside?

7 A. No, ma'am, other than Jason Bowen.

8 Q. Did you see anybody around the house?

9 A. No, ma'am.

10 Q. You didn't see anybody running from the
11 house?

12 A. No, ma'am.

13 Q. And did you hear any voices outside?

14 A. No, ma'am.

15 Q. No yelling? Screaming?

16 A. No, ma'am.

17 Q. Running feet?

18 A. No, ma'am.

19 Q. And when you got inside the house, would
20 you agree that it took you about twelve
21 seconds to clear the house?

22 A. Humm -- we didn't rush through right
23 away. We were trying to get in there as safe
24 as we could, in a reasonable amount of time.

25 Q. Are you sure about that?

1 A. Yes.

2 Q. How long do you think that it took you to
3 clear the house?

4 A. I can't give you a definite time.

5 Q. Do you think that it was like a minute?

6 SOLICITOR FERGUSON: Asked and
7 answered, Your Honor.

8 THE COURT: Overruled.

9 THE WITNESS: All I can remember
10 is that we did it as fast as we could being
11 that, you know, there was only two of us that
12 day.

13 DIRECT EXAMINATION CONTINUED

14 BY ALICIA PENN:

15 Q. Do you believe that it could have been
16 twelve seconds?

17 A. No.

18 Q. You don't think it took twelve seconds?

19 A. I don't believe that it was twelve
20 seconds.

21 Q. Now, when you responded to the call, you
22 were on your radio?

23 A. Yes, ma'am.

24 Q. And this is recorded to dispatch?

25 A. Yes.

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1 Q. And at 11:28 you said, over dispatch,

2 "Come around back, I have an open door."

3 A. Yes, ma'am.

4 Q. And then you put the emergency -- that is
5 when you asked for dispatch to put the radio
6 into emergency mode.

7 A. (Affirmative nod), when Jason Bowen
8 arrived to meet me at the back.

9 Q. And this was at 11:28? 11:29?

10 A. Something of that nature.

11 Q. And you could hear this -- this was all
12 recorded, you would hear this all over
13 dispatch.

14 A. It's recorded over the radio, yes.

15 Q. And on the radio when you put the radio
16 into emergency mode, it goes beep-beep-beep-
17 beep.

18 A. Yes, they have a channel marker.

19 Q. (Playing audio) -- I have a dispatch tape
20 and I am going to play it for you.

21 A. Okay.

22 THE COURT: Is that what we already
23 have?

24 ALICIA PENN: Yes, that's
25 defense exhibit ---

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1 THE COURT: Court's Exhibit 2, I
2 think.

3 COURT REPORTER: It is.

4 THE COURT: Court's Exhibit 2 is
5 being published. Okay.

6 DIRECT EXAMINATION CONTINUED

7 BY ALICIA PENN:

8 Q. I am going to play for you the exact
9 moment when you say, "Come around back."
10 (Audio playing) -- that is your voice,
11 correct?

12 A. Yes, ma'am.

13 Q. And you're saying, just so that I am
14 clear, 'I've got an open slider door, come
15 around back.'

16 A. Yes, ma'am.

17 Q. And on the tape, this reads at three
18 minutes and fifty-five seconds into the tape.

19 (Audio playing, emergency beep sounding)
20 -- I just hit stop and that is at four thirty-
21 eight out of sixteen minutes and fifteen
22 seconds. So that is twenty-one seconds. Does
23 that sound about right?

24 A. It could possibly be. I'm saying -- I
25 don't want to give you an exact time because

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1 I don't recall the exact time that it took us
2 to clear the actual residence that day, but I
3 know ---

4 THE COURT: He doesn't have to.
5 We've got other evidence of that.

6 ALICIA PENN: Yes, sir.

7 THE COURT: All right?

8 ALICIA PENN: Yes, sir.

9 THE COURT: Again, some things
10 speak for themselves.

11 DIRECT EXAMINATION CONTINUED

12 BY ALICIA PENN:

13 Q. And once -- as soon as you got to the
14 house, as soon as you entered, ---

15 SOLICITOR FERGUSON: Your Honor,
16 I would object to relevance.

17 THE COURT: I appreciate it, but
18 it's overruled.

19 SOLICITOR FERGUSON: Thank you,
20 Your Honor.

21 THE COURT: Thank you.

22 DIRECT EXAMINATION CONTINUED

23 BY ALICIA PENN:

24 Q. As soon as you got to the house, did you
25 notice anything that would indicate that

1 somebody was there?

2 A. You could see that there were things like
3 furniture, ---

4 Q. So somebody lived there, but nobody was
5 in that house at that time?

6 A. It was unknown. We didn't know, that's
7 why we were there.

8 Q. Yes, sir. You didn't hear anybody
9 shouting for help when you were inside?

10 A. No one that I could hear at the time.

11 Q. Did you enter with your guns drawn?

12 A. Yes, ma'am.

13 Q. And you didn't hear any sounds, like
14 somebody banging on a door?

15 A. No, ma'am.

16 Q. Anybody screaming for help?

17 A. No, ma'am.

18 Q. You never heard a rustle, indicating that
19 somebody was moving inside the house?

20 A. No, ma'am.

21 ALICIA PENN: Court's indulgence.

22 THE COURT: Certainly.

23 DIRECT EXAMINATION CONTINUED

24 BY ALICIA PENN:

25 Q. And there was only you and Deputy Bowen

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1 at the house?

2 A. Initially, yes, ma'am.

3 Q. And you both went in through the back?

4 A. Yes, ma'am.

5 Q. And you left the front door unsecured?

6 A. We left the front door unsecured? You're
7 asking me?

8 Q. Yes, sir. Were either of you watching
9 the front door?

10 A. We went in through the back. The front
11 door was locked, from what Jason Bowen advised
12 me. When we went through the back, you could
13 see clearly inside the house that no one could
14 go through the front door. It still remained
15 locked while we were inside.

16 Q. Did the house have an open floor plan?

17 A. It's straight open when you come in from
18 the back sliding door.

19 ALICIA PENN: No further
20 questions.

21 SOLICITOR FERGUSON: Briefly, Your
22 Honor.

23 THE COURT: Sure.

24 CROSS EXAMINATION

25 BY SOLICITOR FERGUSON:

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1 Q. When you got to the residence initially,
2 there was a car in the driveway; wasn't there?

3 A. I believe so. Yes, sir.

4 Q. And that is indicative of a person maybe
5 being there, right?

6 A. Yes.

7 Q. So silence is not a tell all that nobody
8 is in the house; is that correct?

9 A. Right.

10 Q. And silence is not a tell all that
11 somebody is not injured; correct?

12 A. Yes, sir.

13 Q. And you said that you went in with your
14 guns drawn, is that correct?

15 A. Yes, sir.

16 SOLICITOR FERGUSON: No further
17 questions, Your Honor.

18 THE COURT: Redirect?

19 ALICIA PENN: No redirect, Your
20 Honor.

21 THE COURT: You may come down.

22 (WITNESS STEPS DOWN)

23 ALICIA PENN: We have no further
24 witnesses, Your Honor.

25 THE COURT: Any additional

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1 witnesses?

2 SOLICITOR FERGUSON: No additional
3 witnesses.

4 THE COURT: All right. Before we
5 hear arguments I want to take care of the bond
6 setting that we had at 1:30 (unrelated case).

7 (BRIEF RECESS)

8 (DEFENDANT PRESENT)

9 THE COURT: Now we're back on the
10 record with Mr. Richardson. I understand that
11 you believe that it should be suppressed. Why
12 don't you respond to Mr. Ferguson's argument
13 and that way maybe we can cut it a little bit.
14 I don't need you to lay the foundation. I
15 think that I understand that.

16 ALICIA PENN: Yes, sir, Your
17 Honor.

18 THE COURT: Mr. Ferguson, thank
19 you sir. Why should I deny the Motion to
20 suppress?

21 SOLICITOR FERGUSON: The require-
22 ment that I believe applies here, uh, --
23 because the test is an objective one.

24 THE COURT: Yes, sir, let me help
25 you with that. I agree with you whole-

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1 heartedly. Help me with this, because this is
2 where I have -- this is where my concern lies.
3 I don't have any problem given everything that
4 I've heard, the totality of it. There's no
5 question that these officers had every right
6 in the world to enter the premises; no ifs,
7 ands or buts about that. I think that they
8 had a duty to do that, in fact. I commend
9 them in their approach to that.

10 There's no question that they had a
11 right to look through the house to make sure
12 that -- their words -- "no one was there."
13 And there's no question that we have a tape of
14 that.

15 And there's no question that -- and
16 I assume that's standard operating procedure,
17 which would make perfect sense, because I
18 understand what I heard -- and that's the
19 first time I've ever heard it. Once that's
20 in emergency mode, that locks everybody out
21 so they have absolute contact with those two
22 officers. That's for their protection,
23 properly so.

24 That's important to me for this
25 reason. They are looking for, number one, a

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1 person who may be, for all they know is
2 trapped in a room. That's been pretty well
3 determined that there weren't any because, I
4 believe, other than the bathroom all the other
5 doors were open. I believe that's what the
6 testimony was. Clearly that's an issue.

7 But they are also looking at and
8 possibly concerned about somebody being there
9 that could harm them. Certainly they have a
10 right to have that fear too and to make sure
11 that it is cleared for that purpose, not for
12 -- forget about the person that may be
13 trapped, there may be a person who is the
14 culprit here, who has caused the whole
15 incident to start, and they've got to be aware
16 of that. I understand that.

17 It's clear to me that -- and I think
18 -- I think the first -- the twelve seconds,
19 and I understand how that was because it
20 really is about twelve seconds, maybe a little
21 bit longer, from the time that that emergency
22 activates to when we all heard "it's clear."

23 Now, I have a problem after that,
24 for this reason -- and maybe you can address
25 my concerns.

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1 SOLICITOR FERGUSON: Yes, sir.

2 THE COURT: My problem is that we
3 know at that point/moment that -- whether he
4 actually knew it or not, law enforcement knew
5 it -- we knew and know that the call did not
6 come from that address. We know that. We
7 know that there is at least a problem. We
8 know that something is up. You're already
9 looking, at 11:46, looking for -- excuse me,
10 at 11:44 somebody is already at North Romney
11 Street. So you are already checking that out
12 because you know that. You've issued that.
13 You followed through on something.

14 No one responds and the statement is
15 'not it's safe' but "no one is here." At that
16 moment, you leave, I believe, under the law.
17 You have no right to stay. You've already
18 determined that it's not there.

19 You've got everything in the world
20 that puts you on notice that we -- 'We might
21 be in the wrong place or this may be a hoax.'
22 We don't know what this is. We know that two
23 officers responded and put their selves in
24 jeopardy and I -- I don't have a bit of
25 problem with that. But -- then they go and

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1 they make the initial check. But the minute
2 that they disengage that emergency, they're no
3 -- there is no exigent circumstance any more.
4 It's not there. Because they're -- they're
5 convinced that 'we are not at risk.' Their
6 statement, not mine, not interpreted, "no one
7 is here."

8 SOLICITOR FERGUSON: Your Honor,
9 let me address that.

10 THE COURT: All right.

11 SOLICITOR FERGUSON: First, that
12 twelve seconds is disputed because ---

13 THE COURT: Well, you can dispute
14 it all you want because -- you know what? You
15 don't need to agree with me, Mr. Ferguson.

16 SOLICITOR FERGUSON: Thank you,
17 Your Honor.

18 THE COURT: Because I've got --
19 Court's Exhibit 2 tells me what it is. We can
20 all track that. I don't think that you're
21 claiming that anybody's done anything to that
22 tape. That is the tape.

23 SOLICITOR FERGUSON: Those twelve
24 seconds are ---

25 THE COURT: Like I said, it doesn't

1 matter. Because -- because you -- would you
2 agree with me this, that we hear 'we are going
3 in', then we hearing the beeping -- and
4 however long it is, it is. Then we hear, they
5 stop the emergency tone, "no one is here."

6 SOLICITOR FERGUSON: Yes, Your
7 Honor.

8 THE COURT: Do you agree with that?

9 SOLICITOR FERGUSON: I do agree
10 with that. At that point probable cause
11 exists because those drugs were in plain view.

12 THE COURT: No they weren't.

13 SOLICITOR FERGUSON: Yes, Your
14 Honor. They were in the bathroom on top of
15 the sink.

16 THE COURT: Well, when did they say
17 that they saw it?

18 SOLICITOR FERGUSON: They saw it
19 after they did the sweep, Your Honor.

20 THE COURT: But the problem is that
21 -- you've got a problem there. I assume, I
22 haven't heard how many bathrooms there were
23 but that bathroom door -- in which bathroom
24 did they say that they found the drugs? I
25 think it was the one that they said that they

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1 opened the door.

2 SOLICITOR FERGUSON: In the master
3 bathroom, Your Honor.

4 THE COURT: Right. And another
5 question that I have, too, the master bathroom
6 -- can anybody tell me where the location was
7 of the master bathroom with respect to the
8 house?

9 SOLICITOR FERGUSON: No, Your
10 Honor.

11 THE COURT: Well, we know that it
12 was a front room, too, don't we?

13 SOLICITOR FERGUSON: Yes, sir.

14 THE COURT: How does that give you
15 circumstance?

16 SOLICITOR FERGUSON: Well, when
17 the officers did the sweep, that -- they had
18 probable cause because it was in plain view.

19 THE COURT: No.

20 SOLICITOR FERGUSON: The amount of
21 time that it took them to do the sweep was a
22 little misconstrued during the hearing.

23 THE COURT: No, it wasn't. But I
24 appreciate it. You can argue that one else--,
25 -- up the road.

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1 SOLICITOR FERGUSON: Your Honor,
2 because the beeps each are ten seconds of
3 time, so ---

4 THE COURT: Mr. Ferguson, you can
5 argue that someplace else.

6 SOLICITOR FERGUSON: Yes, Your
7 Honor.

8 THE COURT: Thank you, sir. I
9 think you understand that, don't you?

10 SOLICITOR FERGUSON: Yes, Your
11 Honor.

12 THE COURT: Okay.

13 SOLICITOR FERGUSON: Further, the
14 State still contends that when the officers
15 got in the house and looked for the person
16 that made the 911 call that those drugs were
17 in plain sight of wherever a person that was
18 hiding may be. They didn't look in pockets or
19 bags or ---

20 THE COURT: I understand that. I
21 am not suggesting that.

22 SOLICITOR FERGUSON: So if the
23 officers left while they saw those drugs in
24 plain view, they would have ignored another
25 crime. Once they crossed that threshold

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1 because of the exigent circumstance, they
2 reached probable cause by ---

3 THE COURT: You're telling me that
4 you want me to believe, in the light most
5 favorable to the State, that in that period of
6 time that they are able to walk through,
7 observe scales, look at the scales, find out
8 that there is powder on the scales and then
9 come back and say 'no emergency', "no one is
10 here." You want me to believe that?

11 SOLICITOR FERGUSON: I do, Your
12 Honor.

13 THE COURT: Thank you, sir.

14 SOLICITOR FERGUSON: They look
15 into the bathroom and see a scale with powder
16 on it. They look under the bed and see a pile
17 of guns.

18 THE COURT: Sir, what -- what are
19 we talking about, how many rooms are we talk-
20 ing about? How many rooms?

21 SOLICITOR FERGUSON: We are
22 talking about what I believe is a two-bedroom
23 house.

24 THE COURT: Fine. And you're
25 telling me that they walked in, they were able

1 to go through the entire house and see that in
2 the time span that Court's Exhibit 2 says?

3 SOLICITOR FERGUSON: It takes the
4 blink of an eye to see scales, powder on the
5 scales and to see guns, Your Honor.

6 THE COURT: Yeah, I agree with you
7 but you've got to get there first.

8 SOLICITOR FERGUSON: They got
9 there by entering the house and looking in a
10 bathroom where they thought that somebody
11 could ---

12 THE COURT: Mr. Ferguson, now you
13 -- you're an intelligent man. You're telling
14 me that somebody with guns drawn is running
15 around a house? No chance at all.

16 SOLICITOR FERGUSON: Officers are
17 trained to ---

18 THE COURT: No, sir. I am asking
19 you to realistically -- you're talking to me.
20 You're going to try to convince me that an
21 officer enters a building and he is going to
22 walk into any room within the time span that
23 we're here? Is that what you're arguing?
24 I mean, we're talking about -- we're talking
25 about having to actually sprint through a

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1 house. I don't believe that they are going to
2 be sprinting through a house, because they
3 don't know what is there.

4 SOLICITOR FERGUSON: Right.

5 THE COURT: So they are going to be
6 moving very cautiously.

7 SOLICITOR FERGUSON: Yes, Your
8 Honor. Moving cautiously, observing
9 everything.

10 THE COURT: Yeah, I understand
11 that.

12 SOLICITOR FERGUSON: They observed
13 scales and powder residue sitting right in
14 front of them on a kitchen (sic) counter.
15 This is not something that was hidden, it's in
16 plain ---

17 THE COURT: Mr. Ferguson, you don't
18 need to keep arguing that. I am not saying
19 that it is hidden. I am not saying that it is
20 not in plain view. I'm saying to you that I
21 don't think that you had -- that you observed
22 it at the time that -- at the time that they
23 said it's clear. That's what I am saying. I
24 am not convinced that the officer observed
25 that at that time, because he said there was

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1 "no one there." Then 'we started looking
2 behind the screens, we looked behind the
3 curtain.' Those were things that they did
4 looking for someone who may be injured, is
5 what I think he described.

6 SOLICITOR FERGUSON: Right, correct.

7 THE COURT: But he's not there to
8 do that.

9 SOLICITOR FERGUSON: At that point
10 there was exigent circumstance but they were
11 still looking -- they gained entry into the
12 house by exigent circumstance, ---

13 THE COURT: That's my problem.
14 You've already determined and made a conclu-
15 sion that "no one is here." You're out the
16 door. I didn't say it. You said it. That's
17 what is on the tape. "No one is here."

18 SOLICITOR FERGUSON: "No one is
19 here" -- but before they said that no one was
20 here there were drugs that were found.

21 THE COURT: No, sir. Mr. Ferguson,
22 thank you. I don't agree with you. I'm sorry
23 but the testimony didn't support it.

24 SOLICITOR FERGUSON: How about
25 this, what they did find later was two

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1 kilograms of cocaine.

2 THE COURT: I understand. No
3 question that they -- that there were drugs
4 there.

5 SOLICITOR FERGUSON: They did not
6 see that because that was hidden.

7 THE COURT: Well, ---

8 SOLICITOR FERGUSON: What was in
9 plain view was the powder, scales, drug
10 paraphernalia, guns, ---

11 THE COURT: Mr. Ferguson, quit
12 arguing with -- you're trying to get me to go
13 to the end and say that justifies the means.
14 No, sir. I mean, I don't understand that
15 argument.

16 SOLICITOR FERGUSON: The call
17 justifies the means.

18 THE COURT: What?

19 SOLICITOR FERGUSON: The 911 call
20 justifies the means.

21 THE COURT: The 911 call justified
22 the means to go in the house without any kind
23 of warrant, probable cause. Once they found
24 out that no one was there, it ended and out
25 the door you go. Thank you.

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1 SOLICITOR FERGUSON: For the
2 record, I need to state my objection ---

3 THE COURT: You don't need to state
4 your objection. Your brief is incorporated.

5 SOLICITOR FERGUSON: Thank you,
6 Your Honor. And ---

7 THE COURT: Mr. Ferguson, why do
8 you think you need to object to me?

9 SOLICITOR FERGUSON: I do not,
10 Your Honor.

11 THE COURT: I don't think you do,
12 sir. I count that as borderline argument.
13 You're kind of being argumentative, I think.

14 SOLICITOR FERGUSON: I ---

15 THE COURT: I understand what you
16 said. I won't do what Judge Wade Weathers did
17 to me. At least you didn't do that. Because
18 I said -- I saw it on Perry Mason, "note my
19 exception." And he screamed at me, "note
20 what?" He said, "There's a court reporter.
21 What are you -- are you trying to make fun of
22 me?" And I said, "No, sir." So I understand
23 what you meant. Thank you.

24 Help me with the plain view issue.

25 ALICIA PENN: Yes, Your Honor.

1 The main point of the plain view issue is as
2 Your Honor mentioned, the timing. These
3 officers are going through the house looking
4 for someone. They pretty much indicated that
5 as soon as they stepped in that they didn't
6 see anyone. In fact, the floor plan was
7 enough that they could see the front door and
8 they're not worried about someone running
9 through the front door. They already know
10 that no one is there.

11 They should have done a quick look,
12 they should have exited, and the tape shows
13 that they didn't. They stayed around. A few
14 minutes later they say, 'oh, we have something
15 interesting here, somebody come check it out.'

16 A few minutes later when the phone
17 rings, Officer Bowen is in there just hanging
18 out. He picks it up, ADT is calling.

19 THE COURT: Oh, I understand that.
20 I don't blame him for hanging around then,
21 because he's already at that -- that was
22 subsequent to his saying 'we have something
23 interesting here.' Correct?

24 ALICIA PENN: Yes.

25 THE COURT: There was no reason for

1 him to leave then. He's doing exactly what he
2 should do.

3 ALICIA PENN: Yes, sir. There
4 were strange things going on with the timing.
5 The officers never testified that they heard
6 an alarm. They said that the door was just
7 open. We've heard testimony about that, and
8 how can that be? If the door was open, why
9 wouldn't the alarm have gone off. Those
10 things not consistent.

11 THE COURT: I don't know but that
12 is not -- just because they had it on their
13 report that the alarm went off, that doesn't
14 mean that it is alarmed. To me, I -- that
15 doesn't mean anything. That just means that
16 that is what that recorded, that the alarm
17 went off. But whether or not it actually went
18 off at the scene, they don't know.

19 ALICIA PENN: Yes, sir.

20 THE COURT: Because I assume -- and
21 I'm not -- I am assuming that when you say
22 "voice connection" that that creates some sort
23 of intercom type situation where you're
24 listening to what's taking place. I don't
25 know what that is; but it was never connected

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1 anyway, so it doesn't matter.

2 ALICIA PENN: The radio is the
3 most important part. It records that it was
4 twelve seconds and nobody was in there, and
5 they didn't say during that time over the
6 radio that 'we found something.' They didn't
7 say that in the twelve seconds, they don't say
8 that until minutes later. And Your Honor --
9 as fortunate as we are to have dispatch
10 recorded, that's proof that they did not see
11 those things at that time.

12 THE COURT: But would you agree
13 with me that they have a right to further --
14 or potentially have a right to further check
15 to make sure that no one is injured in the
16 building?

17 ALICIA PENN: Your Honor, I
18 would not agree with you on that point. I
19 believe that the officer testified on the
20 stand that the only reason that he had
21 circumstance was the call -- they said that
22 they knew as soon as they pulled up that
23 number -- that they knew where it was coming
24 from, and they knew that it wasn't coming from
25 that house. They should have checked. They

1 didn't bother to check. It would have taken
2 all of thirty seconds to triangulate that
3 call, and they do it all the time. The
4 problem in this case is that forbid someone
5 actually has a real emergency and they are
6 sent to this house when they are really at
7 another. There is no testimony that the
8 officers did anything when they went to Romney
9 Street. They didn't enter into the house when
10 they thought that they had an emergency, as
11 they did in this case when they had a lucky
12 open door. That's -- Your Honor, that's why
13 I don't agree with you.

14 That's a terrifying thing. Last
15 night when I was at the gas station, I could
16 have called 911 and said, 'Hello, my name is
17 Emanuel Ferguson. I am being held at Judge
18 Dennis' house.' Based on that, that would
19 have been enough to go to your house, without
20 a warrant.

21 That's why I think that exigent
22 circumstances were not met in this case.

23 SOLICITOR FERGUSON: Your Honor,
24 if I may.

25 THE COURT: Just one second, Mr.

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1 Ferguson. You remind me of me. Anything
2 else?

3 ALICIA PENN: Nothing further,
4 Your Honor.

5 THE COURT: Mr. Ferguson.

6 SOLICITOR FERGUSON: Thank you,
7 Your Honor. The CAD report, which I believe
8 is Court's Exhibit 3, states that the
9 emergency traffic tone/signal was placed at
10 11:39:15.

11 THE COURT: Yeah.

12 SOLICITOR FERGUSON: And that they
13 resumed normal traffic, "no one at this
14 location", was done at 11:43:33.

15 THE COURT: That's fine.

16 SOLICITOR FERGUSON: That is four
17 minutes, Your Honor. That's ---

18 THE COURT: That's fine. But where
19 -- tell me where on there -- do we agree -- I
20 haven't played it. I assume that the tape is
21 there because he said, 'I have found something
22 that...' -- is that on two?

23 ALICIA PENN: Your Honor, that's
24 on the tape where it says ---

25 THE COURT: Is it after this, is it

1 following this ---

2 ALICIA PENN: It is, Your Honor.

3 THE COURT: Court's Exhibit 2 sets
4 it up, Mr. Ferguson, as far as I am concerned,
5 for my ---

6 SOLICITOR FERGUSON: Yes, Your
7 Honor.

8 THE COURT: --- purposes. I think
9 Court's Exhibit 2 is probably the best thing
10 for you and for me. I mean, we don't have to
11 agree. I am doing the best that I can. I
12 just think -- I think that when you couple
13 everything and -- and, again, let me just put
14 it this way. Suppose that we don't have the
15 tower, we don't have this thing ---

16 SOLICITOR FERGUSON: Yes, Your
17 Honor.

18 THE COURT: We don't have this
19 thing that is on your screen -- and I say
20 "yours" because I don't think that you can
21 argue that 911 is not part of what you have
22 available to you. Everything that they have,
23 you have.

24 SOLICITOR FERGUSON: Yes, sir.

25 THE COURT: I know that places an

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1 extreme burden on law enforcement but I don't
2 think that's unfair to assume that's available
3 to them. And, obviously, action was taken
4 because someone was dispatched to 102 Romney.

5 SOLICITOR FERGUSON: Right, Your
6 Honor.

7 THE COURT: To check that out.

8 SOLICITOR FERGUSON: Yes, sir.
9 That was found out and dispatched after the
10 emergency ---

11 THE COURT: Well, I -- I understand
12 that it may have been after it, but it was
13 known instantly.

14 SOLICITOR FERGUSON: Not according
15 to this report.

16 THE COURT: Well, according to the
17 lady that testified -- and -- if you want to
18 bring up testimony that she was wrong, that's
19 fine. But I didn't hear that. She said that
20 it was on the screen there. They saw it. The
21 towers are there. So that's the problem. You
22 have all of that, you act on it. You're on
23 notice. You come in and you say 'nothing's
24 here' and then you have, 'oh, here's something
25 interesting.' That's part of the whole

1 transmission. Appreciate it. Mr. Ferguson,
2 but I ---

3 SOLICITOR FERGUSON: Yes, Your
4 Honor?

5 THE COURT: You've got a grand
6 place else to argue but it's not with me
7 because I -- I don't think that you are going
8 to convince me otherwise. I don't fault the
9 officers.

10 I -- suppose -- just suppose --
11 let's take the flip. Well, 'we've got a
12 triangulation problem.' You don't go there
13 and somebody is hurt. You know, that's
14 equally bad. They did that. They went there.
15 They took -- they methodically went in, saw no
16 one was there, and that was it.

17 SOLICITOR FERGUSON: But while
18 they were looking for people ---

19 THE COURT: What they should have
20 done is kept the emergency -- because, let me
21 ask you a question. If I think somebody is
22 there -- well, let's just -- I don't even
23 think that someone is there to harm me, why
24 would somebody -- because it is two-fold,
25 isn't it? You're looking for a possible

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1 victim, you're looking for a possible injured
2 person. You want to have dispatch right
3 there, saying 'you've got to send an
4 ambulance, we've got an injured person.'

5 SOLICITOR FERGUSON: Right.

6 THE COURT: And that's another
7 reason that you have that constant contact
8 where nobody can interrupt you, because you
9 don't know what you're going to find. But
10 they made a determination that there was no
11 need for that anymore. That, to me, is
12 critical.

13 SOLICITOR FERGUSON: Your Honor,
14 if I could just ask you a question? What if
15 they found and saw those drugs during the
16 emergency situation but only recorded it after
17 they ---

18 THE COURT: Well, they should have
19 kept the emergency situation on for the entire
20 time they were looking at the building.

21 SOLICITOR FERGUSON: They ---

22 THE COURT: Mr. Ferguson, that's
23 what I do. The Supreme Court can say, 'No,
24 Judge, you're wrong, you can't set that
25 policy.' And I am not setting that policy.

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1 I am just suppressing this evidence today.

2 So thank you, sir.

3 SOLICITOR FERGUSON: Your Honor, I
4 am ---

5 THE COURT: I appreciate it.
6 You're persistent.

7 SOLICITOR FERGUSON: Your Honor, I
8 am asking, at this time do I need to note my
9 objection to this ---

10 THE COURT: No, sir, I don't think
11 you -- I assume that you were opposed to it.
12 That's why you would have filed it, and I
13 incorporated it. You need to make sure that
14 you filed a hard copy of a document entitled
15 memorandum in opposition to the Motion to
16 suppress; which I have incorporated fully for
17 purposes of record, which you now may cite up
18 the road. Thank you, sir.

19 SOLICITOR FERGUSON: Yes, sir.

20 THE COURT: Thank you.

21 ALICIA PENN: Thank you, Your
22 Honor.

23 THE COURT: Thank you. That having
24 been done, do we need a jury?

25 SOLICITOR FERGUSON: I think ---

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1 THE COURT: Mr. Ferguson, thank you
2 for the banter. I enjoy that. And I enjoy
3 your kindness and your professionalism, both
4 of you. Thank you so much.

5 And what I said about the officers
6 and their courage, thank you guys for what you
7 do too. I mean that sincerely. And your
8 professionalism that you show all the time.
9 Thank you, sir.

10 (HEARING CONCLUDED)

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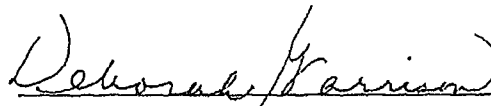
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25

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the
hearing held before The Honorable R. Markley
Dennis, Jr., on May 9, 2012;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

June 3, 2012

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	11-GS-10-2320 et al
	)	
Therron Richardson,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing was held on August 28, 2012, before The Honorable R. Markley Dennis, Jr. in Courtroom 3B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel, as follows:

APPEARANCES:

Manual Ferguson, Assistant Solicitor
 Culver Kidd, Assistant Solicitor
 9TH CIRCUIT SOLICITORS OFFICE
 100 Broad Street, Suite 400
 Charleston, South Carolina 29401
 Appearing for State of South Carolina

Donna Taylor, Esq.
 Mary Ford, Public Defender
 CHARLESTON COUNTY PUBLIC DEFENDER
 101 Meeting Street, 5th Floor
 Charleston, South Carolina 29401
 Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
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dGarrison@sccourts.org

State of South Carolina v. Therron Richardson
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1 THE COURT: Ms. Taylor.

2 MS. TAYLOR: Your Honor, we are on a
3 Motion to reconsider ---

4 THE COURT: If it deals exclusively
5 with -- I'll hear you but I don't know -- to me,
6 that's the trial judge's call but maybe you can
7 explain. I will certainly give you an opportunity
8 to do that.

9 MS. TAYLOR: Thank you. We will be very
10 brief.

11 THE COURT: No problem. It's just that
12 I'm seeing multitudes of documents and I have to
13 wonder, 'hummm, what is all this about?'

14 MS. TAYLOR: It is not that much.

15 THE COURT: That's fine. Bring in Mr.
16 Richardson.

17 (DEFENDANT PRESENT)

18 THE COURT: We are here on a Motion to
19 reconsider and possibly another Motion that I think
20 has been filed contemporaneously with that. State
21 is ready to proceed?

22 MR. FERGUSON: Yes, Your Honor.

23 THE COURT: I'll be delighted to hear
24 from you. Good morning.

25 MS. TAYLOR: Good morning, Your Honor.

State of South Carolina v. Therron Richardson
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1 We were very recently appointed on this case. This
2 is a Motion to reconsider. We have no additional
3 evidence or testimony to present. The
4 transcript would be a part of the record.
5 She filed a Motion to reconsider, which I
6 presume that Your Honor has that.

7 THE COURT: I have it.

8 MS. TAYLOR: The only two documents
9 that I offer to the court to the point of --
10 what she argued was the unreasonableness of the
11 search and also the excessive nature of the
12 seizure. The only thing we would add to that
13 was that the search return shows that they took
14 not only contraband but also a washer, dryer,
15 sofa, bed frame, just a huge number of kinda
16 peculiar things to have been taken out of this
17 house, for what that's worth.

18 THE COURT: Isn't that more of a
19 Motion to return? How does that ---

20 MS. TAYLOR: The only ---

21 THE COURT: Maybe I am missing
22 something. How does that -- do you want me
23 to exclude evidence because it was excessive
24 material?

25 MS. TAYLOR: No, sir. I offer that

State of South Carolina v. Therron Richardson
Case No. 11-GS-10-2320 et al
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1 only to go to the point of the reasonableness
2 of the intrusion that is protected by the
3 Fourth Amendment and our Constitution. That's
4 all. It was an excessive seizure. That's it
5 on that point.

6 THE COURT: Okay.

7 MS. TAYLOR: Again, you have heard
8 the testimony. The reason that we asked you
9 to hear our other search and exclusion issue
10 is because, again, no additional testimony is
11 necessary. This is a Motion based solely on
12 the CDV statute, which is a part of our Motion
13 -- I have a copy of it if you'd like to see
14 it. It is black and white letter law which
15 prohibits and requests the exclusion of
16 evidence found under certain circumstances
17 regarding to the CDV cause.

18 THE COURT: Yeah, I -- again, and
19 this is way I wanted to -- I assume that
20 you're talking about in the trial of this
21 case, should that case go to trial it would be
22 ---

23 MS. TAYLOR: It would be ---

24 THE COURT: --- inappropriate
25 evidence. It would be -- it may or may not be

State of South Carolina v. Therron Richardson
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Reconsideration Hearing of August 28, 2012
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1 relevant but that's ---

2 MS. TAYLOR: I think that it is
3 proper pretrial consideration. The only
4 reason that we ask that ---

5 THE COURT: I have no problem with
6 the pretrial. I think it's more *in limine*
7 than it is for trial. I mean, it's more *in*
8 *limine* than it is a Motion.

9 I don't have any problem, for
10 instance, analogous, I don't have any problem
11 with hearing a Motion to suppress the state-
12 ment, because I think that rises and falls on
13 its own set of circumstances. The problem
14 that I have with saying that this evidence is
15 excluded at this juncture -- it may well be
16 excluded, but I don't know what evidence is
17 going to unfold. If you exclude it, then it
18 is excluded for all purposes.

19 MS. TAYLOR: Yes, sir, and the
20 reason that we asked that you consider hearing
21 it is because it is based solely on the
22 testimony that you have already heard.

23 THE COURT: I understand that.

24 MS. TAYLOR: The statute is just ---

25 THE COURT: Let me see the statute,

State of South Carolina v. Therron Richardson
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1 if you have a copy of it.

2 MS. TAYLOR: Yes, sir, (tendering).

3 It is a purely legal determination ---

4 THE COURT: I understand that. If
5 it is purely legal, then Mr. Ferguson would
6 say 'I agree with you, that it is not
7 admissible', but I haven't heard him say that.

8 MS. TAYLOR: Well, we have a
9 different argument on the legal application of
10 the statute.

11 THE COURT: Now we get into the
12 issue ---

13 MS. TAYLOR: The legal application
14 of the statute.

15 THE COURT: Which statute are you
16 referring to?

17 MS. TAYLOR: (h)(a), under the
18 warrantless search provision of the CDV
19 statute.

20 THE COURT: (Upon review), okay.
21 You want me to exclude the evidence and you
22 said that the basis for it is -- I am reading
23 from 16-25-70(h), which says "Evidence
24 discovered as a result of a warrantless search
25 administered pursuant to a complaint filed

State of South Carolina v. Therron Richardson
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1 *under this article is admissible in a court of*
2 *law:...."* ---

3 Is that -- are we on the same page?

4 MS. TAYLOR: We are.

5 THE COURT: (Continues reading):

6 *"(1) if it is found:*

7 *(a) in plain view of a law*
8 *enforcement officer in a room in which the*
9 *officer is interviewing, detaining, or*
10 *pursuing a suspect;"*

11 And you believe that means that is
12 has to be confined to the simple premises of
13 where they are?

14 MS. TAYLOR: Well, if you continue
15 reading to the very end of that section, ---

16 THE COURT: Precisely my point.
17 We are talking about something that at this
18 juncture -- I don't know what they are going
19 to argue as the foundation. The whole purpose
20 for the hearing, as I understood, was to
21 suppress it as being basically exceeding all
22 grounds that would be recognized in warrant-
23 less searches in -- and I say all grounds
24 because it is not only "plain view" but "how
25 long did they stay." That was the initial

State of South Carolina v. Therron Richardson
Case No. 11-GS-10-2320 et al
Reconsideration Hearing of August 28, 2012
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1 issue.

2 MS. TAYLOR: Yes, sir.

3 THE COURT: However, in listening
4 to it and looking at the time, that's where it
5 created what I believed the basis for my
6 denying it. That's why I am going to deny
7 your Motion to reconsider.

8 I think everything was done. He had
9 every right in the world given -- I think that
10 he had a responsibility, under the law, to
11 make sure that there was no one there in harm.
12 I think that gave that officer probable cause
13 and the right to go in every single room of
14 that house.

15 When I heard, and it's so quick in
16 listening to it, without factoring in that the
17 beeps mean something. That's what I wasn't
18 doing. I thought that the beeps were actual
19 seconds ticking off. That's not what it does.

20 So when you consider that, it really
21 was a continuous process. He completes the
22 sweep, and then says, as I recall the
23 transmission, 'you need to send someone else
24 because I've found something interesting.'

25 MS. TAYLOR: That's correct.

State of South Carolina v. Therron Richardson
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1 are asking the State to tell us how they are
2 going to present the evidence and I don't
3 think that they have to make that call yet.

4 MS. TAYLOR: I would actually very
5 respectfully, because I appreciate your time,
6 Judge, ask that you simply decline to hear the
7 argument on our exclusion Motion.

8 THE COURT: I deny to hear it. I
9 don't think that there is any need for me to
10 decline to hear the argument.

11 I deny your Motion at this time,
12 without prejudice, because I think it is
13 premature.

14 MS. TAYLOR: As long as it is
15 without prejudice.

16 THE COURT: It is without
17 prejudice. And my ruling, I want it clearly
18 understood, and if you want to prepare the
19 Order that says that, that it is without
20 prejudice and furthermore I have not ruled on
21 the admissibility of any evidence that was
22 seized.

23 MS. TAYLOR: Yes, sir, I just want
24 to make sure that it is clear on the record
25 that Ms. Penn's Motion, which did not include

State of South Carolina v. Therron Richardson
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Reconsideration Hearing of August 28, 2012
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1 this statutory protection, ---

2 THE COURT: That's correct.

3 MS. TAYLOR: Which we contend ---

4 THE COURT: I think that there may
5 be some legitimacy to that and that's why the
6 trial judge is going to have to make a
7 determination. What were the premises?
8 What's in plain view?

9 The problem is that we are not
10 pursuing a suspect at this juncture.

11 MS. TAYLOR: That is our argument,
12 right there.

13 THE COURT: So I don't know whether
14 this statute complies with exclusion. At this
15 point they were investigating a CDV.

16 MS. TAYLOR: That's right.

17 THE COURT: Okay.

18 MS. TAYLOR: Which could be a
19 complaint under this statute.

20 THE COURT: Could be. May not be.
21 They don't know whether he was the person or
22 not.

23 MS. TAYLOR: That creates the legal
24 argument.

25 THE COURT: That's why I say that.

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1 I don't know how it is going to fall. Thank
2 you very much. Since I am not hearing the
3 Motion, because I think it is premature, I am
4 going to let you take any exhibits back.

5 MS. TAYLOR: Thank you. If we could
6 leave one and two with you because that goes
7 to the excessive.

8 THE COURT: All right. I'll retain
9 those. Thank you.

10 (HEARING CONCLUDED)

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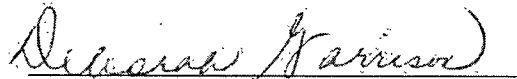
State of South Carolina v. Therron Richardson
Case No. 11-GS-10-2320 et al
Reconsideration Hearing of August 28, 2012
Before The Honorable R. Markley Dennis, Jr.

13

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the
hearing held before The Honorable R. Markley
Dennis, Jr., on August 28, 2012;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina

June 5, 2013

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	Case No(s) : 2011GS1002320,
	)	2011GS1002321,
State of South Carolina,	)	2011GS1002323,
	)	2011GS1002324,
Plaintiff,	)	2011GS1002325,
	)	2011GS1002326,
-VS-	)	
	)	
Therron R. Richardson,	)	TRANSCRIPT OF RECORD
	)	
Defendant.	)	
	)	

November 13, 2012
Charleston, South Carolina

B E F O R E:

HONORABLE R. MARKLEY DENNIS, Judge.

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

EMMANUEL FERGUSON, Esquire
CULVER KIDD, Esquire
Assistant Solicitors

DONNA K. TAYLOR, Esquire
D. LYNN BOWLEY, Esquire
Attorneys for the Defendant

Recorded by: Sharon L. Vizer-Hanks
Circuit Court Reporter

Transcribed by: Teresa B. Johnson
Circuit Court Reporter

I N D E XDIRECT CROSS REDIRECT RECROSS

Jury Qualification	4
Certificate of Reporter	30

EXHIBITS PAGENO.DESCRIPTIONID EV

STATE EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 13th day of November, 2012.)

THE COURT: We ready for the jury to come in?

MR. FERGUSON: Yes, sir.

THE COURT: Okay. Bring them in. Y'all have -- voir dire has already been submitted or do I have it?

MR. FERGUSON: Mine have been submitted.

(WHEREUPON, there is a pause.)

THE COURT: Are you the lead counsel or Mrs. Taylor?

MRS. WALSH: Mrs. Taylor is lead.

THE COURT: Mrs. Taylor. That's fine. I will you and then you can introduce. Will that work?

MR. SMITH: Yes.

THE COURT: And you must be Mr. Richardson, I think as I recall. Good to see you, sir.
(Pause.)

Is that for -- the indictments for Unlawful Possession of a Weapon?

MR. FERGUSON: I believe there are four.

THE COURT: Four?

MR. FERGUSON: Yes, Your Honor.

1 **THE COURT:** Oh, I see them. Thank you.

2 **(WHEREUPON,** the jury enters at approximately
3 10:42 a.m.)

4 **THE COURT:** Thank you very much. Ladies and
5 Gentlemen, good morning to you. My name is Markley
6 Dennis. I'm one of the Circuit Court judges for
7 the 9th Circuit. You all are going to have the
8 experience of working with a bunch of us. You've
9 already met Judge Harrington. You're now going to
10 meet me. When you come back after lunch, you're
11 going to meet Judge McDonald. So, uh, you're going
12 to have revolving judges to deal with. I hope it
13 doesn't confuse anybody. Judge McDonald had a
14 prior engagement to speak to a matter at the law
15 school so she asked if I wouldn't mind coming and
16 selecting this jury. I thank the lawyers and Mr.
17 Richardson that they have permitted me to do that.
18 That's what we're going to be about.

19 The case that you will be trying is the case
20 that's entitled the State of South Carolina versus
21 Therron or Therron Richardson. Uh, the State, of
22 course, is the party who's making the claim.
23 They've accused him of committing several criminal
24 offenses. Let me introduce Mr. Richardson to you.

25 Mr. Richardson, good morning, sir. If you

1 would, please stand and face the jury panel.

2 This is Mr. Richardson seated at the table to
3 my left.

4 Thank you, sir. You may take your seat.

5 Are there any members of the jury panel
6 related by blood or marriage, have any business
7 dealings with, socially or casually acquainted
8 with, have any connection with Mr. Richardson? If
9 so, please stand. (No response.)

10 Thank you. There appear to be none. Mr.
11 Richardson is represented by Mrs. Taylor.

12 Ms. Taylor, if you would, identify yourself
13 and anyone who will be assisting you.

14 **MRS. TAYLOR:** Thank you. My name is Donna
15 Taylor. My partner is Lynne Bowley.

16 **THE COURT:** Thank you.

17 Are there any members of the jury panel
18 related by blood or marriage, have any business
19 dealings with, socially or casually acquainted
20 with, ever been represented by Mrs. Taylor, Mrs.
21 Bowley or their law firm? If so, please stand.

22 Yes.

23 **THE JUROR:** My children goes to school with
24 Mrs. Bowley's children.

25 **THE COURT:** Okay. Your name please?

1 **THE JUROR:** Daniel.

2 **THE COURT:** And your juror number, sir?

3 **THE JUROR:** 35, I believe.

4 **THE COURT:** Would that influence you or
5 affect you in this dispute, sir?

6 **THE JUROR:** I would hope not.

7 **THE COURT:** I appreciate that answer and I
8 very understand the answer. The question would be
9 would you be able to make a commitment to the State
10 and to Mr. Richardson that that would not influence
11 your decision at all?

12 **THE JUROR:** I believe so, yes.

13 **THE COURT:** And that you would base your
14 decision on the evidence and the law and that
15 decision would be fair to both sides?

16 **THE JUROR:** Yes, sir.

17 **THE COURT:** And you could make that
18 commitment?

19 **THE JUROR:** Yes.

20 **THE COURT:** Thank you, sir. You may take
21 your seat. Are there others? (No response.)

22 Thank you. There appear to be none.

23 The State is represented in this -- first of
24 all, let me ask you. The Chief Prosecuting Officer
25 for the 9th Circuit is our Solicitor, Scarlett

1 Wilson. Are there any members of the jury panel
2 related by blood or marriage, have any business
3 dealings with, socially or casually acquainted
4 with, ever been represented by Mrs. Wilson? If so,
5 please stand.

6 Yes, sir.

7 **THE JUROR:** Your Honor, Thomas Rivers. I
8 was a detective with the Police Department for 12
9 years and I know her quite well. I've actually
10 testified in this courtroom.

11 **THE COURT:** Okay.

12 **THE JUROR:** My wife and her were childhood
13 friends.

14 **THE COURT:** Would that affect or influence
15 you, sir?

16 **THE JUROR:** I believe it would, sir.

17 **THE COURT:** Thank you, sir. Your number
18 again?

19 **THE JUROR:** 219.

20 **THE COURT:** Number 219 will be excused. Are
21 the jurors to report back or are they free to leave
22 if they aren't selected? I don't know. We're
23 going to pick another one?

24 **UNIDENTIFIED SPEAKER:** May I approach for a
25 second?

Jury Qualification

1 **THE COURT:** You may.
2 You may be seated. Hold on just one second.
3 You may be moving somewhere else.

4 **(WHEREUPON, a bench conference is held off the**
5 **record.)**

6 **THE COURT:** If you will, return to the jury
7 assembly room.

8 **THE JUROR:** Yes, sir.

9 **THE COURT:** Thank you so much, sir. You
10 will be excused from participating in this case.
11 Are there others? Yes.

12 **THE JUROR:** Uh, I work in the Charleston
13 Police Department, Special Investigations Unit.
14 We're involved in drug cases, crimes against
15 children ---

16 **THE COURT:** I understand.

17 **THE JUROR:** --- prostitution.

18 **THE COURT:** Would that affect you in this
19 dispute, sir?

20 **THE JUROR:** I think it would.

21 **THE COURT:** Your number again please?

22 **THE JUROR:** 21.

23 **THE COURT:** Number 21 will be excused. If
24 you also will return to the jury assembly room
25 please, sir. Thank you very much.

1 Any others? (No response.)

2 Thank you. There appear to be none. Mrs.
3 Wilson has a number of attorneys who assist her.
4 One of those is Mr. Ferguson who is an Assistant
5 Solicitor.

6 If you would, identify yourself and anyone
7 that will be assisting you please, sir.

8 **MR. FERGUSON:** Thank you, Your Honor.

9 Good morning. My name is Emmanuel Ferguson.
10 I work for Scarlett Wilson. I'm a Assistant
11 Solicitor with my circuit. This is Culver Kidd.
12 He's also an Assistant Solicitor with the 9th
13 Circuit. He'll be assisting, working with me in
14 this trial.

15 Also, there's Tommy Plyler. He's a detective
16 with the Mt. Pleasant Police Department and once
17 worked for the Charleston County Sheriff's Office.
18 You may see him at the table as well. And also
19 David Watson who is an investigator with the 9th
20 Circuit. You may see him seated at the table every
21 now and again as well.

22 **THE COURT:** Mr. Plyler and Mr. Watson,
23 correct?

24 **MR. FERGUSON:** Correct.

25 **THE COURT:** Are there any members of the

1 jury panel related by blood or marriage, have any
2 business dealings with, socially or casually
3 acquainted with, ever been represented by Mr.
4 Ferguson or Mr. Kidd? If so, please stand.

5 Yes?

6 **THE JUROR:** Socially acquainted with Mr.
7 Kidd. We attended college together and have
8 business dealings together.

9 **THE COURT:** You have business dealings
10 together? Did you say business dealings?

11 **THE JUROR:** Yes. Yes.

12 **THE COURT:** So y'all are partners in
13 business transactions?

14 **THE JUROR:** Yes, sir.

15 **THE COURT:** Your number please?

16 **THE JUROR:** 110.

17 **THE COURT:** I'm going to excuse you from
18 participation in this dispute, sir. If you will,
19 return to the jury assembly room downstairs. Thank
20 you.

21 **THE CLERK:** What was his number, Judge?

22 **THE COURT:** 10?

23 **THE JUROR:** 110.

24 **THE COURT:** 110. Are there others? (No
25 response.)

1 Thank you. There appear to be none. I'm
2 going to identify a number of persons, Ladies and
3 Gentlemen. If you are related by blood or marriage,
4 have any business dealings with or socially or
5 casually acquainted with any of these persons, you
6 need to stand and share that information please
7 with the court.

8 Marian Cousino, Deputy Jason Bowen, Deputy
9 Julius Alexander, Robert Hess, Tim Ketcham,
10 Detective Thomas Plyler, Detective Fletcher
11 Ferguson, Brent Roy, Susan Moody, Anita Moore who
12 is a lab analyst, Aaron Tod McKnight, Sergeant
13 Andrea York or Andrea York, Investigator James Milz
14 -- Milz -- Milz, Tonya Mallette, Patricia Stanley,
15 David Watson, Bonnie Campbell who is the Clerk of
16 Court for Charleston -- Assistant Clerk of Court
17 for Charleston County and Sergeant K. Heyward. Any
18 of those persons? (No response.)

19 Thank you. There appear to be none. The
20 dispute that brings us here, Ladies and Gentlemen,
21 is framed by these five documents that I hold in my
22 hand. They are pieces of paper. They are not
23 evidence. They won't accompany you to your jury
24 room. They are -- technically, they are called
25 indictments. It's a formal charge is what it is.

1 As I said, it frames the issues to be resolved.
2 While it's not evidence, I need to share with you
3 what's alleged so that I can ask you some questions
4 about it.

5 One indictment accuses Mr. Richardson of
6 committing the offense of Trafficking in Cocaine
7 and that it alleges that in Charleston County on or
8 about October 17th, 2010, Mr. Richardson unlawfully
9 and knowingly did sell, manufacture, cultivate,
10 deliver, purchase or bring into this state or did
11 provide financial assistance or otherwise aid,
12 abet, attempt or conspire to sell, manufacture,
13 cultivate, deliver, purchase or bring into the
14 state or did possess or attempt to possess a
15 controlled substance, a controlled substance is,
16 namely cocaine, in excess of 400 grams in violation
17 of the Code of Laws that describes that conduct.

18 It's alleged that on that date in Charleston
19 County, Mr. Richardson unlawfully possess several
20 firearms and he's accused in each one of those.
21 There are four separate charges of unlawful
22 possession of a firearm by a person who had been
23 previously convicted of a crime of violence. He's
24 accused of having in his possession a Sig Sauer
25 Model P232 nine millimeter handgun, also a Glock

1 Model 17 nine millimeter handgun, also being in
2 possession of an Intratec Model AB-10 nine
3 millimeter handgun and an H&R, Inc. Model 733, 32
4 millimeter handgun. Having also each one -- it
5 further alleges that he had been previously
6 convicted of a crime of violence.

7 I share that with you to find out whether any
8 member of the jury panel has heard anything, read
9 anything or had any prior discussions concerning
10 those charges. If so, please stand.

11 **MR. FERGUSON:** Your Honor, could we approach
12 you briefly?

13 **THE COURT:** Yeah.

14 **(WHEREUPON, a bench conference is held off the**
15 **record.)**

16 **THE COURT:** There's also an indictment that
17 I failed to disclose, Possession of a Firearm
18 During the Commission of a Violent Crime in that he
19 had in his possession these firearms and he's also
20 -- the crime is attempting or committing the
21 trafficking of cocaine. Now, has any member of the
22 jury panel heard anything, read anything or have
23 any prior knowledge of this dispute? If so, please
24 stand. (No response.)

25 Is there anything about the nature of the

1 disputes, that is, somebody accused of having
2 firearms while they were allegedly committing a
3 crime of trafficking of cocaine, which is a violent
4 crime, or persons having firearms after they've
5 been previously -- allegedly previously convicted
6 of crimes, anything about the nature of those
7 offenses that you, because of some philosophy
8 you've had, something that may have happened to you
9 in your life, any strong feelings you may have,
10 anything you think would affect or influence your
11 ability to make a fair and impartial decision based
12 on the evidence of the law? If you feel there
13 would be, please stand.

14 Okay. I ask that person to come forward
15 please. The attorneys may approach.

16 (WHEREUPON, the following bench conference is held.)

17 THE COURT: Step up here. I'll tell you
18 what, why don't you stand right here so you can be
19 close. Can you give me your name?

20 THE JUROR: 203.

21 THE COURT: Okay.

22 THE JUROR: I was a victim of a home
23 invasion two or three weeks ago.

24 THE COURT: Okay.

25 THE JUROR: And my son and my brother was

1 hit in the head with a gun. They had to transport
2 them to the hospital. They came from one neighbor
3 house. They come to my house and it was five
4 o'clock in the morning.

5 THE COURT: Yes, ma'am. I understand.

6 THE JUROR: This just happened.

7 THE COURT: It would affect you?

8 THE JUROR: Right.

9 THE COURT: Your number please?

10 THE JUROR: 203.

11 (WHEREUPON, the bench conference is concluded.)

12 THE COURT: Number 203 be excused. If you
13 will, return downstairs and we'll get to you as
14 quick as we can. Thank you, ma'am.

15 Are there any others? (No response.)

16 Thank you. There appear to be none. Oh,
17 excuse me.

18 Yes. Come on forward please. I'm sorry.

19 (WHEREUPON, the following bench conference is held.)

20 THE COURT: Just one second. (Pause.)

21 Hi. Your name please.

22 THE JUROR: Audrey Cameron.

23 THE COURT: Yes, ma'am.

24 THE JUROR: Okay. I'm going to get myself
25 together. I was on a hike one night and, uh, I was

1 sitting in the car. And a friend of mine, they
2 supposed to have been came by. They kind of
3 stopped and backed up the car. They asked if I
4 know where I'm at. I told them no. They was
5 telling me I was in front of a crack house. About
6 50 or 60 policemen surrounded me.

7 **THE COURT:** All right. You feel that would
8 affect you?

9 **THE JUROR:** Yeah.

10 **THE COURT:** Let the record reflect this lady
11 is obviously traumatized by that experience, her
12 response. Her body language indicates she's
13 clearly unable to be fair and impartial.

14 Your number please?

15 **THE JUROR:** 38.

16 (WHEREUPON, the bench conference is concluded.)

17 **THE COURT:** Number 38 is excused. If you
18 will, return downstairs please.

19 (WHEREUPON, a bench conference is held off the
20 record.)

21 **THE COURT:** Are there any members of the
22 jury panel or a member of your immediate family who
23 have been involved with law enforcement in any
24 capacity either now or formerly? If so, please
25 stand.

1 Yes, sir.

2 **THE JUROR:** My brother was a police officer.

3 **THE COURT:** Would that affect you in this
4 dispute?

5 **THE JUROR:** Again, I would hope not. But
6 until I'm in that position, I would say no.

7 **THE COURT:** Again, the bottom line -- and
8 not to repeat this. But it really is the essence
9 of what you do. Judge Harrington mentioned to all
10 of you the beauty of our system is we have two
11 judges that work together to resolve these disputes
12 when a jury trial is conducted. One judge is
13 responsible for the law. That will be Judge
14 McDonald in this case. And one judge is
15 responsible for the factual determination. That
16 would be you. Basically, to become the judge --
17 after you are selected, one of the first acts that
18 will take place is the clerk will ask you to stand,
19 you will raise your hand and you will make a
20 commitment to basically try this case and make
21 decisions based on the evidence of the law.

22 Now, I understand what you're saying. You say
23 I hope it wouldn't. The question is could you
24 conscientiously make sure that it does. Only you
25 know the answer to that.

1 **THE JUROR:** I'm sure I can make the
2 difference.

3 **THE COURT:** And I appreciate that. I
4 appreciate your candor in which you make your
5 responses. So your number again for the record?

6 **THE JUROR:** 35.

7 **THE COURT:** Thank you very much.

8 Yes, sir.

9 **THE JUROR:** I have a brother that retired as
10 a state highway patrolman, trooper.

11 **THE COURT:** Would that affect your ability
12 to --

13 **THE JUROR:** He's retired.

14 **THE COURT:** He's retired. Can you base your
15 decision on the evidence and the law and be fair to
16 both sides?

17 **THE JUROR:** Yes.

18 **THE COURT:** Your name and number?

19 **THE JUROR:** 201.

20 **THE COURT:** Thank you.

21 Yes, sir.

22 **THE JUROR:** Yes, sir. I worked as a
23 corrections officer at the Department of Juvenile
24 Justice for about three years.

25 **THE COURT:** Would that affect you, sir?

1 **THE JUROR:** I would probably be biased.

2 **THE COURT:** Thank you, sir. I appreciate.

3 Your number please?

4 **THE JUROR:** 249.

5 **THE COURT:** Okay. If you will return to the
6 jury assembly room downstairs, we will hopefully
7 not detain you too long. Thank you, sir.

8 Are there any others? (No response.)

9 Thank you. There appear to be none. Are there
10 any members of the jury panel that have ever been
11 involved in a criminal dispute, any crime? Either
12 you were accused or you were testifying for the
13 accused or you were the person who was alleged to
14 have been the victim of a crime or you were
15 testifying for that person or testifying in any
16 capacity? If so, please stand.

17 Okay. I ask you to come forward.

18 (WHEREUPON, bench conferences are held with the
19 responding jurors off the record.)

20 **THE COURT:** Are there others?

21 (No response.)

22 Thank you. There are appear to be none. Are
23 there any members of the jury panel presently or
24 formerly involved in any or contributed to any city
25 groups such as MADD, Mothers Against Drunk Driving,

1 or PAR, against rape, citizens advocating decency,
2 or similar organizations? If so, please stand.

3 Yes, ma'am.

4 **THE JUROR:** I have contributed to MADD.

5 **THE COURT:** Okay. Would that affect you in
6 this dispute, ma'am?

7 **THE JUROR:** I don't think so.

8 **THE COURT:** Could you base your decision on
9 the evidence and the law and be fair to both sides?

10

11 **THE JUROR:** Yes.

12 **THE COURT:** Your name and number please?

13 **THE JUROR:** 10.

14 **THE COURT:** Thank you, ma'am.

15 Are there others? (No response.)

16 Thank you. There appear to be none. Any
17 members of the jury panel have ever been involved
18 in any dispute involving a law enforcement officer
19 or official? If so, please stand. (No response.)

20 Thank you. There are none. This is a process
21 for dispute resolution. That's what a jury trial
22 is. Uh, as I mentioned to you and I'm sure Judge
23 Harrington mentioned to you as well, this system is
24 wonderful. It works extremely well. I credit you
25 and people like you for its efficiency and

1 effectiveness.

2 One of the things that's required is that you
3 understand that the trial judge has nothing to do
4 with the factual determination. We can, but that's
5 when a jury is not present. When you are present,
6 we don't have anything to do with that. That's
7 solely your responsibility. You would make a
8 commitment to decide that based on the evidence
9 which consists of testimony of witnesses and
10 exhibits that might be introduced through their
11 testimony. That's it. That's the sole source of
12 the evidence.

13 You also make the commitment that you're going
14 to accept the law and apply that law fairly and
15 impartially to the facts. When I had qualified
16 you, one of the statutes that I ask, it causes us
17 to ask a question. I've been doing this now for
18 almost 19 years. I scratch my head and think what
19 a silly waste of time. That's my personal opinion.
20 I'm not being critical of anybody. But the
21 question is whether you have a Highway Department
22 identification card, voters registration
23 certificate or a driver's license. I never had
24 anybody that didn't have. It finally dawned on me
25 several years into why I never will. That's how we

1 got your name in the first place. You are there.
2 Of course, you have one. It's kind of redundant.

3 But anyway, notwithstanding my personal
4 opinion about that, I've asked that question every
5 single time I've qualified a jury and I will ask it
6 every single time. If I'm fortunate enough to
7 qualify another 19 years, I'll ask it again. Why?
8 Because it's the law and I took an oath just like
9 you will to apply that law quite fairly and
10 impartially.

11 I use that as an illustration because you
12 might hear some principle of law that causes you to
13 scratch your head as I do mine with that one and
14 say that's a silly law or we can have a law that's
15 better than that. We might can. But for purposes
16 of this proceeding, it doesn't matter what our
17 opinion about it is. You promise that you will set
18 aside your opinions or your feelings and take the
19 law as the trial judge gives it to you and apply
20 that law fairly and impartially. Anything about
21 your strong beliefs and personal philosophies that
22 would give you any concern or cause or worry about
23 your ability to do that? If so, please stand.

24 (No response.)

25 Thank you. One of the principles of law, the

1 basic principles of persons, which is Mr.
2 Richardson here, and anyone else who is accused of
3 a crime in this country, is they are presumed
4 innocent. That's not -- those aren't just words.
5 That's an active presumptive, as Judge McDonald
6 will tell you. It means you have to actively
7 presume that. That can only change when and if the
8 state presents enough evidence to persuade you
9 beyond a reasonable doubt and that means the State
10 has established each element of the various crimes
11 charged to your satisfaction before you change that
12 and set that presumption aside. Basic principle of
13 law. Anything about your basic understanding or
14 feelings or your beliefs that would give you any
15 concern about your ability to apply that law? If
16 so, please stand.. (No response.)

17 Thank you. Fair enough. Another basic
18 presumption or basic principle that applies to this
19 case and every single case that's brought in this
20 country in a criminal dispute is persons so accused
21 have no burden of proof whatsoever. The only
22 burden rests on the party making the claim and
23 that's the State of South Carolina in this case.
24 Mr. Richardson has nothing to prove. He has
25 nothing to explain. He doesn't have to prove his

1 innocence. He doesn't have to present any evidence
2 for your consideration. You can not consider that
3 in any way as a negative against him. Anything
4 about that principle of law that would give you any
5 concern about your ability to apply that fairly and
6 impartially? If so, please stand. (No response.)

7 Thank you. There appear to be none.

8 Any other specific questions from the State,
9 Mr. Ferguson?

10 **MR. FERGUSON:** No, Your Honor.

11 **THE COURT:** Any other specific questions
12 from Mr. Richardson?

13 **MRS. TAYLOR:** No, sir.

14 **THE COURT:** The last question I have for you
15 is kind of a catchall question. And it is
16 redundant and repetitive but it really sums it all
17 up. Based on everything you heard thus far about
18 this dispute, is there anything, anything that
19 would give you any concern about your ability to
20 raise your hand and make a commitment to apply --
21 to determine the facts, determine based on the
22 evidence, decide what you believe to be the truth,
23 once deciding those facts, taking the law as Judge
24 McDonald will give it to you and applying that law
25 fairly and impartially to those facts? If you feel

1 there is, please stand. (No response.)

2 Thank you so much. There are none.

3 What will happen now, Ladies and Gentlemen,
4 is --

5 Mr. Callahan, will you be doing this?

6 **THE CLERK:** Yes, sir.

7 **THE COURT:** Mr. Callahan will be calling
8 your names. Your names have been pulled and put on
9 a list at random. They will be called. When your
10 name is called, as he will instruct you, get your
11 personal things, come forward and stand as I'm
12 standing here in front of this podium facing the
13 parties and the attorneys.

14 The State will have the first opportunity to
15 say seat the juror, swear the juror or something
16 similar. If they say seat the juror, then it will
17 pass to Mr. Richardson. He will have the same
18 opportunity. They may say excuse the juror.
19 That's the process. Don't be offended if either
20 side excuses you. That's the way it works. In
21 this case, it will be five and five. Each side can
22 excuse five persons. We'll continue through the
23 process until we select our 12 jurors and one
24 alternate. So just follow -- I'll turn it over to
25 Mr. Callahan now.

1 Mr. Callahan, I'll let you ---

2 **THE CLERK:** Yes, sir.

3 **THE COURT:** --- seat the jury.

4 (WHEREUPON, the trial jury is selected.)

5 **THE CLERK:** Your Honor, the jury has been
6 selected and is seated.

7 **THE COURT:** Thank you, Mr. Callahan.

8 Any motions from the State regarding the jury
9 selection?

10 **MR. FERGUSON:** None, Your Honor.

11 **THE COURT:** Any motions from Mr. Richardson?

12 **MRS. TAYLOR:** None, Your Honor.

13 **THE COURT:** Thank you.

14 Ladies and Gentlemen, those of you who were
15 not selected, thank you very much. I may see some
16 of you very shortly. If you would, return to the
17 jury assembly room. We'll be with you as quickly
18 as we can. Thank you.

19 (WHEREUPON, the jury panel exits at approximately
20 12:23 p.m.)

21 **THE COURT:** Ladies and Gentlemen, those of
22 you that were selected, thank you very much as
23 well. I'm advised by Judge McDonald that there are
24 some matters of law that she needs to take up. So
25 you're going to get a little bit longer lunch break

1 than is customary today. I'm going to excuse you
2 until three o'clock, I think is what she indicated
3 that it would take that much time to get those
4 matters resolved. So you need to report to your
5 jury room at three o'clock. And when you exit, you
6 will exit the door to your left and the bailiffs
7 will show you your jury room.

8 Have a good lunch. Please understand that
9 you've heard no evidence in this case. Don't
10 speculate about it. Don't try to anticipate
11 anything. Certainly don't conduct any independent
12 investigation. Don't discuss the case among
13 yourselves either or permit anyone to talk about it
14 in your presence. Have a good lunch and a good
15 extra time. I know Judge McDonald will look
16 forward to working with you at three o'clock.
17 Thank you. You are free to leave. If you will,
18 just exit the door to the jury room.

19 (WHEREUPON, the jury exits at approximately
20 12:35 p.m.)

21 **THE COURT:** So I'll see them in 4C?

22 **UNIDENTIFIED SPEAKER:** Correct, Your Honor.

23 **THE COURT:** Yes, ma'am.

24 Okay. We'll be at ease then. Thank you very
25 much.

1
2
3
4
5
6

MR. FERGUSON: Thank you.

(WHEREUPON, a lunch recess is taken.)

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston, South Carolina, on this 12th day of February, 2013.

I do further certify that I am neither of kin, counsel
nor interest to any party hereto.

Thomas

Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	Case No(s) : 2011GS1002320,
	)	2011GS1002321,
State of South Carolina,	)	2011GS1002323,
	)	2011GS1002324,
Plaintiff,	)	2011GS1002325,
	)	2011GS1002326,
-VS-	)	
	)	
Therron R. Richardson,	)	TRANSCRIPT OF RECORD
	)	
Defendant.	)	
	)	

November 13 - 15, 2012
Charleston, South Carolina

B E F O R E:

HONORABLE STEPHANIE MCDONALD, Judge.

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

EMMANUEL FERGUSON, Esquire
CULVER KIDD, Esquire
Assistant Solicitors

DONNA K. TAYLOR, Esquire
D. LYNN BOWLEY, Esquire
Attorneys for the Defendant

Recorded by: Sharon L. Vizer-Hanks
Circuit Court Reporter

Transcribed by: Teresa B. Johnson
Circuit Court Reporter

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(No exhibits offered.)

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P R O C E E D I N G S

1
2 **THE COURT:** I've got a couple of questions
3 for y'all on the motion to exclude before I hear
4 from you. I read the transcript and the order and
5 the prior brief. Since all of that has been heard,
6 the plain view issue, the exigent circumstances
7 issue by Judge Dennis, are y'all just proceeding
8 today on the CDV statute that wasn't argued before
9 him?

10 **MRS. TAYLOR:** Yes, ma'am.

11 **THE COURT:** Okay. Then I am happy to hear
12 from you.

13 **MRS. TAYLOR:** You know the background.
14 Basically, what happened was -- as far as the
15 lawyers are involved, we are the third counsel for
16 Mr. Richardson -- that Fourth Amendment issue was
17 created and raised by prior counsel and we really
18 had nothing to do with that other than appearing
19 briefly ---

20 **THE COURT:** Okay.

21 **MRS. TAYLOR:** --- before you to articulate a
22 reconsideration. The issue, uh, which is
23 completely separate and apart from Fourth Amendment
24 protections, come statutorily under the CDV statute
25 that was cited. Plain reading of that section,

1 which specifically deals with warrantless arrests
2 and/or search and the admissibility of the
3 evidence, we are relying on Section 8, which again
4 reading it in its plain language appears to be
5 pretty clear that it is admissible if, starting
6 with number 1, it is in plain view -- and no one is
7 contesting that -- in the room with the officers
8 interviewing, detaining or pursuing a suspect.

9 Everyone, I believe, is in agreement that
10 there was no one in this house. What had happened
11 -- we are not entirely clear on who made that phone
12 call. It was not his actual girlfriend. She's
13 never been found or located. It was not made from
14 that home, which is in West Ashley. That call was
15 later triangulated downtown to Romney --

16 **COURT REPORTER:** I'm sorry. I'm having
17 trouble.

18 **THE COURT:** Triangulated downtown to Romney
19 Street?

20 **MRS. TAYLOR:** Right.

21 **THE COURT:** I'm going to get you speak up
22 for us.

23 **MRS. TAYLOR:** I'll try not to do the low
24 talking thing. But there was nobody in the home.
25 They did their protective sweep. Again, we're not

1 challenging that. That's been heard and
2 determined. We'll except to that for purposes
3 later. But that's not the argument here. Just
4 that there was no defendant being interviewed,
5 detained and they were not pursuing a suspect.

6 There is throughout -- well, let me go through
7 this and I'll point to the circumstance. The, uh,
8 remaining -- obviously, there was no search
9 incident to a lawful arrest because there was no
10 arrest. That takes care of A and B. The only
11 issue that is contested is whether they were
12 pursuing a suspect. I think it's -- it requires it
13 to be in plain view with one of those three
14 circumstances.

15 **THE COURT:** I'm listening to your argument,
16 but I'm looking at these cases that interpret 16 --

17 **MRS. TAYLOR:** Would that be Cannon and --

18 **THE COURT:** I'm looking at State v. Roberts
19 right now.

20 **MRS. TAYLOR:** Yes, ma'am. That's clearly
21 distinguishable.

22 **THE COURT:** Okay. Tell me -- distinguish
23 that for me then.

24 **MRS. TAYLOR:** All right. That -- if I've
25 got them right, that's the one who the guy was

1 lying drunk outside. He was initially arrested for
2 public disorderly conduct or something like that.
3 Ultimately, was also arrested or charged with CDV.
4 But when he was initially taken, it was on a public
5 intoxication and maybe disorderly conduct.

6 **THE COURT:** Yeah.

7 **MRS. TAYLOR:** Public drunkenness and
8 disorderly conduct. And they found cocaine in his
9 pockets. In this case, there was no arrest. There
10 was nobody in the house when they performed this
11 sweep, but there was evidence taken from the house
12 which clearly falls within the purview. This
13 fellow was out in a public place. He was arrested
14 for other charges. The court actually justified
15 allowing it based on that he was arrested with
16 other charges.

17 **THE COURT:** What I'm concerned with is the
18 very last paragraph and just the general reason for
19 the CDV statutes that we have.

20 **MRS. TAYLOR:** Right.

21 **THE COURT:** And the fact that they are
22 really there to promote victim's access to certain
23 protections and to address some of the problems
24 that are systemic when we have criminal domestic
25 violence issues, for lack of a better word.

1 **MRS. TAYLOR:** Right.

2 **THE COURT:** That's what I need you to get me
3 around. It's hard for me to think that our
4 legislature meant to give greater protections than
5 were otherwise provided by the Fourth Amendment.

6 **MRS. TAYLOR:** Are -- you're with the Court
7 that it is certainly an unusual position to find
8 myself in as well ---

9 **THE COURT:** Okay.

10 **MRS. TAYLOR:** --- using the South Carolina
11 legislature protections. But again, looking at it
12 in the black and white lettering of the law, it is
13 very specific and very clear what they are saying
14 here. There's talk also in Cannon -- I don't know
15 if you read that one too, Judge -- where the court
16 is even more explicit in Cannon about their
17 concerns of what this means. They clearly are
18 looking for a way to get around it if there is one.

19 **THE COURT:** Sure.

20 **MRS. TAYLOR:** But again, I think both of
21 those cases are factually distinguishable. I think
22 that if you take their concern -- and it's
23 certainly entirely possible. We tried to find
24 legislative history and couldn't. So I don't know
25 that we have quotes ---

1 **THE COURT:** Okay.

2 **MRS. TAYLOR:** --- as to why it happened.
3 There's also been amendments. I'm not sure. We
4 couldn't figure out when or what those were. In
5 Cannon, the Court is very explicit about concerns,
6 but also they seemed to be arguing a case when the
7 statute may have been different. Later, it becomes
8 more specific about what they allow or don't allow.
9 I understand that people are going to take a
10 position that the reason that protection is there
11 is so victims don't get arrested. But I don't
12 think that's a fair or reasonable or even necessary
13 argument because it could also be that not just a
14 victim, but anybody who wants to call -- a mother
15 on her son, wife on her husband -- they may not
16 want to call to protect themselves or a child even if
17 it means that they know he's got other illegal
18 activities going on. I don't --

19 **THE COURT:** Okay.

20 **MRS. TAYLOR:** I just don't think that we
21 need to, first of all, look at that when the
22 statute is so specific and clear.

23 **THE COURT:** I agree that I don't need to
24 look at it because I think Cannon is pretty clear.
25 And I need you to distinguish that for me. I think

1 that the interplay of 16-25-70(h) with 16-25-70(c)
2 and the fact that there was no arrest here.

3 **MRS. TAYLOR:** Right.

4 **THE COURT:** Certainly, they were responding
5 to somebody that felt threatened. I need to look
6 back at the transcript. For all I know, it could
7 be -- tell me -- and I may need to hear the tape.
8 But as I understand it, the caller said he's trying
9 to get in, he's trying to get in.

10 **MRS. TAYLOR:** 911.

11 **THE COURT:** Did she ever say who he was?

12 **MRS. TAYLOR:** No.

13 **THE COURT:** Well, how do we know he was a
14 household member or anybody that would come within
15 the purview of any kind of CDV charge period and
16 not just some random jump-out-of-the-bushes person
17 breaking into the house?

18 **MRS. TAYLOR:** That's another issue, Judge.

19 **THE COURT:** Okay.

20 **MRS. TAYLOR:** Everywhere along the line of
21 this case, starting from that call -- and Mr.
22 Ferguson raises the issue of whether CDV statute is
23 applicable at all -- it seems to me somewhat
24 disingenuous to try and raise the issue at this
25 stage, if this would not have been -- if this was a

1 legitimate call, which it clearly was not. This
2 was someone making a call to send cops to this
3 house --

4 **THE COURT:** Seems like somebody was throwing
5 him under the bus to me.

6 **MRS. TAYLOR:** Yes, ma'am. They weren't at
7 the house. They probably knew he wasn't at the
8 house. So to say now -- but, nevertheless, what
9 triggers the permission and the rights of the
10 government to enter the home is this statute that
11 they are using because they refer to it both in the
12 911 dispatch, police reports, the police officers
13 both refer to it when they talk in the transcript,
14 pages 15, 17, 34. It's a domestic call. It's a
15 criminal domestic dispute between boyfriend and
16 girlfriend. It's in the CAD reports. It's in the
17 search warrant that they later get based on
18 probable cause of what they saw. Everybody is
19 referring to it as a criminal domestic call.

20 Had they gotten in that house and it had been
21 boyfriend trying to get to his girlfriend, he would
22 have been charged with Criminal Domestic Violence
23 in all likelihood. But we don't ever get that far.

24 But again, as unusual as it is for there to be
25 extra protections in a criminal case for a

1 defendant, it's real hard to look at that statute
2 and not see what it says. They could have said any
3 number of things. They could have said nothing and
4 it just would have gone to exigent circumstances.
5 But they create an exclusion and specifically say
6 for any purpose in any other court. Now, why would
7 they do it if they wanted evidence to be brought in
8 against those facts?

9 **THE COURT:** Well, I think they did it under
10 the very specific circumstances to which they
11 intended this statute to apply. And granted,
12 without legislative history, uh, that is somewhat
13 difficult to discern. But I'm getting ready to
14 look at the preamble in the introduction and I
15 think that may help me a little bit. But I do
16 agree that it's a very interesting issue. So
17 anything else you want to put on the record before
18 I hear from the State?

19 **MRS. TAYLOR:** Uh, I think that was it
20 although I may be responsive to some of his
21 arguments ---

22 **THE COURT:** Sure.

23 **MRS. TAYLOR:** --- as to why it's applicable.

24 **THE COURT:** Okay. Yes, sir.

25 **MR. FERGUSON:** Thank you, Your Honor. I

1 want to begin by addressing some of the things that
2 the defense has said. First, there was talk of
3 there not being a suspect to pursue. I just want
4 to let you know there can be a suspect who doesn't
5 exist. The police can be searching for somebody,
6 an unknown suspect, for example. And the judge in
7 June 20th, 2012 says on page 70, therefore, exigent
8 circumstances doctrine justified the deputy's
9 warrantless entry into the residence to conduct a
10 protective sweep and search for injured persons
11 and/or the perpetrator. So Judge Dennis had
12 already ruled that the officers were in there
13 searching for a person.

14 Now, when you apply that to the CDV statute,
15 uh, then 16-25-70(h) says that if those drugs or if
16 those items are found in plain view while pursuing,
17 detaining or questioning the suspect, then they are
18 able to use them. So even if we do apply the CDV
19 statute here, it fits squarely within the
20 exception.

21 Piggyback on that, the State does contend that
22 the CDV statute doesn't apply at all. We're unable
23 to identify household member. There's nothing in
24 the call that states that the victim was a spouse,
25 a former spouse, had a child in common or

1 cohabitated with her alleged attacker.

2 Furthermore, --

3 **THE COURT:** Let me ask you this question.

4 I'm trying to read the statute together as a whole
5 to discern if I can what the intent is. What about
6 the language that says an officer may arrest and
7 file criminal charges against a suspect for any
8 offense that arises from evidence discovered
9 pursuant to this section? Y'all can both think
10 about that. That, to me, seems ---

11 **MR. FERGUSON:** That seems to sum it up.

12 **THE COURT:** --- very inconsistent with
13 (h)(1)(a) and (b).

14 **MRS. TAYLOR:** No, I don't see how it's
15 inconsistent at all. Because they are saying that
16 if, under the circumstances of (a), you are in
17 there legitimately and you are conducting your CDV
18 with a suspect and you see guns and drugs, you can
19 use it then. That meets what they specify as
20 acceptable. And you can charge that individual
21 with different things.

22 But again, when they're so specific as to have
23 -- I mean, this whole statute applies to un --
24 searches without a warrant, warrantless search. So
25 to somehow exclude it -- and it's just a couple of

1 levels on a CDV -- it said if you want to use this
2 911 call, there may be nothing that says she's a
3 household member, but there's nothing that says she
4 doesn't. It's a very short, brief call. A woman
5 calls. She gives her name, a name. She gives the
6 address twice. She makes some commentary about
7 what happened, which is my boyfriend, arguing,
8 whatever. There's nothing to suggest that she
9 doesn't live there with the boyfriend or anything
10 else that would fit it into criminal domestic
11 violence. We don't know. But again, every piece
12 of this case refers to that call and the placement
13 of those officers there as a criminal domestic
14 violence.

15 **THE COURT:** Isn't that just an assumption
16 that they made, the officers made? Does that not
17 bring it within the ambit of State v. Redford,
18 which I believe states if they have probable cause,
19 it's probable cause whether they have it for the
20 correct offense that they stated or not? That's
21 what I'm struggling with here.

22 **MRS. TAYLOR:** I just don't see how you can
23 define it on the one side and apply these
24 circumstances because you see it in that light.
25 Then when it's over with and you want to use

1 something else, suddenly, it's not a criminal
2 domestic violence call. It clearly was. That's
3 how they treated it every step of the way. The CAD
4 officer, the --

5 **THE COURT:** Answer this for me then, if you
6 would, I'm sorry, just before I forget. What is
7 the significance of the complaint filed language in
8 the statute? Is that defined anywhere what a
9 complaint filed is?

10 **MRS. TAYLOR:** Not that we could find. The
11 only way that it makes any sense is that a
12 complaint, as you see on any police report, the
13 complainant is the caller, the alleged victim.
14 Now, filing, obviously we don't file complaints in
15 this state.

16 **THE COURT:** Right.

17 **MRS. TAYLOR:** The only way I can read it
18 that it makes any sense is when you call, that's
19 the complaint. The police arrive and they either
20 arrest people or they don't. There's a whole other
21 series of things. They have to determine whether
22 it would have ultimately resulted in either
23 physical injury or threat of of the household
24 member or any of that stuff. At the beginning,
25 what they talk about and what they all describe at

1 every step of the way is they got a criminal
2 domestic, a heated criminal domestic
3 boyfriend/girlfriend fighting call. They go in.

4 **MR. FERGUSON:** That's why we call it --
5 that's why it calls it exigent circumstances, Your
6 Honor. We can't sit around and figure out -- the
7 911 dispatcher can't call and say are you a live-in
8 boyfriend, girlfriend, are you a spouse, do you
9 have a child in common. They are trying to get to
10 the scene which is indicative also of a kidnaping.
11 The 911 tape says she locked herself in that
12 bathroom and there was no way for her to get out.
13 She didn't say anything more than that.

14 The police officers have treated this like a
15 kidnaping. They were trying to take someone out of
16 the house. In CDV, typically you see the police
17 going in there to take the aggressor or the person,
18 the assailant out of the home. In this situation,
19 the police went there to get the victim and rescue
20 the victim from being held against her will.
21 That's more along -- fits in line with a kidnaping,
22 thus why Judge Dennis ruled it would be exigent
23 circumstances and a lot of this doesn't come in.

24 Furthermore, there is a warrant in this
25 situation. The officers who responded, they saw

1 the drugs in plain view and that's not disputed
2 here, uh, today. But when they saw the drugs in
3 plain view, they didn't collect it. They called
4 Charleston County Metro and informed them about
5 what they saw in plain view and then they obtained
6 a search warrant. So we're not dealing with a
7 warrantless search here. We just dealing with what
8 the officers saw in plain view and then got a
9 warrant.

10 **THE COURT:** You get the last word. It's
11 your motion.

12 **MRS. TAYLOR:** We are dealing with a
13 warrantless search in the beginning. And the
14 warrantless search was their entry. Again, exigent
15 circumstances is a whole different issues. This is
16 statutory exclusionary protection that is South
17 Carolina law, clearly written, easy to understand
18 the language of.

19 The application of ignoring anything else to
20 get to the issue of warrantless or using or not
21 using is specifically also referred to at the very
22 end of this section where they again reiterate that
23 nothing that you find can be used in any court. So
24 if you find that CDV, this statute applies to our
25 facts and this protection applies to this search,

1 if they saw it when they shouldn't have been able
2 to use it, they can't go to the magistrate court
3 and use what they couldn't use there to get a
4 search warrant. So you either applied it or you
5 don't.

6 **THE COURT:** I think you make an excellent
7 argument. The problem here is poor drafting.
8 We've got subsection (h). It says something in
9 smaller subsection 1 and 2. It says something
10 different and more inclusive in the language that
11 follows that is not part of smaller subsections 1
12 and 2. Then it says something else in the next
13 paragraph. You can choose to read it a couple of
14 different ways. I understand that. I think it
15 needs to be interpreted more specifically perhaps,
16 although Cannon, I think, does help, State v.
17 Cannon and State v. Roberts. But as I read the
18 cases and I read the statute and the plain language
19 of the statute, in particularly, 16-25-70
20 subsection (c), which again addresses the necessary
21 element that we have to have a family member or a
22 household member, I don't think they entered the
23 residence at -- pursuant to the authorization of
24 this statute. They went in on exigent
25 circumstances and did a protective sweep looking

1 under the bed, looking in the bathroom, looking in
2 the closet like they do any time there's a
3 possibility of a danger inside to the officer or
4 others looking for whoever this victim was, this
5 fathom victim that called. I simply don't think
6 under the circumstances of this particular case,
7 especially when there never was a, quote, unquote,
8 complaint filed or even a victim identified much
9 less a household member that 16-25-70 bars the
10 evidence. So the motion's denied.

11 **MRS. TAYLOR:** Okay. Your Honor, we would,
12 of course, respectfully except. Your Honor, can I
13 add one more thing?

14 **THE COURT:** I don't think you have to do
15 that in court here.

16 **MRS. TAYLOR:** I'm sorry. For the record, on
17 just a comment of what you said about the police
18 officers. Again, the police officers in their
19 testimony in the transcript talk about things that
20 are solely related to criminal domestic violence,
21 down to the types of locks on the door, how they
22 study and are trained to respond --

23 **THE COURT:** I appreciate that and I think
24 you've made your record. We'll need to figure that
25 out in Columbia if we need to. So all right. What

1 else do we need to rule on before we either take a
2 break or bring the jury? Have y'all got together
3 to mark exhibits?

4 **MR. FERGUSON:** No, we haven't. I do have
5 some exhibits that we can premark.

6 **THE COURT:** That will be great. Any other
7 motions I need to hear?

8 **MRS. TAYLOR:** Uh, there are -- not from us,
9 Judge. We had an issue with the four weapons
10 charges which are unlawful possession by a violent,
11 uh, someone with a violent criminal record. We
12 were going to object to that language and ask that
13 -- the statute actually requires the court to make
14 a finding that there are those prior violent
15 offenses. Mr. Ferguson has indictments to that
16 effect. But in the earlier time, selecting our
17 jury, Judge Dennis talked about it already.

18 **THE COURT:** Oh, okay.

19 **MRS. TAYLOR:** So we don't really have that.
20 I know we had talked about one other issue
21 regarding the search.

22 **THE COURT:** Well, and y'all, I apologize.
23 Somehow we seemed to go from four indictments
24 earlier to six now.

25 **MRS. TAYLOR:** Just four gun ones.

1 **THE COURT:** Huh?

2 **MRS. TAYLOR:** Just four gun ones are the
3 ones that we talked about.

4 **THE COURT:** Right, but I only had four in my
5 hand period earlier and now I seem to have six. I
6 just want to make sure we have the correct ones.

7 **MRS. TAYLOR:** And if I could just have a
8 word with --

9 **THE COURT:** Sure. Y'all take all the time
10 you need. (Pause.)

11 Have y'all had any discussions? Are there any
12 issues we need to put on the record? I was trying
13 to make sure we preserve those now that we have got
14 those two United States Supreme Court cases that
15 came in.

16 **MRS. TAYLOR:** I can very quickly tell you
17 what my understanding of that is. Mr. Richardson
18 can correct me.

19 **THE COURT:** Okay.

20 **MRS. TAYLOR:** It's my understanding that
21 with his first attorney, there was an offer of
22 somewhere between five and eight years, which was
23 rejected.

24 **THE COURT:** Okay.

25 **MRS. TAYLOR:** I don't believe there were any

1 with the second attorney. We have discussed the
2 offers down to and including perhaps impossible --
3 it wasn't offered, but even to the point of
4 inquiring if we were able to get a time-served
5 sentence, would he accept that. And that was
6 declined as well.

7 **THE COURT:** He declined it?

8 **MRS. TAYLOR:** Yes, ma'am.

9 **THE COURT:** Sir, is that correct?

10 **MR. FIELD:** Yes, ma'am.

11 **THE COURT:** So you declined the earlier plea
12 offer of five to eight, is that correct?

13 **MR. FIELD:** Yes, ma'am.

14 **THE COURT:** And if -- and I don't think they
15 would probably offer it, but if they did offer some
16 kind of time-served sentence, you declined that as
17 well?

18 **MR. FIELD:** Yes, ma'am.

19 **THE COURT:** Okay. Do you have any questions
20 for your attorneys about any plea offers or
21 anything that may have occurred previously?

22 **MR. FIELD:** No, ma'am.

23 **THE COURT:** Okay. Thank you. I just wanted
24 to make sure. Sometimes we can actually work these
25 things out the eve of the trial, but, uh, -- all

1 right. What -- y'all are working on exhibits.
2 When I give my brief introductory remarks to the
3 jury, I'm not going to say unlawful possession of a
4 firearm by a person convicted of a crime of
5 violence. I'm just going to say indictments for
6 trafficking cocaine and unlawful possession of a
7 firearm. Then y'all can argue all of that whenever
8 you give your opening statements and then later on
9 down the road. Of course, they'll have the
10 indictments back with them when they take the
11 evidence at the end.

12 **MRS. TAYLOR:** That was just another
13 interesting thing, Judge. Judge Dennis told them
14 they wouldn't.

15 **THE COURT:** Wouldn't have the indictments?

16 **MRS. TAYLOR:** They don't go back. They're
17 not evidence.

18 **THE COURT:** I always send them, but y'all
19 are welcome to argue to me.

20 **MR. FERGUSON:** I would like them to be sent
21 in to the jury.

22 **THE COURT:** That's the thing that makes it
23 so hard for y'all that everybody does it
24 differently. If anybody has any law one way or
25 another, I'm sure the defense does not want them to

1 go back, but I'm sure the State does want them to
2 go back. I'll have to do an informal survey to
3 find out how many yield one way and how many yield
4 the other way.

5 **MRS. TAYLOR:** Okay. It fluctuates in my
6 experience.

7 **THE COURT:** All right. I'll be happy to
8 hear arguments from y'all on that if we get to that
9 point and need to do that. Anything else I need to
10 deal with before the jury comes?

11 **MR. FERGUSON:** I don't believe so, Your
12 Honor.

13 **THE COURT:** Okay. I think they are supposed
14 to be back at three o'clock. So we'll just be at
15 ease until then. I'll be back a little before
16 3:00. If y'all need me before then, let me know.
17 Okay. Thanks.

18 (WHEREUPON, a recess is taken.)

19 (WHEREUPON, State's Exhibits 1 through 44 are marked
20 for identification purposes.)

21 **THE COURT:** Okay. Our last juror just got
22 here. All right.

23 **MR. FERGUSON:** Your Honor, during the break,
24 we, uh, talked about some pictures and some other
25 things that will come into evidence without

1 **THE COURT:** Okay. All right. And I assume
2 that they haven't been sworn yet. Correct? Okay.
3 We'll do that first thing when they get back in.

4 Okay. Yes, ma'am. Thank you very much.

5 **(WHEREUPON, the jury enters at approximately**
6 **3:05 p.m.)**

7 **THE COURT:** Please be seated everybody.
8 Thank you.

9 **THE BAILIFF:** The jury is all present, Your
10 Honor.

11 **THE COURT:** Thank you, sir.

12 Good afternoon, Ladies and Gentlemen. I'm
13 Stephanie McDonald. I'm a circuit court judge here
14 based in Charleston. Judge Dennis was kind enough
15 to strike the jury for me this morning while I
16 handled another matter. I understand y'all have
17 not taken the next oath yet. I know you took an
18 oath this morning before qualifications. So I'm
19 going to ask my clerk to give you the oath.

20 **THE CLERK:** Ladies and Gentlemen of the
21 jury, if you will, please stand and raise your
22 right hand. After I've given you this oath, if you
23 will accept it, please respond by saying "I do".
24 Do you swear or affirm that you shall well and
25 truly try and a true deliverance make between the

1 State of South Carolina and the defendant at the
2 bar whom you shall have a charge and a true verdict
3 render according to the evidence and the law so
4 help you God?

5 (WHEREUPON, each juror responds.)

6 THE CLERK: If you have accepted this oath,
7 please have a seat.

8 (WHEREUPON, each juror responds.)

9 THE COURT: Thank you, sir.

10 Thank you, Ladies and Gentlemen. As you know,
11 we are about to try the case of the State versus
12 Therron Richardson, defendant. The defendant is
13 charged in the indictments that were shown to you
14 this morning. These indictments have been filed in
15 the court and they concern the crimes of
16 Trafficking Cocaine and Unlawful Possession of a
17 Weapon. The elements of those offenses will be
18 explained to you later when I give you the charge
19 on the law at the end of the case.

20 As Judge Dennis told y'all during voir dire,
21 the indictments are not evidence. They are simply
22 the charges and documents by which the case is
23 brought into court. The defendant has pled not
24 guilty to each and every one of the indictments.
25 The State, therefore, has the burden of proving the

1 bring to my attention?

2 **MR. FERGUSON:** No, Your Honor.

3 **THE COURT:** Okay. All right. Thank you.

4 Then I'll call on Mr. Ferguson to give the opening
5 statement of the State.

6 **MR. FERGUSON:** Thank you. May it please the
7 Court?

8 **THE COURT:** Yes, sir.

9 **MR. FERGUSON:** Good afternoon. The drug
10 industry is a business. Unlike a legitimate
11 business, unlike the businesses in our community,
12 unlike the businesses that produce good services
13 and goods that are useful, unlike businesses that
14 help us improve our own quality of life, the drug
15 business degrades that. The drug business deals in
16 death. It sells poison in little baggies. It's up
17 to you to shut that drug business down.

18 Like every other business, it needs three
19 things: inventory, cash on hand and security. When
20 officers entered that man's home, that's exactly
21 what they found. They found a thriving business.

22 My name is Emmanuel Ferguson. Along with
23 Culver Kidd and Detective Tommy Plyler, we
24 represent the State of South Carolina in the case
25 against Therron Richardson for Trafficking Cocaine

1 and Possession of a Firearm by a Convicted Felon
2 and also Possession of a Firearm during the
3 Commission of a Violent Crime.

4 Now, I've got to tell you a story. I'm going
5 to start here. It was October 17th, 2010. The 911
6 dispatcher received a phone call from a woman who
7 said she had locked herself in the bathroom because
8 of her boyfriend. She said there was no way for
9 her to get out. She asked the police to help get
10 her out.

11 The dispatcher sent two officers to respond to
12 Old Fort. That was the address that she said
13 when she called 911. She said I'm at Old Fort
14 Avenue. That's where the officers went. Two
15 officers who responded there walked out and they
16 saw a truck parked in the front yard which would be
17 reasonably that someone was in that home.

18 Now, Detective Bowen of the Charleston County
19 Sheriff's Office, he approached the front door.
20 When he approached the front door, something was
21 odd. You see, there was no doorknob on the front
22 door. It was a deadbolt lock, the kind of lock
23 that you put on a shed or something when you want
24 to keep someone out or keep someone in.

25 Also, Deputy Alexander went around the back to

1 secure the scene. He saw a small crack in a
2 sliding glass door. So he radioed Deputy Bowen who
3 was in the front door and said come around back, we
4 need to go inside. They realized the nature of
5 this call and decided to go in and find out if
6 someone was hurt. This 911 call ended. The policy
7 is to try to keep that victim on the phone until
8 the officers arrived. The last thing the
9 dispatchers heard was he's trying to get in, he's
10 trying to get in. Click.

11 The officers went in to see if someone was
12 hurt. As they conducted what they called a
13 protective sweep, and the officers will tell you
14 what a protective sweep is. Basically, it's a
15 search for a person. They look in, uh, closets,
16 under the bed, in the bathroom. They look in
17 places where someone would hide. It's called a
18 protective sweep.

19 When they did this protective sweep, they
20 didn't find a person. What they did notice is that
21 there were drugs sitting on the bathroom counter.
22 There was a small digital scale used to weigh drugs
23 sitting on that counter. They saw five guns when
24 they lifted up the bed skirt. They saw cash strung
25 about in the closet when they opened the closet.

1 Now, this raised alarm with these officers.
2 But their job wasn't to investigate drugs. You
3 know what they did? They stepped back and said
4 we've got to find the 911 caller. They left those
5 items alone and, instead, they called the narcotics
6 unit. They said there is something here that you
7 might want to check out. Go get a search warrant
8 while we look for whoever made that phone call.

9 The officers did. They looked for the cell
10 phone number, trying to look into what tower this
11 bounced off. All we know is it bounced off a tower
12 on Romney Street, not at Old Fort in West
13 Ashley. The officers went over to Romney Street to
14 still make sure.

15 Meanwhile, the reason you are here today is
16 because officers on the drug team, after they got
17 that search warrant, they looked inside that house.
18 They found the drugs that the officers saw. They
19 saw the cash that was strung about in the closets
20 and they saw the guns hiding underneath the bed.
21 But they found more. They found \$60,000 worth of
22 cocaine, \$26,000 in mostly small bills, two Glock
23 automatic handguns, one Sig Sauer automatic
24 handgun, one H&R revolver. I'll be surprised if
25 you know what this is because I didn't. They found

1 a gun called a Tec 9. All of them loaded. That's
2 why we're here today. Inventory, cash on hand and
3 security. We ran into his drug business.

4 Now, I'm going to go over what exactly the
5 defendant is charged with. I don't know if you can
6 read that, but I'm going to read it to you. It's
7 called Trafficking Cocaine. Section 44-53-370(e)
8 of our state law says that any person who knowingly
9 sells, manufactures -- and it lists a couple of
10 things -- but most importantly, it says brings into
11 this state or provides financial assistance or
12 otherwise aids, abets, attempts or is knowingly in
13 actual or constructive possession or who knowingly
14 attempts to become in actual or construction --
15 constructive possession of 10 grams of cocaine or
16 any mixture containing cocaine is guilty of a
17 felony which is known as trafficking cocaine. Like
18 I said, \$60,000 worth of cocaine. That's more than
19 two kilograms, 2000 grams.

20 He's also charged with Possession of a Firearm
21 during the Commission of or Attempt to Commit a
22 Violent Crime. Now, that's -- here's the law on
23 that. If a person is in possession of a firearm or
24 visibly displays what appears to be a firearm
25 during the commission of a violent crime -- and

1 Trafficking Cocaine is a violent crime -- and is
2 convicted of committing or attempting to commit a
3 violent crime as defined in our state law.
4 Meaning, if he possesses cocaine, he's guilty of
5 trafficking cocaine.

6 If there are guns also in his possession, he's
7 guilty of possessing those weapons while attempting
8 to commit or during the commission of that same
9 violent crime. Violent crimes listed in our state
10 statute include drug trafficking. The state
11 statute says purposes of -- definition under South
12 Carolina law, a violent crime includes the offense
13 of drug trafficking as defined in that same
14 statute, section 44-53-370(e).

15 Finally, he's charged with Possessing a
16 Firearm by a Person Convicted of a Violent Crime.
17 I'm talking about the violent crime for which he's
18 currently charged with. He, as of right now, isn't
19 guilty of that. That is the State's burden of
20 proof and we will prove that burden to you.

21 He's been charged with possessing a firearm
22 because he was previously convicted of a violent
23 crime. Now, the state law on that is it is
24 unlawful for a person who has been convicted of a
25 violent crime as defined by Section 16-1-60, that

1 is classified as a felony offense, possessing a
2 firearm or ammunition in the state. The state law
3 had already told this man not to possess a gun.
4 You know what he did? He turned around and had
5 five under his bed. Two Glocks, automatic weapons,
6 one Sig Sauer, an automatic weapon, one H&R
7 revolver, not an automatic weapon but it's a
8 revolver and one Tec 9 which can hold upwards of 30
9 rounds. They were all loaded.

10 Members of the jury, the drug business is a
11 business. He had the inventory. He had the
12 security. He had cash on hand. It was his. It
13 was in his home. The judge is going to charge you
14 later on in the trial what exactly possession is.
15 She's going to talk to you about something called
16 constructive possession. Constructive possession
17 means that the defendant had dominion or control or
18 the right to exercise dominion or control over
19 either the cocaine itself or the property on which
20 the cocaine was found. That doesn't just apply to
21 the cocaine but applies to those guns. If he had
22 the right to exercise dominion or control over that
23 property, then he is guilty and the State must show
24 that he had exercise -- he had the right to
25 exercise property, excuse me, dominion and control

1 over that property where they found it. They found
2 it under his own bed, in his own closet and other
3 places in the home as we will show. It's up to you
4 to shut his business down.

5 **THE COURT:** Thank you.

6 Mrs. Taylor?

7 **MRS. TAYLOR:** Thank you, Your Honor.

8 Good afternoon, Ladies and Gentlemen. We met
9 before lunch. Again, I'm Donna Taylor. My partner
10 Lynne Bowley and I have the honor today to be
11 appointed to represent Therron Richardson. We are
12 his counsel in this process as Judge Dennis talked
13 to you about of dispute and resolution. That's
14 what people who end up in courts of law in front of
15 a jury have, a dispute and a disagreement. There
16 are two opposing sides.

17 Now, Mr. Ferguson has told you he had a story
18 to tell you. Now a lot of people -- and maybe some
19 of you have been in court before either as jurors
20 or as participants or as witnesses or just civics
21 class and seen some of this. Most people who have
22 any, what they consider personal knowledge of
23 court, they get from TV. Let me just tell you
24 after nearly 30 years of actually practicing law in
25 courts, very little of what you see on TV has

1 anything to do with what you'll see here.

2 What happens to any citizen who is accused by
3 a government of a crime of doing something that
4 they will be more than happy to show you slide
5 shows and relevant black and white letter law of
6 what the crimes are. Let me make one thing
7 perfectly easy for you today, we're not arguing --
8 sometimes you do. Sometimes in a factual criminal
9 dispute, you argue over what is the law, what isn't
10 the law, what the facts say, what they don't say,
11 whether it's murder, whether it's manslaughter,
12 whether it's this, whether it's that. But we're
13 not arguing over a whole lot of things that they
14 are going to be telling you about and showing you
15 things and slide shows where you need witnesses to
16 talk about or facts of things that they said they
17 found in this house. There was cocaine, there were
18 guns and there were cash in that house when the
19 police found it.

20 There's going to be some other questions. And
21 the reason that Judge McDonald and Judge Dennis
22 also mentioned this, there is a process that we
23 have to follow and there are rules. Judge Dennis
24 told you that there are two judges in this
25 courtroom. Y'all create one. Judge McDonald is

1 the other. She's going to talk to you about the
2 law. She will show you, tell you, share with you,
3 as will we probably, but she is the arbitrary of
4 what is the appropriate law for you to follow. And
5 you will be guided down that every step of the way
6 even more than you want to know. You'll have it to
7 follow.

8 The big question are the facts. That is
9 entirely your purview. Now, you can come in and
10 you can talk about generalities. And of course, we
11 all know in this country and any country in the
12 world about drugs and about guns and about
13 violence. Nobody is saying that's a good thing.
14 Nobody is supporting it.

15 The question that you are to determine -- it's
16 not your job to eradicate the drug industry at all.
17 Your job today is to make them do their job. Judge
18 Dennis told you, Judge McDonald told you people
19 accused of crimes don't have a burden. Unlike some
20 countries where you can just type up something and
21 say he did something, you actually have to go in
22 and prove he didn't do it before the government has
23 to present it. That's not our process.

24 Ours is the government wants to make a claim.
25 And they did. They have to prove it and not by

1 theatrics, not by praying on fear or prejudice, but
2 by actual reliable credible evidence. That comes
3 not from there necessarily, but right there with a
4 person talking under oath and swearing to tell the
5 truth.

6 Now, sadly, that doesn't always happen. That
7 is another part of your job. You get to determine
8 whether people coming in here and telling you stuff
9 is telling the truth, whether it's accurate,
10 whether they know what they're talking about. And
11 you'll see. And you will make that determination.

12 All that we ask for and all that Therron asks
13 for is that you follow the oath that you took, you
14 don't jump to conclusions, you don't look at him
15 sitting there and say, hmm, he's got dreads, he
16 could be a drug dealer. That's not evidence.
17 That's a wrong assumption. Listen to the evidence.

18 The law is a little bit tricky in sort of a
19 small way. Was it cocaine? I'm sure they are
20 going to tell you it was. It is what it is. It
21 weighs what it is. Trafficking cocaine by the law
22 is a weight-based proof. If you have a little bit
23 of cocaine, if you have some in different baggies,
24 maybe it's a presumption that you're going to
25 distribute it. If you've got a certain weight,

1 then that's trafficking. Whether Thomas Ravenelle
2 was having a big party or whether you are actually
3 a drug dealer, it's a presumptive claim. That's
4 not going to be the question we're fighting over
5 here today. The question we're fighting is whose
6 was it. Who possessed it? Who controlled it? Who
7 put it where they found it? The same with the
8 guns. The same with the cash.

9 Mr. Ferguson and I told you a little while ago
10 it's not TV. But it is true, it is a story. There
11 was a phone call. As he's already told you that
12 that phone call, that 911 distress call of a woman
13 saying my boyfriend's fighting me, I'm hiding in
14 the bedroom. What's your address, lady? And she
15 gives his address. This address. She wasn't
16 there. It wasn't the truth. It was a lie. She
17 was downtown near Romney Street, Bayside Manor,
18 somewhere over there, not West Ashley. Miles away.
19 But that's what leads the police there. The police
20 come there.

21 Now, on one hand, Mr. Ferguson says he's a
22 drug dealer. You know why he's a drug dealer?
23 Cause he got a security system on his house. He's
24 got locks on his door. He's got all this stuff.
25 He has it because he's a drug dealer. He's got a

1 bunch of cocaine and also guns and a security
2 system.

3 What did the police find when they get there
4 after they are summoned by a ploy? A door is
5 opened. A sliding glass door is open. There is in
6 plain visible view a scale, drugs, guns. There's a
7 safe with cash on the outside of it laying on the
8 floor. There is a story to be told. Now, what we
9 ask you to do is make them tell it truthfully.

10 **THE COURT:** Yes, sir.

11 **MR. FERGUSON:** The State calls Brent Roy.

12 **THE COURT:** Sir, if you would, come forward
13 and be sworn please.

14 **BRENT ROY**

15 having first been sworn, testifies as follows:

16 **THE CLERK:** Spell your last name for the
17 record.

18 **THE WITNESS:** Brent Michael Roy. Last name
19 is spelled R-O-Y.

20 **DIRECT EXAMINATION**

21 **BY MR. KIDD:**

22 **Q** Good afternoon. Is it Officer Roy?

23 **A** Deputy Roy.

24 **Q** Deputy Roy. Uh, can you tell the jury where
25 you are employed, Deputy Roy?

1 A I'm employed at the Charleston County Sheriff's
2 Office.

3 Q And back in October of 2010, is that where you
4 were employed as well?

5 A Yes, I was.

6 Q What was your title in October of 2010?

7 A I was a crime scene investigator.

8 Q And what are the duties of a crime scene
9 investigator?

10 A Uh, process crime scenes, collect and maintain
11 evidence, certain analysis and transport evidence for
12 other agencies to do analysis.

13 Q I'll get kind of right to the point of why
14 we're here. Are you familiar with this case? It would
15 be under your case number 2010-017299?

16 A I am.

17 Q What is your involvement with this case?

18 A I took some narcotics to the City of Charleston
19 for testing.

20 Q So how does that work? How are you told to do
21 something like that?

22 A Uh, anything that comes in, anything suspected
23 of being an illegal substance is either tested in-house
24 or sent out. The only thing we test in-house is
25 marijuana. Everything else gets tested by the City of

1 Charleston. My function or my duties at the time would
2 be to take everything that came through the door, uh,
3 fill out the paperwork and take it to the City of
4 Charleston to have it tested.

5 **MR. KIDD:** May I approach the witness, Your
6 Honor?

7 **THE COURT:** You may.

8 **BY MR. KIDD:**

9 **Q** Let me show you what's been marked for
10 identification purposes as State's Exhibit number 1. The
11 bag is torn up a little bit. Do you recognize that item?

12 **A** I do.

13 **Q** And, uh, did you come into contact with that
14 item in executing your duties in October of 2010?

15 **A** I did, on the 19th.

16 **Q** On the 19th? And what did you do with it?
17 Where did you get it from? How did it come into your
18 custody?

19 **A** It was in our evidence vault, where we keep all
20 of our controlled substances.

21 **Q** Is that like a locker?

22 **A** It's a facility. It's a building. There's
23 actually two buildings on the property. This would be in
24 the front building, what we call a vault, which is kind
25 of like a bank vault.

1 Q Is that a secure area?

2 A It is.

3 Q Who all has access to that area?

4 A There's five people in the sheriff's office
5 that have access.

6 Q Five people who had access at that time. So
7 you picked up that, I think you said, uh, on the 19th ---

8 A Yes, sir.

9 Q --- you picked up that item from your evidence
10 facility?

11 A I did.

12 Q And, uh, what did you do with the items?

13 A Uh, I took it from my office to the City of
14 Charleston's narcotics testing location which is in the
15 MUSC Hospital.

16 Q Were there any signs that the evidence had been
17 tampered with at all when it came in your custody?

18 A No, there was no signs.

19 Q Do you know who brought -- what officer brought
20 that narcotic evidence to your, uh, evidence compound?

21 A Judging by the label on it, Deputy Ferguson
22 turned it in.

23 Q Okay.

24 A And that's the name on the label.

25 Q Okay. So how did he turn, uh, narcotics

1 evidence in to your facility?

2 **A** Uh, there's different ways. The most prominent
3 way is they will package it, secure it, seal it, initial
4 it and then turn it in to an evidence locker in our main
5 headquarters, which it's a lock -- it's like a locker,
6 but it's locked. They put it in there with the
7 submission paperwork.

8 The next morning, the evidence technicians go
9 up. We check them every day. We go up and take the
10 evidence out, take it back to our facility, our evidence
11 compound and we would verify what it is, assign it
12 permanent storage and then put it away.

13 **Q** And, uh, when you came into contact with this
14 evidence on October 19th, where did you take it to?

15 **A** Took it to the City of Charleston.

16 **Q** And do you remember who you gave it to?

17 **A** Mrs. Susan Moody.

18 **Q** Susan Moody? All right.

19 **MR. KIDD:** Court's indulgence. (Pause.)

20 No further questions for this witness, Your
21 Honor.

22 **THE COURT:** Thank you. Cross-examination.

23 **MRS. TAYLOR:** Thank you. Very briefly.

24 **CROSS-EXAMINATION**

25 **BY MRS. TAYLOR:**

1 Q Good afternoon, Deputy. Let me make sure I
2 understand your sole involvement here with what's in that
3 bag is you picked it up from the evidence locker at the
4 county police department?

5 A Yes, ma'am.

6 Q You had not seen it before that?

7 A I don't believe so.

8 Q And under whose direction did you do that?

9 A Again, we -- everything that comes in is
10 tested. It's an automatic -- my supervisor, that was one
11 of my positions -- one of my job titles at the time.
12 Anything that was not -- anything that was considered
13 possibly a controlled substance minus -- except -- with
14 the exception of marijuana because we test that in-house,
15 everything else would go to the City of Charleston. So
16 automatically, anytime any of that came in, I would check
17 the intake for the day. Anything that possibly fits that
18 description, I would check and then make sure it got
19 sent.

20 Q So at your own directions, part of what was
21 your job at the time ---

22 A Correct.

23 Q --- if there was something in there that needs
24 to go for analysis. And is it just substances or is this
25 all sorts of evidence? Any other items like guns, for

1 instance.

2 **A** The guns, actually we do -- we have our own
3 IBIS system.. If we get a hit on that, per say, then that
4 would go to SLED.

5 **Q** So this evidence vault, locker, building that
6 you're dealing with, is it just narcotics?

7 **A** Uh, in that particular room, there are
8 narcotics, guns, ammunition and valuables, in other
9 words, gold, money, things like that.

10 **Q** So you check a log. If something's in there
11 that needs to be tested, you take it to the appropriate
12 place?

13 **A** Correct.

14 **Q** And you don't know where it came from or the
15 circumstances associated with it?

16 **A** Other than what's on the label, I couldn't tell
17 you a lot of the times....

18 **Q** And what does that label tell you?

19 **A** This label tells me this was, uh, turned in by
20 Deputy Ferguson on the 17th of October. It was taken
21 from 1956 Old Fort Avenue, Charleston, South Carolina.
22 It has the case number, the bar code and a description of
23 the item.

24 **Q** That was my next question. So it's got every
25 -- its own little bar code is on there?

1 **A** Yes, ma'am. The bar code is assigned when it
2 comes to us. We take it out of the evidence lockers in
3 the main building and bring back -- sometimes the
4 deputies bring it to us directly. As soon as we get it,
5 it's scanned, verified what it is and then assigned
6 permanent storage.

7 **Q** And you took it to Mrs. Moody would be the next
8 link in our chain?

9 **A** Correct.

10 **Q** Thank you.

11 **A** You're welcome.

12 **MR. KIDD:** No further questions.

13 **THE COURT:** Okay. Deputy, you may step down.

14 **THE WITNESS:** Thank you.

15 **MR. KIDD:** The State calls Susan Moody.

16 **SUSAN MOODY**

17 having first been sworn, testifies as follows:

18 **THE CLERK:** Please state your full name and
19 spell your last name.

20 **THE WITNESS:** It's Susan Murray Moody,
21 M-O-O-D-Y.

22 **DIRECT EXAMINATION**

23 **BY MR. KIDD:**

24 **Q** Can you tell the jury where you're employed?

25 **A** I work for the City of Charleston Police

1 Department.

2 Q In what fashion?

3 A I'm the laboratory technician for the forensic
4 services division.

5 Q In kind of layman's terms, what does your
6 department do? What does that mean?

7 A I'm the evidence custodian. I'm responsible
8 for picking up and returning evidence. I'm also
9 responsible for reports and quality assurance.

10 Q So is that like a laboratory which you are a
11 part of it?

12 A It was in the drug lab, yes, sir.

13 Q Drug lab. So y'all do testing on drugs and
14 other evidence that comes in?

15 A Yes, sir.

16 Q Now, in regards to case number 2010-017299, do
17 you recall coming into contact with evidence from that
18 case?

19 A Yes, sir.

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

22 THE COURT: You may.

23 BY MR. KIDD:

24 Q I'm going to show you what has been marked for
25 identification as State's Exhibit number 1 for ID. Do

1 you recognize that item?

2 A Yes, sir.

3 Q Did you come into contact with that item at
4 some point?

5 A Yes, sir.

6 Q On what date did you first see that?

7 A On October 19th of 2010.

8 Q And where did you get it from?

9 A I got it from Officer Brent Roy.

10 Q And when it came into your cus -- did you take
11 custody and control of it at that point?

12 A Yes, sir.

13 Q At that point, did any of the bags appear to be
14 tampered with at all?

15 A No, sir.

16 Q Would it have come to you in that paper bag?

17 A Yes, sir.

18 Q Okay. But there would have been sort of
19 evidence bags on the inside?

20 A Uh, --.

21 Q Feel free to --

22 A Yes, sir.

23 Q And if something -- those evidence bags, are
24 they kind of like tamper-proof type bags?

25 A They are. We ask that they are sealed and then

1 initials are placed half on and half off the seal.

2 Q And was that done in this case? Can you tell?

3 A Yes, sir.

4 Q Now, if that wasn't done or those bags had been
5 tampered with in any way, what would you have done?

6 A We would not accept the evidence if it was not
7 sealed correctly.

8 Q And would you have made a note about it or
9 anything like that or just sent it back?

10 A It would not have come into our custody.

11 Q But nothing like that was evident in this case,
12 is that correct?

13 A Yes.

14 Q Okay. So they were not tampered with, I guess?

15 A Correct.

16 Q Uh, so as you just testified, on October 19th,
17 2010, Deputy Roy gave you that evidence. What did you do
18 with it?

19 A At that point, I entered it into our database
20 system, assigned it a laboratory number and placed it in
21 our safe.

22 Q So at part of CPD, you have a safe where
23 evidence that comes in, a way til it can be tested?

24 A Yes, sir.

25 Q Is that accurate?

1 **A** Yes, sir.

2 **Q** And then can you tell who, uh, the evidence
3 went to from there?

4 **A** After me, it went to Anita Moore.

5 **Q** Anita Moore? And what does she do?

6 **A** She was -- she's an Associate Criminalist.

7 **Q** A Criminalist?

8 **A** Yes, sir.

9 **Q** Does that mean she like does the testing?

10 **A** Yes, sir.

11 **MR. KIDD:** Okay. Court's indulgence.

12 (Pause.)

13 No further questions.

14 **THE COURT:** Yes, ma'am.

15 **MRS. TAYLOR:** Thank you.

16 **CROSS-EXAMINATION**

17 **BY MRS. TAYLOR:**

18 **Q** You've looked in there. There are how many
19 bags in that bag?

20 **A** How many evidence bags?

21 **Q** How many bags of -- are there -- pull them out.

22 **A** There's three evidence bags.

23 **Q** Now, when you say evidence bags, what's the
24 distinction between evidence bags?

25 **A** The outermost packaging.

1 Q I'm presuming that is because a police officer
2 has put whatever they originally brought into that?

3 A Yes.

4 Q Is that the blue color that I'm seeing?

5 A Yes, ma'am.

6 Q Yeah. Those are the bags that have been
7 sealed?

8 A Yes.

9 Q Are the original packaging or the presumed
10 original packaging still inside that evidence bag as well
11 as far as you know?

12 A Yes, ma'am.

13 Q And do you do any testing other than chemical
14 analysis to determine what the substance is?

15 A I do no analysis.

16 Q You just take it?

17 A I'm the evidence custodian.

18 Q Okay. So you wouldn't do any forensic
19 fingerprint testing or anything like that?

20 A No, ma'am.

21 Q Thank you.

22 **REDIRECT EXAMINATION**

23 **BY MR. KIDD:**

24 Q Does it appear to you that there are multiple
25 bags inside the outer packaging?

1 **A** Outer -- yes, sir.

2 **Q** So there's multiple containers inside the
3 evidence bag?

4 **A** Yes.

5 **Q** Each of those evidence bags, what we were
6 talking about before are sealed?

7 **A** Yes.

8 **MR. KIDD:** No further questions.

9 **THE COURT:** Thank you.

10 Ma'am, you may step down.

11 **MR. KIDD:** Thank you. The State calls Anita
12 Moore.

13 **THE COURT:** Okay.

14 **ANITA MOORE**

15 having first been sworn, testifies as follows:

16 **THE CLERK:** Please state your full name and
17 then spell your last name.

18 **THE WITNESS:** Anita Marie Moore, M-O-O-R-E.

19 **DIRECT EXAMINATION**

20 **BY MR. KIDD:**

21 **Q** Good afternoon, Mrs. Moore.

22 **A** Good afternoon.

23 **Q** Excuse me. Can you tell the jury what your
24 occupation is?

25 **A** At this time, I am a Crime Scene Technician

1 with the Charleston Police Department.

2 Q And in October of 2010?

3 A I was a Criminalist for the Charleston Police
4 Department, which means I worked in the laboratory.

5 Q So you worked in the -- back in October of
6 2010, you worked in the lab at CPD?

7 A Yes, I did.

8 Q Okay. What, uh, -- how long have you been
9 employed at CPD?

10 A I have worked for the Charleston Police
11 Department for about 12 years.

12 Q And when you were a chemist back in 2010, what
13 were your duties?

14 A Our duties were to analyze substances that came
15 into the laboratory for possible controlled substances.
16 We also did fire debris.

17 Q Did you receive any training to, uh, perform
18 those duties?

19 A We did. I have a Bachelors degree in Chemistry
20 from the College of Charleston. Once I did a very
21 thorough in-house training program. Shadowed a competent
22 and certified analyst. Then we have to go through a
23 period of technical reviews. Then, we are then
24 eventually allowed to perform casework.

25 Q Have you testified in court before?

1 A Yes, I have.

2 Q Have you been qualified as an expert on drug
3 analysis?

4 A Not on drug analysis.

5 Q How many times have you testified?

6 A I couldn't recall between crime scene and the
7 lab work. I would say maybe 20, 30 times.

8 Q Have you been, uh, qualified as an expert in
9 any field?

10 A Crime scene analysis.

11 Q Crime scene analysis? And does crime scene
12 analysis incorporate the drug analysis that you did,
13 would have done in this case?

14 A No, sir.

15 Q Okay. Uh, when you, uh, test drugs or cocaine,
16 specifically, that comes in, what are you doing? What
17 sort of tests are you performing?

18 A When we receive a sample, it's an unknown
19 substance. We treat it as such. We do a visual exam.
20 We also do a wet chemical test that shows us kind of
21 which direction to go. Then we do instrumental analysis
22 to determine what it is.

23 Q So you are basing on three separate tests on a
24 cocaine or a presumptive cocaine substance?

25 A Yes.

1 Q And what sort of, uh, equipment do you use for
2 that test?

3 A The first one is visual. We observe the
4 samples through a light. We put them together. We do
5 the analysis. The second test that we do is a wet
6 chemical test, which is a presumptive test. It is
7 actually a color test. We can put the sample -- the
8 chemical onto the sample. It will change a certain color
9 with the reaction and therefore it leads us to what it
10 could be and what class and what instrumentation we use.

11 For this particular sample, we used a FTIR and
12 a gas chromatograph mass spectrometer for
13 instrumentation. They are just instruments that allow us
14 to definitively determine what the sample is.

15 Q All right. And, uh, I believe you have in
16 front of you those -- what has been marked as State's
17 Exhibit number 1. Do you recognize that item?

18 A (Reviewing.)

19 Q I believe you might have had the bags on the
20 inside.

21 A Yeah. Well, I have the initials on the outside
22 as well. And we also put labels on the exterior and my
23 initials.

24 Q And does that correspond -- do you assign a lab
25 number?

1 A Yes, sir. We do.

2 Q Okay. And so whenever an item comes in to CPD,
3 at that point, it's up for drug analysis. Your lab then
4 assigns it a specific number or tracking?

5 A Yes. Once the item is received into the
6 laboratory, the technician or the person receiving it
7 will enter it into a computer system and assign it a
8 specific laboratory number.

9 Q What day did you come into contact with this
10 specific item?

11 A I received it on the 20th of October, 2010.

12 Q And can you tell who you received it from or
13 where you got it?

14 A It was probably received out of the locked
15 safe. Once the evidence comes in, the evidence custodian
16 will put it into a safe. And then -- cause we get a
17 large amount of samples or cases. Then we take one at a
18 time and work it. So I retrieve it from a safe.

19 Q And, uh, could you tell the jury what you did
20 with, uh, the samples as you described them once you got
21 control or custody of them?

22 A These particular samples -- do you mind if I
23 pull it out?

24 Q No. Help yourself.

25 A Once we open them up, we look at them to verify

1 if there's any difference in the packaging. Then, we go
2 ahead and we assign cue numbers, which is numbers to
3 signify what kind of packaging we have. From that point,
4 we do the chemical test and then take samples to do the
5 instrumental.

6 Q And, uh, I just want to --

7 MR. KIDD: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MR. KIDD:

10 Q I just want to try to clarify something real
11 quick. When you would receive -- these outer bluish
12 border bags would have been inside this bag, is that
13 correct?

14 A Yes.

15 Q And you could tell they'd been cut open now.

16 A Uh-huh.

17 Q What condition were they in when you received
18 them?

19 A When we received them, they would be sealed and
20 initialed. We look -- make sure they are sealed and
21 initials and I open them up at that point.

22 Q And so, uh, would you -- what would you have
23 done if there had been some sign of tampering with that
24 bag?

25 A If there was any sign that it was not sealed

1 properly or that it was tampered, on the intake, it would
2 have been stopped at that point. If, for some reason,
3 there was a small area, if I noticed any differences, it
4 would have been put into the case files.

5 Q But there were no such notations in the case
6 files?

7 A No, sir. There was not.

8 Q Now, those -- how many of those outer bags are
9 there? Those blue bags?

10 A I don't recall. There was three of the blue
11 bags.. They are inside of the paper bag.

12 Q Okay. And now let me get kind of -- uh, would
13 there be multiple plastic baggies or baggies containing
14 drugs inside the blue bags?

15 A Yes, there can be. We take the sample. We're
16 taking the outer container and we're going by faith that
17 what they say is in it is in it. A lot of times, what
18 will happen, once we open up the bag, even the officer,
19 the investigating officer who takes it does not know
20 what's inside of what's inside. So we will open it up
21 and there could be a plastic bag that actually has four
22 plastic bags of a substance instead of one big bag. Then
23 we itemize everything that we have.

24 Q Such an itemization occur in this case?

25 A Yes, it did.

1 Q Did you create a report on your findings in
2 this case?

3 A Yes, sir. We do.

4 Q Do you have a copy of your report?

5 A I do.

6 Q Can you tell the jury what the results of your
7 examination of State's Exhibit number 1 is?

8 A It shows that -- do you want a total or
9 individual as how I have it on the report?

10 Q Let's go through it individually.

11 A Okay. We -- I accounted for a plastic bag with
12 white powder that tested positive cocaine at 505 grams,
13 plastic bag with white powder, cocaine, 223 grams and 78
14 -- 223.78. Sorry. Plastic bag with white powder,
15 cocaine, 39.05 grams. Plastic bag with white powder,
16 cocaine, 14.07 grams. There was a plastic bag that was
17 containing four plastic bags with white powder. That
18 totaled 111.75 grams. That tested for cocaine. And then
19 a plastic bag with white powder, cocaine, 1135 grams.

20 Q Okay. So basically, uh, -- don't let me put
21 words, but basically there were nine separate bags?

22 A Yes, sir, there were.

23 Q Okay. This is all inside those three bags?

24 A Yes, sir.

25 Q Is that correct?

1 **A** Yes.

2 **Q** Uh, and in total of those nine separate bags
3 which were contained in the three evidence bags which you
4 have, you have a total weight on all the cocaine that was
5 found in there?

6 **A** I have a weight of 2028.65 grams.

7 **Q** Okay. Just so we can kind of go through, did
8 you -- do you write on the back of the bags that
9 delineate different quantities? Is that your writing?

10 **A** Excuse me. Yes, sir. We do.

11 **Q** That's kind of the same breakdown that we just
12 went through?

13 **A** Yes, sir. It is.

14 **MR. KIDD:** Uh, Court's indulgence. (Pause.)

15 **BY MR. KIDD:**

16 **Q** What do you do with the drugs once you finish
17 testing them and preparing them for court?

18 **A** Once the items have been tested and we're
19 completed with the case, we seal up the evidence the best
20 that we can. Then we put it into an evidence bag. In
21 this case, this one was an evidence bag was an outer
22 container. I was able to reseal this one. I reseal this
23 and initial it. Then it goes back into our safe until it
24 is picked up by the agency who turned the evidence in.

25 **Q** And I want to go back through the testing that

1 you do one more time.

2 A Yes, sir.

3 Q The first -- you do a color test, is that
4 right?

5 A Yes, sir. We do. We do a color test, which is
6 a presumptive test that allows us to determine what class
7 of drug it may be.

8 Q And that is like a, uh, swab or how does the
9 color test work?

10 A What we do is we have a -- they are generally
11 ceramic spot plates. We take a small amount of sample
12 from each individual sample that we have. We place it
13 into the spot plate. Then we take the chemical, it's
14 usually in a dropper bottle, and we just put a little bit
15 of the chemical onto the sample that we put into a spot
16 plate..

17 Q If it's presumptive for cocaine, will it turn a
18 certain color?

19 A Yes, sir. Once -- it's cobalt thiocyanate.
20 And we put that onto the sample. We'll get a blue. Then
21 we'll do hydrochloric acid which keeps it that same
22 color. If there's no change, then it's indicative of
23 cocaine.

24 Q And then, uh, the next test you perform, an
25 FTIR test?

1 **A** Yes, sir.

2 **Q** Can you tell the jury as best you can what that
3 is?

4 **A** The long name is, uh, Fourier Transform
5 Infrared Spectrometer. That's why we call it FTIR for
6 short. And what it does is we put a sample of our sample
7 onto a platform. Then we put a -- it runs it. And then
8 basically what happens is the energy from a laser makes
9 the molecule move around. And from that, we can tell the
10 different frequencies and we get a spectrum. Once we get
11 the spectrum, we then compare that to a known library and
12 known samples. It's like a fingerprint. It tells you
13 what that sample is that you just ran.

14 **Q** And so when you run a test on this substance
15 and you energize those particles and you get a spectrum
16 on it. You then compare that to a known spectrum for
17 cocaine or a controlled substance.

18 **A** Yes, we do.

19 **Q** Is that accurate?

20 **A** Yes.

21 **Q** In this case, that spectrum which you created
22 or you discovered on this substance matched this spectrum
23 or the known spectrum for cocaine?

24 **A** Yes, it did.

25 **Q** And the final test you performed on that

1 substance, I believe, is the GC-MS test, is that right?

2 **A** Yes, sir. If the sample on the FTIR does not
3 reach a quality that we have set, then we have to run it
4 on a secondary instrumentation. This is just to confirm.
5 That is where the sample is put into a liquid. The first
6 part of the instrument basically vaporizes the sample and
7 it goes through a long column that kind of separates out
8 what is in that sample. At the end, as they separate it
9 out at different times, it goes into another part of the
10 instrument that actually bombards it with electrons or
11 ions. And that gives you another spectrum. In between
12 the two parts of that instrument, we can match it up
13 again to known spectrum of cocaine and other items that
14 may be in it and confirm what we have.

15 **Q** And you performed that test in, I believe, five
16 of these instances?

17 **A** Yes, I did.

18 **Q** Why would you not have performed it on the 111
19 gram sample?

20 **A** The FTIR done on those samples was a match of
21 higher than 90 percent. If it has a match of higher than
22 90 percent, then we do not have to go any further and do
23 any further instrumentation.

24 **Q** So basically on that substance, the cocaine was
25 pure enough to where your level of certainty was so high,

1 you felt that -- or your protocol led you to not -- not
2 needing that final test?

3 A Right. I don't know the purity of it. It's
4 just that that sample that I had did run and the match
5 was of enough significance for our protocols test.

6 Q But on the other -- on the other four or five
7 -- excuse me -- on the other five samples that you ran
8 tests on, your protocols led you to run that final test,
9 is that correct?

10 A Yes, it did.

11 Q Did that final test confirm the presence of
12 cocaine?

13 A It does. When you ran a GC-MS, a gas
14 chromatograph mass spectrometer, there's a confirmatory
15 technique in most laboratories and from the standards
16 that are set by the organizations who accredit us. So
17 yes, it is confirmatory.

18 Q I'm going to show you what's been marked for ID
19 as State's Exhibit number 39. Do you recognize that?

20 A Yes, that is the, uh, -- a copy of the lab
21 report that we initiated at the end of the analysis.

22 Q So that's the same report that we've been
23 talking about here for the last 10 or 15 minutes?

24 A Yes, it is.

25 Q Does that report accurately reflect what you,

1 uh, -- the testings that you performed?

2 A Yes, it does.

3 Q And is that your signature at the bottom?

4 A Yes.

5 Q That was Exhibit 37 what I just put up there?

6 A 39.

7 Q 39.

8 A Yes.

9 MR. KIDD: Your Honor, at this time, the
10 State would like to introduce State's Exhibit number
11 39 into evidence.

12 THE COURT: Anything from the defense?

13 MRS. TAYLOR: No, Your Honor.

14 THE COURT: Okay. State's 39 is admitted
15 without objection.

16 (WHEREUPON, State's Exhibit 39 is admitted into the
17 record.)

18 MR. KIDD: I have no further questions.

19 THE COURT: Okay. Thank you, sir.

20 Yes, ma'am.

21 MRS. TAYLOR: Thank you.

22 CROSS-EXAMINATION

23 BY MRS. TAYLOR:

24 Q Good afternoon.

25 A Good afternoon.

1 Q Just a couple of quick things. You were asked
2 a couple of questions by the prosecutor. One was about
3 purity. I think your answer was you don't know about
4 purity.

5 A Right.

6 Q You also mentioned that you can test for other
7 substances. Were there tests done for other substances
8 or you just have that stuff and you test it enough to see
9 what it is as far as known substances?

10 A A lot of times --

11 Q Oh, I'm sorry.

12 A A lot of times when we get a sample, it
13 contains numerous other things in that sample. They are
14 called dilutants or additives. Those will show up on the
15 GC-MS spec -- spectra. We use that with the FTIR to
16 determine what we have. So there is a possibility that
17 there may be other things in the sample. But we don't do
18 qualitative reports. We don't know how much of it was
19 this versus this.

20 Q You just know that that combined mass has
21 cocaine in it?

22 A Yes, ma'am.

23 Q You have the one report which you did. I
24 understand that was your report. There's also something,
25 uh, --

1 **MRS. TAYLOR:** May I approach the witness,
2 Your Honor?

3 **THE COURT:** You may.

4 **BY MRS. TAYLOR:**

5 **Q** I'll show you. It's identified as Charleston
6 Police Department Evidence Examination Request.

7 **A** Okay.

8 **Q** I think you signed that as well at some point.

9 **A** Yes, ma'am.

10 **Q** There appears that the deputy that got it out
11 of the locker that we had heard from earlier had written
12 in what was there, numbers of bags. Are you the one that
13 corrected those initially?

14 **A** Yes.

15 **Q** And that's what you just explained to us?

16 **A** Right. When we have something come in, they
17 have to give us a description. But sometimes, it needs
18 to be altered.

19 **Q** What the original officer that had it, he had a
20 certain number of things. And as you took them out of
21 the bags, you put the correct numbers?

22 **A** Yes, ma'am.

23 **Q** And initialed with your initials inside?

24 **A** Yes, ma'am.

25 **Q** Do you know anything about the source of the

1 drugs?

2 **A** No, ma'am. I don't.

3 **Q** You do any forensic testing on the original
4 bags that the drugs were found in for fingerprinting or
5 identifications of any kind?

6 **A** Not that I recall. The only thing I did
7 testing on is what was here.

8 **Q** This substance?

9 **A** Yes.

10 **Q** Thank you.

11 **A** You welcome.

12 **MR. KIDD:** No further questions.

13 **THE COURT:** Okay. Ma'am, you may step down.

14 **THE WITNESS:** Thank you.

15 **MR. FERGUSON:** Marian Cousino.

16 **THE COURT:** Good afternoon. Ma'am, if you'll
17 come forward and please be sworn in.

18 **MARIAN COUSINO**

19 having first been sworn, testifies as follows:

20 **THE CLERK:** Be seated. Speak into this mic.
21 You got to get kind of close to it. I need you to
22 state your full name for the record and then spell
23 your last name.

24 **THE WITNESS:** It's Marian Jane Cousino. Last
25 name is C-O-U-S-I-N-O.

1 DIRECT EXAMINATION

2 BY MR. FERGUSON:

3 Q I've been calling you Casino.

4 A I'm used to it.

5 Q You ever testified before?

6 A No, sir.

7 Q No. We're just going to have a conversation.

8 I just ask you to speak up. I just have a couple of

9 questions. Okay?

10 A Okay.

11 Q Where do you work?

12 A Charleston County Dispatch.

13 Q Dispatch?

14 A Uh-huh.

15 Q And how long have you done that?

16 A Six years.

17 Q What are the duties of your occupation?

18 A It really depends on what position you're in.

19 Q Your position. What are the duties of your
20 position?21 A Right now, I'm medical and fire radio. So I
22 have to make sure the right resources go to the correct
23 location and that anything else they need after they get
24 on the scene, I make phone calls and get it to them.

25 Q Were those your duties in October of 2010?

1 A No, at that point, I was a call taker. My
2 duties were to answer any 911 or administrative phone
3 lines in an appropriate time period and get or call
4 whatever help they needed.

5 Q So if someone called 911, you may have picked
6 up the phone?

7 A Yes, sir.

8 Q Uh, as a part of your duties, did you have an
9 occasion to answer a 911 call, uh, from a woman around
10 11:09 a.m. on October 17th, 2010?

11 A Yes, sir.

12 Q Uh, now when someone calls 911, how is that
13 call recorded?

14 A Any phone call that we take is actually
15 recorded as soon as we pick up the phone line.

16 Q You mean like audio recording?

17 A Yes.

18 Q Like a voice recording of what's going on?

19 A Yes.

20 Q It's also recorded in the computer system?

21 A Yes.

22 Q And who makes the notes in the computer system?

23 A The call taker or the dispatcher after the call
24 is put in.

25 Q So that call you answered on October 17th,

1 2010, you were the one that entered in the numbers and
2 the notes and everything?

3 A Yes, sir.

4 Q Is that called a CAD report?

5 A Yes, sir.

6 Q Okay. You know what CAD stands for?

7 A Computer Aided Dispatch.

8 Q Oh, okay. So computer dispatch. Okay.

9 A Uh-huh.

10 Q Automated. Computer automated dispatch. It
11 makes perfect sense.

12 A Uh-huh.

13 Q I'm going to show you --

14 MR. FERGUSON: Your Honor, if I may approach.

15 THE COURT: Okay.

16 BY MR. FERGUSON:

17 Q I'm going to show you what's been marked as
18 State's Exhibit 40 for identification purposes. Do you
19 recognize that?

20 A Yes, sir.

21 Q What is it?

22 A It's the CD of the audio recording of the phone
23 call that I took.

24 Q How do you recognize this disk?

25 A I dated and initialed it.

1 Q That's your initial right there?

2 A At the very bottom, yes, sir.

3 Q At the very bottom right there. And you dated
4 it as well?

5 A Yes, sir.

6 Q So you listened to what was on this disk?

7 A Yes, sir.

8 Q Does it fairly and accurately depict events
9 that occurred on that date?

10 A What I heard is the phone call. Yes. That was
11 it.

12 MR. FERGUSON: Your Honor, if I may publish
13 this?

14 MRS. TAYLOR: No objection.

15 THE COURT: No objection.

16 MR. FERGUSON: Oh, I'm sorry. I didn't move
17 it into evidence. At this time, I'd like to move
18 this Exhibit, State's 40 into evidence.

19 THE COURT: Thank you. State's 40 is
20 admitted without objection and you may publish it.

21 MR. FERGUSON: Thank you. I got ahead of
22 myself.

23 THE COURT: That's okay.

24 (WHEREUPON, State's Exhibit 40 is admitted into the
25 record and published to the jury.)

1 BY MR. FERGUSON:

2 Q Does the call end at that point?

3 A Yes, sir.

4 Q Did you end that call?

5 A No. She did. She disconnected.

6 Q The caller disconnected the call?

7 A Right.

8 Q Now, you said that a CAD report is also used to
9 record 911 calls. Is that right?

10 A Yes. It's the written form of this.

11 Q The written form of what we just heard?

12 A Of the notes and the time stamp, yes.

13 Q Oh, so it also has notes and time stamps?

14 A Uh-huh.

15 Q I'm showing you what's been marked for
16 identification purposes as State's Exhibit 41. Do you
17 recognize that?

18 A Yes, sir.

19 Q What is that?

20 A This is the CAD report from that incident.

21 Q That incident we just heard?

22 A Yes, sir.

23 Q And who filled out the information on this
24 sheet?

25 A The call taker. I did.

1 Q You did?

2 A Yes, sir.

3 Q Does it accurately reflect the events that
4 occurred on November -- excuse me -- October 17th, 2010?
5 That phone call?

6 A Yes, sir.

7 MR. FERGUSON: Your Honor, at this time, I'd
8 like to move State's Exhibit 41 into evidence.

9 MRS. TAYLOR: No objection.

10 THE COURT: State's 41 is admitted without
11 objection.

12 (WHEREUPON, State's Exhibit 41 is admitted into the
13 record.)

14 BY MR. FERGUSON:

15 Q Taking a look at that CAD report, what time did
16 the caller call 911?

17 A The line was picked up at 11:09:07.

18 Q 11:09:07?

19 A Yes, sir.

20 Q And what time did a unit, uh, dispatch to the
21 address?

22 A The first unit was assigned at 11:15:13.

23 Q What address did that unit go to?

24 A To Old Fort Avenue.

25 Q Old Fort Avenue. Now, can you tell what

1 number the caller called from on this report?

2 **A** The number that's listed in here, up here, it
3 was actually something changed by the dispatcher. But
4 the number I have is a 901 area code which means the
5 phone line was disconnected. There was no number to call
6 back.

7 **Q** How do you call on a disconnected phone? What
8 does that mean that the phone was disconnected?

9 **A** It's an old cell phone that the cell phone plan
10 was actually canceled. But because of the law, the cell
11 still has emergency call out. They can call 911 on it
12 even though you can't use it for general everyday use.

13 **Q** So I could pick up a cell phone that has no
14 minutes on it or isn't activated by Verizon or Sprint or
15 whomever and I can still call 911?

16 **A** Yes, sir.

17 **Q** So the call -- that's what the caller did with
18 this phone?

19 **A** Yes, sir.

20 **Q** Do you know what an ANI/ALI address is?

21 **A** Yes, ANI/ALI is an automatic number. ALI is an
22 automatic location indicator. It's almost like a GPS for
23 where your phone line is hitting. Automatic number is
24 whatever number you're calling from if it registers an
25 automatic address location.

1 Q So an ANI/ALI --

2 THE COURT: Will you spell that for us
3 please?

4 MR. FERGUSON: It's A-N-I, slash, A-L-I.

5 THE COURT: Thank you.

6 BY MR. FERGUSON:

7 Q So the ANI/ALI address will show where the call
8 came from?

9 A Yes, if it registers.

10 Q Did the ANI/ALI address, is it registered on
11 this CAD report?

12 A No, sir. Unfortunately, it didn't register for
13 that.

14 Q It did not register for this ---

15 A Particular call, no.

16 Q --- particular call. So we're unable to
17 determine where the caller was according to this sheet?

18 A According to this sheet, no.

19 Q Unable. Okay. Uh, I already asked you when a
20 unit dispatched and you said 11:15 and 13 seconds, right?

21 A Yes, sir.

22 Q What time did a unit arrive according to your
23 CAD report?

24 A The first unit that arrived was at 11:24:59.

25 Q So the first unit that arrived was at 11:24.

1 Okay.

2 **MR. FERGUSON:** Court's indulgence.

3 No further questions. Thank you. Please
4 answer any questions the defense may have.

5 **THE COURT:** Thank you.

6 Cross-examination.

7 **MRS. TAYLOR:** Thank you.

8 **CROSS-EXAMINATION**

9 **BY MRS. TAYLOR:**

10 **Q** You have the report there in front of you?

11 **A** Yes, ma'am.

12 **Q** A few questions for you. I'm looking at page
13 1.

14 **A** Uh-huh.

15 **Q** As I understand, you are sitting in a room.
16 Are you looking at a screen? Do you have a screen in
17 front of you? Computer?

18 **A** We have three computer screens and then two
19 phone screens.

20 **Q** You are handling one call at a time?

21 **A** Yes, ma'am.

22 **Q** So the phone rings. You pick it up. We mostly
23 heard what happened there. And then how is this report
24 generated? Are you filling it out or is the computer
25 filling it out as it's happening or are you typing in

1 these things?

2 A When I pick up the phone line, most -- some of
3 the information is already put in, like, the phone number
4 which has a 901 area code here. That's automatically put
5 in by the system. Every phone line if it's on 911 should
6 have that. Everything after that, her name and any notes
7 that I type in, I'm physically putting in.

8 Q In this case, where it says in the middle of
9 that first page, caller's name, you typed that?

10 A Yes, ma'am.

11 Q But do I understand you that the call back
12 number was put in --

13 A After I had completed the call. That was a
14 phone number that was found on the side of a van outside
15 of the residence.

16 Q I got you.

17 A The dispatcher put it in.

18 Q So that was not necessarily the phone number
19 for the cell phone that was deactivated that was used to
20 make this call?

21 A No, that wasn't the number that was on there.

22 Q And for instance, on that first page 1, first
23 column, fourth box down, it says problem semicolon. Do
24 you fill that in or does the computer?

25 A I fill that in.

1 Q What is that?

2 A It's the problem nature code. Each protocol
3 that we have is listed differently. This one happened to
4 be a domestic from what she told us with the boyfriend.

5 Q So 114 is your code number for ---

6 A Yes.

7 Q --- domestic physical abuse?

8 A Yes, ma'am.

9 Q And then the address?

10 A Yes, ma'am. That was input by me as well.

11 Q As it was told to you by her?

12 A Yes, ma'am.

13 Q Now, there was also some conversation about
14 this address. Is that the same thing as triangulation,
15 finding the source of a call made?

16 A The ANI/ALI?

17 Q Uh-huh.

18 A Uh, it can be. The ANI/ALI that we had
19 actually didn't hit in this area.

20 Q What does that mean in plain terms?

21 A The cell phone GPS did not hit in -- it didn't
22 show her to be at Old Fort Avenue.

23 Q Where did it show her to be?

24 A Downtown off of North Romney.

25 Q Any idea how far the distance is between the

1 house where the person said they were and the police
2 responded to?

3 **A** It's roughly 10 to 20 minutes depending on how
4 you drive.

5 **Q** Did you -- when did you know that? Are you
6 looking at a screen that shows you that information while
7 you're having this conversation?

8 **A** Yes. The phone screen that we have has the
9 automatic locator. That actually shows on a map where
10 the cell phone is hitting. It actually showed it hitting
11 downtown off North Romney.

12 **Q** Obviously, what do you do when you are doing
13 this kind of stuff would be quite stressful, taking phone
14 calls, you have long hours that you're doing it,
15 repetitive, one after another, but you're trying to help
16 people?

17 **A** Yes, ma'am.

18 **Q** When you were on this particular call, when did
19 you notice that information that the caller that's
20 talking to you saying this stuff is happening at this
21 house is in the house? When did you know that?

22 **A** When I looked up on the phone screen and saw on
23 the map that she was heading downtown.

24 **Q** Was that while she was still on the line with
25 you or after she had disconnected the call?

1 A While she was on the phone line with me.

2 Q Did you ask her anything about that?

3 A There is sometimes where we could have a call
4 hitting off of Rivers Avenue and it would actually be in
5 Goose Creek off of Foster Creek Drive in a totally
6 different county.

7 Q So at that point in time, you were still
8 focusing on maybe this is real and let me see if I could
9 talk her through it?

10 A Yes, ma'am.

11 Q And then you went through as well the times of
12 arrivals. I think -- let's see. Page 1 also says time
13 call taken completed. It seems to indicate 11:12:03?

14 A Yes, ma'am.

15 Q And that would be when she hangs it up?

16 A Yes, ma'am. And when I also disconnect.

17 Q And so within 12 minutes of that happening,
18 officers are on the scene, is that right, 11:24?

19 A Yes, ma'am.

20 Q Okay. Now, we also hear reasonably well her
21 communicating to you what she wanted you to believe in
22 order to have cops sent to that house, that there was a
23 struggle of some type. She says something about waking
24 up that morning.

25 A Uh-huh.

1 Q Fighting with my boyfriend. He's trying to get
2 in. You can hear her talk. Could you ever hear anything
3 else?

4 A Nothing.

5 Q Nobody else, any sound of someone hitting the
6 door or trying to turn the knob?

7 A No, ma'am.

8 Q You asked her at one point whether this person,
9 who we now know wasn't there, had access to a weapon and
10 the woman said no.

11 A She said I don't know.

12 Q Is there anything else that you did other than
13 what we already all talked about? Were you involved with
14 when the police called back and gave this other number
15 that they got off of the truck that was in the driveway
16 at the house? Did you take that and log that in?

17 A I took the phone call where the city dispatcher
18 advised that she would have her officers check where the
19 cell phone was actually showing to have hit at.

20 Q So they sent police officers down the street to
21 see if they could find the caller?

22 A Yes, ma'am.

23 Q And there's one other thing on page 3 under, I
24 guess these are the comments you were telling us about
25 you would have typed in. It looks like the first set as

1 to location, that's the callback number to this 911. Do
2 you see that?

3 A Yes, ma'am.

4 Q Is that 911-143-4620, is that any kind of known
5 number or is that just a generic number that's used when
6 it's disconnected?

7 A It's a generic number that's used on a
8 disconnected cell phone.

9 Q And again where it says problem description,
10 you have typed in domestic between girlfriend and
11 boyfriend?

12 A Yes, ma'am.

13 Q And then on page 4 and page 5 of this report,
14 that's still information -- are you actually still on the
15 phone with them when this stuff is happening? It's
16 talking about down -- sort of jump through to the lower
17 part where it says 11:21:13. Backup means there's
18 officers coming. It looks like 11:28 is when they get
19 this response. Are you still listening to the phone and
20 hearing this stuff or how does this get generated?

21 A No, that is actually the initials for the radio
22 dispatcher.

23 Q Okay.

24 A It was the radio dispatcher that was getting
25 information from her units on the scene.

1 Q So there's an overlay of this report where it's
2 your stuff. And once the call, your 911 call was
3 disconnected, you are sort of done with that and then
4 dispatch is still sort of picking up, correct?

5 A Yes, ma'am.

6 MRS. TAYLOR: Court's indulgence just one
7 second. (Pause.)

8 BY MRS. TAYLOR:

9 Q So page 4 of this stuff that I just asked you
10 about, you wouldn't know, where it says 10/17/2010,
11 11:21:13 response whatever, you didn't have any part do
12 with any of that?

13 A No.

14 MRS. TAYLOR: Thank you.

15 THE COURT: Thank you.

16 Any redirect?

17 MR. FERGUSON: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. FERGUSON:

20 Q You said that when you looked up at the screen,
21 you saw that the call triangulated off of Romney Street?

22 A Yes, in the middle of an apartment complex.

23 Q So the call that was triangulated was not at
24 Old Fort?

25 A No, sir.

1 Q Why didn't you just say, hey, this is a bogus
2 call, don't do that?

3 A That's not what we were trained to do. We take
4 every call like it's an actual real call.

5 Q Did you believe it was an actual call?

6 A I honestly can't recall.

7 Q You can't recall? Now, when a phone call hits
8 off of Romney Street tower, does that mean that call has
9 to come from Romney Street?

10 A No, not necessarily.

11 Q Explain that.

12 A Uh, the newer phones have what we call a
13 wireless, a GPS chip that hits right within 100 yards of
14 where you're actually at. The older phones are wireless.
15 They do not have the GPS chip. They can hit completely
16 in a different county. It depends on whatever cell tower
17 they actually manage to get on.

18 Q So some cell phones could hit off a different
19 county's tower and be from somewhere else?

20 A Yes, sir.

21 Q Be calling from somewhere else?

22 A Yes, sir.

23 Q So is that why you check every call and send a
24 unit to a house when they request 911 even if the cell
25 phone tower doesn't hit?

1 **A** Yes, sir.

2 **Q** Uh, also on page 5 of the CAD report, that
3 first line, 10/17 at 11:44 and 33 seconds, it says having
4 -- CPD OP9 having her officer on scene at 102 Romney to
5 see if she could find another cell phone and call to see
6 if it was disconnected. Does that show that all their
7 officers went to Romney Street to look for a person?

8 **A** They either went there or they were actually
9 already there for a prior, for another existing call.

10 **Q** So police were already at Romney Street?

11 **A** Yes, sir.

12 **Q** So a caller could have been at Old Fort
13 and the cell phone showing it came from Romney Street?
14 That is possible.

15 **A** Yes, sir. It depends on whether it was
16 wireless.

17 **Q** All right. Thank you.

18 **THE COURT:** Okay.

19 **RE CROSS-EXAMINATION**

20 **BY MRS. TAYLOR:**

21 **Q** Let me ask that question slightly different. Is
22 it possible that the woman who made this phone call was
23 downtown where the light indicated on the computer the
24 phone was coming from and it was a ploy and there was no
25 one in that house that --

1 **MR. FERGUSON:** Your Honor, she asked --

2 **MRS. TAYLOR:** It's compound, but it's --

3 **THE COURT:** Okay. Overruled.

4 **THE WITNESS:** It's quite possible, yes,
5 ma'am, that she could have been downtown.

6 **THE COURT:** Thank you. Okay.

7 Ma'am, you may step down. Now you can say you
8 testified before. You don't have to be nervous.

9 **THE WITNESS:** Thank you.

10 **THE COURT:** You're welcome. Thank you.

11 Ladies and Gentlemen, I think we may have run
12 out of witnesses for the day.

13 Is that correct?

14 **MR. FERGUSON:** We have, Your Honor.

15 **THE COURT:** Whenever they are running this
16 efficiently, I don't fuss at them for that. So we
17 will see y'all back at 10:30 in the morning because
18 I have that prior competency matter to address. As
19 I indicated earlier, please do not discuss the case
20 with anyone, even each other or anyone at home. And
21 please don't do any independent research or try to
22 Google anything or look for these various locations
23 on the map or read any coverage, if -- should there
24 be any. I don't know if there will be any or not.
25 I appreciate that. I hope y'all have a good

P R O C E E D I N G S

(WHEREUPON, the Court resumed on the 14th day of November, 2012.)

THE COURT: Anything we need to take up?
Oh, please be seated everybody.

MR. FERGUSON: I apologize, Your Honor.

THE COURT: Oh, no problem. I just got back.
I wanted to see if y'all need to consider anything before I brought the jury in. Anything we need to deal with. Okay. Well, they are all here. So whenever y'all are ready...

MR. FERGUSON: We're ready.

THE COURT: You're ready? All right.

MR. FERGUSON: Yes, ma'am.

THE COURT: Let's bring them in. Thank you.

(WHEREUPON, the jury enters at approximately 10:42 a.m.)

THE BAILIFF: The jury is present, Your Honor.

THE COURT: Thank you, sir.

Good morning, Ladies and Gentlemen. I hope you had a nice evening. We finished our earlier matter. I appreciate your patience. We are ready to continue with the trial.

Mr. Ferguson?

1 **MR. FERGUSON:** Thank you, Your Honor. The
2 State calls Officer Jason Bowen.

3 **JASON BOWEN**

4 having first been sworn, testifies as follows:

5 **THE CLERK:** Sir, for the record, if you will,
6 please state your name spelling your last name.

7 **THE WITNESS:** Thank you. My name is
8 Detective Jason Bowen. That's B-O-W-E-N.

9 **DIRECT EXAMINATION**

10 **BY MR. FERGUSON:**

11 **Q** Good morning, Detective Bowen.

12 **A** Good morning.

13 **Q** Where do you currently work?

14 **A** I work for the Charleston County Sheriff's
15 Department.

16 **Q** And how long you been there?

17 **A** I've been there 10 years.

18 **Q** What are your current duties?

19 **A** My current duties, I'm assigned to the
20 detective division. I'm in charge of the county sex
21 offender registration.

22 **Q** Were those your duties on October of 2010?

23 **A** No, they weren't. I was assigned to routine
24 uniform patrol.

25 **Q** You were a patrol officer?

1 A I was.

2 Q And what are the duties of a patrol officer?

3 A Patrol officers are to answer calls for service
4 and proactively seek out basically any criminal activity,
5 traffic offenses and such.

6 Q You said those were your duties as a patrol
7 officer in October 17th, 2010?

8 A That's correct.

9 Q Is that Charleston county?

10 A Yes.

11 Q Did these duties bring you to Old Fort
12 Avenue on that date?

13 A It did. We received a call for service. I was
14 dispatched to that address.

15 Q Is that address also in Charleston county?

16 A Yes, it is.

17 Q What, if anything, occurred that brought you to
18 that address?

19 A The dispatch dispatched us to a domestic in
20 progress call.

21 Q All right. Had you ever responded to a call of
22 that nature before?

23 A Yes, many times.

24 Q And what's your main goal when responding to
25 that type of call?

1 **A** Our primary goal in responding to that type of
2 call is both officer safety as well as safety for any
3 victims and/or other persons on the scene, be it children
4 or witnesses.

5 **Q** Were you the only officer that was responding
6 to that scene?

7 **A** No. I was dispatched with, uh, Deputy
8 Alexander and later Deputy Jason -- and I can't remember
9 his last name.

10 **Q** Jason Riley?

11 **A** Riley. Thank you.

12 **Q** Now, what did you do when you got to the scene
13 in this case?

14 **A** In this case, Deputy Alexander and I had
15 arrived at about the same time which is generally
16 practiced what we do for domestic calls, we try to make
17 sure two officers are there for officer safety. Once we
18 arrived on scene, made contact with each other, we
19 approached the residence.

20 **Q** And you approached -- what part of the
21 residence did you approach?

22 **A** I approached heading towards a front door
23 initially.

24 **Q** All right. Were there any cars in the driveway
25 or in the front yard?

1 A I do remember some vehicles in the driveway.

2 Q All right. I'm going to show you what's been,
3 uh, entered in evidence as State's Exhibit 2 right there
4 on the screen. Do you recognize that photo?

5 A Yes, it was a pickup truck in the driveway that
6 day.

7 Q That was in the driveway of Old Fort?

8 A Yes.

9 Q When you got to the house, did you approach the
10 front door?

11 A I did.

12 Q Did you knock on the door?

13 A I believe so. I don't completely remember as
14 it was two years ago. But it's typically what we do.

15 Q Did you, uh, -- is that a common practice when
16 you reach someone's home you just knock on the door?

17 A Initially on a domestic type call, we'll listen
18 first to see what, if anything, we can hear to see what
19 we might be going into.

20 Q For your safety?

21 A Correct.

22 Q Did you have a uniform on at that time?

23 A Yes. I was in my uniform.

24 Q Did you arrive in a patrol car?

25 A Yes. I arrived in a marked Charleston County

1 patrol car.

2 Q And the car was marked as we would typically
3 know as a police car? Sirens and painting.

4 A Had lights on the top, stars and strips on the
5 side.

6 Q I understand. When you approached the front
7 door, did anything seem unusual to you?

8 A Yes. I noticed on the front door instead of
9 having a doorknob, it was a deadbolt type of mechanism
10 with a key entry. The only way that you could open that
11 door is if you had a key for that deadbolt.

12 Q I'm going to show you what's been marked as
13 State's Exhibit 3. Is this the house that you responded
14 to?

15 A Yes, it is.

16 Q And State's Exhibit 4. Is that how you verify
17 that you were at the correct address by seeing the 1956
18 on the house?

19 A On the house, that's correct.

20 Q I'm going to show you what's been marked as
21 State's Exhibit 5. What is that?

22 A That is the front door of that residence.

23 Q All right. And what were you talking about,
24 the door?

25 A Where the doorknob should be or would normally

1 be, there is a deadbolt.

2 Q All right. So there's no doorknob. It's just
3 a deadbolt key system?

4 A That's correct.

5 Q Now, what happened after you had realized that
6 the door was in that fashion?

7 A Well, looking at the door, I became a bit more
8 concerned, especially since we were going to a domestic
9 call. The background with domestic calls, somebody -- I
10 initially felt that somebody may be using this door to
11 control somebody else. Some deadbolts you can only open
12 from both sides if there's a key on either side. If that
13 were the case, you could literally lock somebody in this
14 house and they couldn't get out or nobody else could get
15 in without that key. It being as unusual as it was, I
16 became more concerned.

17 Q When you say domestic call, is that because
18 this was at a residence or a domicile of someone's house?

19 A No, it was because the nature of the call that
20 we were dispatched to was a domestic violence call.

21 Q I see. Where was -- you said Deputy Alexander
22 was also with you?

23 A Yes.

24 Q Where was he?

25 A I know he had initially approached with me. In

1 typical fashion, I don't believe he would have approached
2 all the way up to the front door. We use a method called
3 contact cover. I was the contact officer. He would have
4 stayed slightly back or off to the side as a cover
5 officer should I need backup or any type of intervention.

6 Q I see. Let me take one more step back. What
7 information did you have that this was a domestic call?

8 A The dispatch, radio dispatch call had come out
9 that there was an active domestic violence situation in
10 progress, that a female had called, that she had some
11 type of physical altercation.

12 Q So you didn't get any information as to if this
13 woman lived at that house?

14 A No.

15 Q You didn't get any information as to whether
16 this woman had a child in common with her aggressor?

17 A No.

18 Q Okay. Now, when you and Deputy Alexander went
19 to this, you said a back door or what kind of -- where
20 did you and Alexander go?

21 A Well, once no contact was made at this front
22 door and it appeared secure, then, as is typical, we
23 started to work our way around the house with -- as you
24 saw in the picture, he went around the left side. I went
25 around the right side. As I did, I noticed the truck in

1 the driveway. I saw a side door coming out of the house,
2 as would be typical for that type of house. It also had
3 the same type of lock on it. It didn't have a doorknob,
4 but it had a deadbolt, which just kind of heightened my
5 concern. Again, we couldn't make any contact. We met at
6 the rear door which we had discovered was actually open.
7 It was a sliding glass door.

8 Q All right. I'm showing you what's been marked
9 as State's Exhibit 6. Is that the glass door that you're
10 talking about?

11 A Yes, it is.

12 Q Was it open like that when you approached?

13 A No.

14 Q How was it?

15 A It was opened, I would say, six to eight
16 inches.

17 Q All right. And is that the door that you
18 entered the house through?

19 A Yes, it is.

20 Q And why did you enter that house?

21 A We entered the house because of the nature of
22 the call. I believe I remember the dispatcher telling us
23 that the female had locked herself inside of a bathroom
24 to keep herself away from her aggressor. On a domestic-
25 type situation, our thought process is that we have a

1 victim. Once we found an unsecured door, we then --
2 since it was a domestic call, we didn't know if it was
3 somebody who was either still actively attacking somebody
4 or somehow controlling them or threatening them. And so
5 for that victim's safety and our safety, we had to clear
6 the residence and make sure everything was safe inside.

7 Q So you went in there to look for a person?

8 A We did.

9 Q Did you go in there to look for a victim?

10 A Yes.

11 Q Did you go in there to look for a perpetrator
12 or somebody?

13 A Possibly, yes.

14 Q Uh, where did you look?

15 A We looked in each one of the rooms. We swept,
16 uh, initially two bedrooms and a bathroom. We opened the
17 door. Nobody was in the bathroom. We checked the common
18 areas of the house, the kitchen. We went in the master
19 bedroom, master bathroom.

20 Q Did you look behind the shower curtain ---

21 A Yeah.

22 Q --- of the bathrooms? Did you look in closets?

23 A Yes, we did.

24 Q Did you look in drawers?

25 A No.

1 Q Did you look in coat pockets?

2 A No, we didn't.

3 Q Did you look in book bags or luggage bags?

4 A No.

5 Q Why not? Why didn't you look in there?

6 A We -- on doing a protective sweep, you're
7 looking for a person. So you're only concerned with
8 where a person could be.

9 Q All right. Now, when you were doing that
10 protective sweep looking for a person, did you come
11 across anything else unusual?

12 A Yes, we did.

13 Q What did you come across?

14 A As we entered the master bedroom and entered
15 the master bathroom, we noticed on the bathroom counter
16 some white powder, what appeared to me to be possibly
17 cocaine residue.

18 Q Let me stop you right there. I'm going to show
19 you what's been marked as State's Exhibit 7. You saying
20 in the master bathroom. Is that how the master bathroom
21 appeared on October 17th, 2010?

22 A Yes.

23 Q Tell us what you observed when you did the
24 protective sweep.

25 A Uh, you can see in the -- initially, we went in

1 -- again, not concerned with anything that's laying
2 around. We checked the shower, which would have been off
3 camera to the left, to make sure nobody was standing in
4 the shower. Obviously, nobody was in here. As you can
5 see, all the things laying on the counter, the bottom
6 right hand corner is a scale, a very small scale.

7 Q Is this what you're referring to right here at
8 the bottom right?

9 A I can't really see your pointer.

10 Q You want to stand up?

11 A The bottom right-hand corner right here is a
12 scale. It does have a flip top cover. It was flipped
13 open. There was some white powder residue on that scale.

14 Q I'm going to show you what's been marked as
15 State's Exhibit 8 as well. Is that also -- is this the
16 same like a closer shot of what you saw?

17 A Yes. This is the actual scale itself. Now,
18 this was after the search warrant had been done
19 apparently. You can see that it's blue. That's from
20 where the powder on the scale had turned blue as a result
21 of the testing that was done on it.

22 Q And that was in the bathroom, the master
23 bathroom ---

24 A Yes.

25 Q --- you said. And where else did you look and

1 find anything unusual?

2 **A** Uh, when we went in the master bedroom, we
3 looked in the closet. There was a safe. It's not usual
4 for a safe to be in a closet. But outside the safe was a
5 significant amount of cash just kind of spilled out on
6 the floor and the safe was closed. As we sweep the rest
7 of the master bedroom, I noticed another open bag, money-
8 type bag with cash inside of it laying on the floor.

9 Then when we looked under the bed, we always
10 sweep under the bed to make sure nobody's hiding under
11 there. We noticed several pistol firearms. They were
12 laid out in a line. Very specifically laid there. So it
13 was kind of unusual to see -- the way the cash was
14 spilled out of the safe reminding me as if somebody had
15 just grabbed some and ran.

16 **Q** I'm showing you what's been marked as State's
17 Exhibit 17. Is that the bedroom that you entered into?

18 **A** Yes. That's the master bed.

19 **Q** And State's Exhibit 18. Is that just a closer
20 picture of the bedroom?

21 **A** Yes.

22 **Q** And I'm going to show you what's been marked as
23 State's -- and you'll have to excuse me for just a second
24 -- State's Exhibit 21. Are those the pistols that you
25 are referring to?

1 A Yes, laying under the bed. They were right at
2 the edge of the bed. As soon as we lifted up the dust
3 ruffle, they were right there.

4 Q In the back of that picture, behind those guns,
5 it looks like there is a container back there.

6 A Uh-huh.

7 Q Did you notice that container when you first --

8 A No, not at the time.

9 Q You didn't notice that container at all?

10 A It wasn't a person.

11 Q It wasn't a person. I'm going to go on and
12 show you what's been marked as State's Exhibit 28. You
13 said you looked in the closet of the master bedroom?

14 A That's correct.

15 Q I'm sorry. That's not State's Exhibit 28.
16 That is State's Exhibit 33. Is this the closet that you
17 are referring to?

18 A Yes.

19 Q I'm going to show you State's Exhibit 34. Is
20 that another shot of the closet?

21 A Yeah.

22 Q I'm also going to show you State's Exhibit 28.
23 Is this what you were talking about, the safe and the
24 cash?

25 A Yes. That was the safe on the floor just

1 inside the door and the money outside of it.

2 Q And is that how it appeared on December --
3 excuse me, October 17th, 2010?

4 A Yes, it was.

5 Q I'm going to show you what's been marked as
6 State's Exhibit 29. Is that another shot?

7 A Yep.

8 Q And it's the same cash in front of that safe?

9 A It's the same.

10 Q Now, as a result of coming across these things,
11 what did you do?

12 A Once we noticed it and I kind of took note of
13 it and continued the protective sweep, once we made sure
14 that no one was in the house, either perpetrator or
15 victim, uh, we stopped. Deputy Alexander and I kind of
16 made contact with each other and basically talked about
17 what we saw and I notified my sergeant, which was, at the
18 time, Sergeant York, to let her know that primarily the
19 residence was secure, that we didn't have any victims or
20 suspects on scene and also let her know what else that we
21 had seen. Did your search ever switch from finding a
22 person to looking for drugs?

23 A No.

24 Q Did your search ever switch from looking for a
25 person to looking for guns?

1 A No.

2 Q After you realized that there wasn't anyone in
3 that house, did you continue to search for a person?

4 A No, because we had realized that no one was in
5 the house. That's when the truck in the driveway
6 particularly came into play. I started relaying
7 information about the truck to dispatch to see if we
8 could get any more, any further information about the
9 person, about any possible victims or suspects.

10 Q So you were looking for a victim that may have
11 been elsewhere?

12 A Correct.

13 Q To see if the victim had been taken somewhere?

14 A Yes. We later learned that the original call,
15 though they gave us this address, this correct address,
16 the original call had come from a cell phone that had
17 somehow been traced back to a tower in the peninsula
18 area.

19 Q Okay. So you continued to look for a potential
20 victim in other areas?

21 A Correct.

22 Q Even after?

23 A Yes.

24 Q Now, were you able to make contact with someone
25 who had identified themselves as Therron Richardson?

1 **A** Ultimately, yes. While we were at the house.

2 **Q** How did that happen?

3 **A** We were at the house and the phone rang. I
4 answered it trying to make contact, trying to get ahold
5 of somebody to work out exactly what the situation was.
6 Initially the person told me, I believe, that their name
7 was Mike. I said, you know, I identified myself as a
8 deputy. I said, look, I need to get ahold of whoever
9 lives at this house. There's a situation. I actually
10 told them ultimately that it had been broken into. That
11 person hung up.

12 The call came -- the phone rang again from a
13 private number on the caller ID. That time, the person
14 on the line sounded the same as the first and identified
15 themselves as Therron Richardson. And I told them in an
16 effort to get him to come back and investigate the
17 situation further, I said, look, your house has been
18 broken into. We need you to come here and talk to us
19 about it. The person on the phone seemed very
20 disconcerted and, no, I'm not worried about it, I'm not
21 coming back.

22 **Q** Did the house look like it was broken into?

23 **A** No, it didn't look like it was broken into
24 other than the door having been opened. So at that
25 point, it was also a possibility.

1 Q So were things turned over in the house? Were
2 the lamp shades turned over? Were tables turned over?

3 A No.

4 Q Were drawers pulled out?

5 A No, it didn't -- other than the money laying on
6 the floor, didn't have any kind of a resemblance to a
7 burglary. Even with the money, the safe didn't look
8 damaged.

9 Q Didn't look damaged. Did you speak with anyone
10 else while you were in the house?

11 A I don't remember if I did. Not that was in my
12 report.

13 Q Did ADT call?

14 A It seemed like I may have spoken with ADT.
15 Actually, they did because the alarm had gone off.

16 Q The alarm had gone off.

17 A Apparently, the burglar alarm at the house had
18 gone off. ADT's practice is to call and say -- you know,
19 see if there's a passcode or check on things at the
20 house.

21 Q So the burglar alarm went off when you all
22 entered the house?

23 A Correct.

24 Q I see. Had you ever seen, met or had any
25 dealings with the defendant before?

1 **A** No.

2 **Q** Have you ever been to Old Fort before?

3 **A** No.

4 **Q** Did you have any idea that there were drugs and
5 guns in that home?

6 **A** No, not at all.

7 **Q** Do you work with Deputy Alexander?

8 **A** Yes.

9 **Q** Do you know where he is right now?

10 **A** I know yesterday he called in sick. He had a
11 severe head cold. He doesn't call in sick much.

12 **Q** Deputy Alexander, he was with you when all this
13 -- when you had gone to that home?

14 **A** Yes, he was.

15 **Q** And he had seen all these things you had also
16 seen?

17 **A** He did.

18 **MR. FERGUSON:** No further questions. Please
19 answer any questions the defense has.

20 **THE COURT:** Thank you. Cross-examination.

21 **CROSS-EXAMINATION**

22 **BY MRS. TAYLOR:**

23 **Q** Good morning. Is it Officer or Deputy Bowen?

24 **A** Deputy Bowen, yes, ma'am.

25 **Q** Deputy Bowen. I just have a few things I want

1 to make sure I'm clear on. I'm going to start backwards.
2 Mr. Ferguson just asked you about Officer or Deputy
3 Alexander.

4 A Yes, ma'am.

5 Q Did I understand you correctly that you
6 arrived, he arrived, you both go to the front door first?

7 A To the best of my recollection, yes, ma'am.

8 Q And that he was the one that ultimately goes
9 around back and finds the sliding glass door?

10 A We pretty much met around back the same time.

11 Q Okay. So you weren't somewhere else and got a
12 call from him on the radio to come on back, there's a
13 back door open?

14 A I don't remember. It's two years ago.

15 Q Right. Okay. Do you have a copy of your
16 report with you?

17 A Uh, yes, ma'am.

18 Q Do you have it up there with you? It may help
19 you to refresh your memory if you look at that first
20 page.

21 A I don't actually have the first page with me.

22 MRS. TAYLOR: Court's indulgence.

23 THE COURT: Sure.

24 MRS. TAYLOR: May I approach?

25 THE COURT: You may.

1 **THE WITNESS:** Thank you, ma'am.

2 **BY MRS. TAYLOR:**

3 **Q** And this report would have been written right
4 after the incident, I assume?

5 **A** Yes.

6 **Q** And the reason that you write reports right
7 after incidents would be?

8 **A** Well, mainly because it have to be turned in
9 and obviously so that it's fresh in our mind.

10 **Q** That's obviously when it's most fresh?

11 **A** Yes, ma'am.

12 **Q** Now, if you'd look down at about the second
13 line from the bottom, this basically is you talking about
14 what you've already testified about? Going to the front
15 door and seeing another door, apparently, side door.

16 **A** Correct.

17 **Q** What does that next sentence say?

18 **A** You said on the second line?

19 **Q** Second from the bottom. Sorry.

20 **A** Okay. Deputy Alexander and I -- Deputy
21 Alexander located a rear sliding door that was unsecured.
22 Deputy Alexander and I put the radio in emergency status
23 and began to clear the residence.

24 **Q** Okay. Would that indicate to you that he saw
25 the door first or jog your memory at all?

1 **A** He probably did.

2 **Q** Do you have a specific memory of both of y'all
3 together finding the door?

4 **A** No. No, ma'am.

5 **Q** Okay.

6 **A** I can only tell you what is typical for what we
7 would do on a domestic call. Like I said, he would go
8 one direction and I would go the other to see what, if
9 any, disturbances or openings, open or broken windows or
10 open doors.

11 **Q** And I understand. I was trying to get a
12 complete feel on who found it first and who saw it. You
13 told us you thought when you saw it, it was six to eight
14 inches open?

15 **A** Well, I did see it. I don't remember if he saw
16 it first or I saw it. But he had not opened or entered
17 the door before I got there to it.

18 **Q** So he would not have touched it even if he
19 found it first?

20 **A** Correct.

21 **Q** So you are confident that what you saw, six to
22 eight inches was the way it was when y'all were out front
23 and when you got around to the back, whoever got there
24 first, that was the way it was?

25 **A** Yes.

1 Q Okay. You had also testified that you appeared
2 here, you didn't know Mr. Richardson, y'all didn't have
3 any investigation of him going on, you weren't targeting
4 him for anything. You got a domestic call.

5 A Yes, that's correct.

6 Q And you were dispatched?

7 A Correct.

8 Q Along with Officer Alexander. And you got
9 there, uh, he showed us a picture of the truck. Do you
10 remember what that truck, uh, what business that truck
11 was for?

12 A I remember it being for a lawn care business.

13 Q All right. Lazy Man Lawn Care. Does that ring
14 a bell?

15 A Sounds right.

16 Q Did you also, you testified earlier that you
17 found, in the house, a bag with cash on it. Do you
18 recall that that also said Lazy Man?

19 A I don't. At the time, it was during our sweep.
20 I just remember seeing the bag on the floor open and
21 being able to see a significant amount of cash in that
22 bag.

23 Q And you told us what you did, were you involved
24 at all with the subsequent removal of articles from his
25 home?

1 **A** I was there. But that was up to our Metro
2 narcotics division.

3 **Q** Do you remember seeing lawn mower tools that
4 would be used in a lawn care business?

5 **A** I remember in the driveway a bundle up of, it
6 seemed like a lawnmower maybe. I remember that's where
7 the dog cage was. The dog had been released later. I
8 don't remember seeing a trailer or any type of a -- I
9 don't particularly remember a commercial-type mower like
10 most lawn care businesses use.

11 **Q** But you didn't stay for all that or handle the
12 removal of stuff that was taken out of this house?

13 **A** Correct.

14 **Q** Furniture and all sorts of stuff.

15 **A** Like I said, I was there. Primarily, it
16 provided a convenient place to sit and write the report
17 since it was my case and we didn't have any other calls
18 for service at the time.

19 **Q** And you also indicated that we arrived at the
20 house as part of the procedure, especially in domestic
21 calls, that you listen to see what you might hear?

22 **A** That's correct.

23 **Q** And what did you hear?

24 **A** I -- we didn't hear anything at the time.

25 **Q** Did you listen at the front door?

1 A Yes.

2 Q Did you listen at the side door?

3 A I don't think I listened at the side door since
4 it was secure and I knew Alexander was going around. I
5 didn't want he and I to be separated for any longer than
6 necessary.

7 Q Sure. When you got to the back with the open
8 screen door or sliding glass door, did you listen there?

9 A Yes.

10 Q Now, you would have had pretty uninterrupted
11 access to acoustics inside the house, I guess.

12 A Yes.

13 Q And heard nothing?

14 A Didn't hear anything.

15 Q Did y'all then decide to go ahead and go inside
16 the house and do the sweep?

17 A That's correct.

18 Q When, in the course of this activity, did you
19 find that the telephone call that you were responding to
20 or resulted in the dispatch was triangulated downtown and
21 not in this area?

22 A It would have been later in the incident.
23 Primarily because once we arrive, dispatch is trained to
24 essentially not bother us unless we need things.

25 Q Uh-huh.

1 **A** In addition to that, once we went into the
2 residence, we placed the radio in emergency status which
3 disallows and discourages anybody else from transmitting
4 on the radio just in case we need it. Once we found that
5 nobody was in there, that's when we would have started
6 asking more questions and trying to figure out more about
7 the situation that we had at hand.

8 **Q** And you're probably familiar with the CAD
9 reports that they produced that had the times and starts
10 from your 911 domestic call to you getting there and
11 everything else that happens, you would be comfortable
12 that whatever that report shows is the time frame ---

13 **A** Yes.

14 **Q** --- of things happening and on that report is
15 an indication of somebody directing some police officers
16 to go downtown to Romney Street. You are aware of that?

17 **A** Okay. Yes. I don't -- the CAD reports aren't
18 something that we get unless we either ask for ---

19 **Q** Right.

20 **A** --- or a supervisor provides to us.

21 **Q** But you are familiar --

22 **A** With the CAD report, yes.

23 **Q** And how they are generated?

24 **A** Yes.

25 **Q** And you would be comfortable relying on the

1 accuracy of that?

2 A Yes.

3 Q Now, were you aware that this home was rented?

4 A No, I wasn't.

5 Q So you didn't have any indication that who else
6 might live in this ---

7 A No.

8 Q --- or who might have been responsible for the
9 doorknobs being the type of doors, locks that they were?

10 A That's correct. Didn't know anything about it.

11 Q Do you recall you had mentioned you weren't
12 sure when you got to the front door, there were two kinds
13 of deadbolts that had a key, key and switch sort of on
14 the inside. Did you look at it when you got in to see
15 what the situation actually was?

16 A I probably did. But at this point, I don't
17 remember what it was.

18 Q And how many bedrooms did you tell us were in
19 the house?

20 A Uh, that I remember? There were there bedrooms
21 downstairs and there was an open loft area, if you will,
22 upstairs. It wasn't really a second floor. It was just
23 more of a, almost a bonus room, what some people call.

24 Q Did you -- did you see any indication of
25 burglary or break in? Did you look at the sliding glass

1 door to see how it might have been opened, if it was
2 opened? Any damage in that area?

3 **A** No, not at the time that we went in. We
4 weren't there with a burglary forefront in our minds. We
5 were there with a domestic situation in our minds. We
6 were still concerned about anybody being hurt.

7 **Q** But you didn't see pry marks or anything
8 obvious or broken or shattered?

9 **A** No, there was no broken glass. I don't
10 remember any obvious signs of a burglary.

11 **Q** You remember that there were ferrets in the
12 house?

13 **A** No.

14 **Q** So you weren't there for the animal control?

15 **A** Were they -- I don't -- no. Were they
16 upstairs? I don't remember.

17 **Q** I'm not sure which room it is. It's one in
18 y'all's photographs. It's a large cage about this big.
19 About this big. Two ferrets in it.

20 **A** I don't remember that.

21 **Q** Animal Control had to be called and came to get
22 them.

23 **MR. FERGUSON:** Objection, Your Honor.
24 Relevance.

25 **THE COURT:** Overruled. It's interesting.

1 BY MRS. TAYLOR:

2 Q But you don't remember that?

3 A No, ma'am. If it's not an animal that has any
4 aggression to me, I'm not interested in it.

5 Q But in the photos, they are in the cage?

6 A Yes, ma'am.

7 Q Just trying to read my own notes. Excuse me.

8 We also talked about some of the other photos. There was
9 a scale in the bathroom on the sink. I think that's
10 Exhibit 7. That's great. There are photographs and also
11 there are photographs of the condition of the house
12 inside. You also answered Mr. Ferguson when he asked you
13 did there appear to be a burglary. Did there appear to
14 be, from what y'all saw inside, any signs of a physical
15 struggle, any indication that there was actually ever a
16 fight or a struggle between a woman and a man in this
17 house?

18 A No.

19 Q Lamps turned over?

20 A Nothing was turned over. Nothing appeared
21 disturbed.

22 Q And was it -- this is a shot obviously of a
23 bathroom that many of us would probably not like to have
24 necessarily shown unexpectedly. But what's that stuck up
25 there? Other than -- we've seen the scale and the

1 residue that was on that. What's all that other stuff?

2 A I don't remember. In the photo, it's blurry.

3 Containers of some sort.

4 Q Looks like makeup, lotion? Hard to tell.

5 A Yeah. Nothing that stood out as unusual.

6 Q Okay. And you also talked about the safe. You
7 said the safe was closed.

8 A Uh-huh.

9 Q Was it locked?

10 A I don't remember. I didn't touch it.

11 Q So you never tried to open it?

12 A No.

13 Q Were you present later when it was opened?

14 A Yes.

15 Q Do you know how it was opened?

16 A They had to bust it open.

17 Q So could we presume that it was locked?

18 A Yeah. Well, obviously, if they had to bust it
19 open.

20 Q You didn't see them just pull it open?

21 A Right.

22 Q And you told us that this money, uh, do you
23 remember how much money that was we saw?

24 A No, I didn't count it.

25 Q And it was just sort of fanned out there right

1 there in front of the closed and locked safe?

2 A Yes.

3 Q Was the closet door opened?

4 A I don't remember.

5 Q That might be --

6 A I want to say -- see, I don't remember. If it
7 were closed, we would have opened it.

8 Q And it's hard to tell from that part, but do
9 you remember, is that the door frame that we're seeing
10 there the same as the picture before that shows the open
11 door? Was it just a door into a closet or is it a door
12 into a closet to another room?

13 A It's a door into a walk-in closet. What you
14 see there is the door catch. So if you were facing that
15 closet door, that door catch would be on your left-hand
16 side. The door would swing open to the right into the
17 closet.

18 Q Just one door and you go in?

19 A Yes.

20 Q And you also told us that the alarm went off in
21 the house and that's why ADT called you. Again, y'all
22 are in the house responding to this domestic call. There
23 was no burglary call or any other signal to ADT prior to
24 you guys walking in the sliding glass door?

25 A That's correct.

1 Q And the phone rang. Before the phone rang, did
2 you hear the alarm? Was it an audible alarm or did it
3 just go straight to ADT?

4 A I don't remember. I'm reviewing my report.
5 (Pause.)

6 Uh, I don't remember if it was an audible
7 alarm. It's not uncommon to have an audible alarm and for
8 us to basically just work through it, whether it's a
9 business or a residence with an open, unsecure door.

10 Q So it would not have startled you?

11 A No, it would have just been the alarm was going
12 off. We would have realized that most likely it was
13 because we entered the building. It's very common.
14 Happens to us all the time.

15 Q And so there clearly was an active security
16 system there?

17 A Correct.

18 Q That had been turned on by someone?

19 A That's correct.

20 Q And the placement of, uh, guns, you had
21 mentioned that they were lined up?

22 A Yeah, just the way they were laid out seemed to
23 stand out to me.

24 Q And I know you told us you did a fair amount of
25 domestic calls and other types of calls. Where -- what

1 are you doing now as a criminal --

2 A Currently?

3 Q Uh-huh.

4 A I'm in the criminal investigations or detective
5 division. I'm actually specializing in running the sex
6 offender registration.

7 Q Have you ever been the narcotics part of law
8 enforcement?

9 A No, only my experience that I gained on patrol
10 in dealing with various narcotic arrests.

11 Q Just give me one second. Let me see what I've
12 forgotten. (Pause.)

13 I think that's it. Thank you very much.

14 A Thank you, ma'am.

15 THE COURT: Any redirect?

16 MR. FERGUSON: Yes, Your Honor.

17 THE COURT: Okay.

18 REDIRECT EXAMINATION

19 BY MR. FERGUSON:

20 Q You said they were -- you remember there being
21 three bedrooms in the house?

22 A Yes.

23 Q Do you remember how many beds? Do you remember
24 how many beds are actually in the house?

25 A I don't remember how many. I can only remember

1 two in particular.

2 Q All right.

3 A And one -- obviously, there was the master bed.
4 In one bedroom, for some reason, I remember mattresses
5 being up against the wall. I don't remember if that was
6 because we raised them up to look under the bed or if
7 they were there already.

8 Q And the drugs that you saw on the counter in
9 the master bedroom, where were those located?

10 A They were on the counter actually in the master
11 bath.

12 Q The master bathroom?

13 A Yeah.

14 Q And the guns, they were in the master bedroom?

15 A Correct.

16 Q When you didn't hear anything, uh, when you
17 were outside listening at the front door, when you didn't
18 hear anything, did that heighten or lessen your concern
19 about there being someone in the house?

20 A Uh, it really didn't change it. The fact that
21 we didn't hear anything didn't mean that nobody was in
22 the house. We had already knocked on the front door. It
23 was a large front yard. Which for a domestic call, uh,
24 quite frankly was unsettling for us. We have to cross
25 that open space to get to the house. Had somebody been

1 in the house and looking, uh, they -- somebody could have
2 known that we were there. So the fact that it was quiet
3 at the moment we were at the door really didn't change
4 anything for us.

5 Q I understand.

6 MR. FERGUSON: Court's indulgence for a
7 moment.

8 THE COURT: Sure.

9 (WHEREUPON, there is a pause.)

10 BY MR. FERGUSON:

11 Q Deputy Bowen, you said you arrived at 1956 Old
12 Fort because you received the call from dispatch?

13 A Correct.

14 Q And that was two years ago, right?

15 A Yes.

16 Q Uh, would it help your memory to hear that
17 dispatch call?

18 A I'm sure it would.

19 Q Would you recognize that dispatch call if you
20 heard it?

21 A Yes.

22 Q Have you heard the dispatch recording before?

23 A Yes, in prior court hearings.

24 MR. FERGUSON: Your Honor, at this time, I'd
25 like to enter State's Exhibit 44 into evidence, the

1 911 dispatch recording.

2 MRS. TAYLOR: No objection.

3 THE COURT: State's 44 is admitted without
4 objection.

5 (WHEREUPON, State's Exhibit 44 is admitted into the
6 record.)

7 MR. FERGUSON: Permission to publish it for
8 the jury, Your Honor?

9 THE COURT: You may.

10 MR. FERGUSON: I hope we can get the sound
11 working.

12 (WHEREUPON, State's Exhibit 44 is played.)

13 BY MR. FERGUSON:

14 Q What is this we're listening to right now?

15 THE COURT: If y'all will just make sure and
16 only talk one at a time, that will be great. Thank
17 you.

18 BY MR. FERGUSON:

19 Q I heard something about College of Charleston.
20 What was that about?

21 A Right now, you're listening to other, uh,
22 county deputy units being dispatched to different calls.

23 Q Nothing to do with this case?

24 A Nothing to do with this case. He was in a
25 completely actually separate district than I was in.

1 (WHEREUPON, State's Exhibit 44 is continued.)

2 BY MR. FERGUSON:

3 Q That also was some other call?

4 A Yes, that was another deputy and another call.

5 (WHEREUPON, State's Exhibit 44 is continued.)

6 BY MR. FERGUSON:

7 Q Was that Detective Alexander?

8 A I apologize. 254 is Detective Alexander.

9 MR. FERGUSON: I won't do that again. Sorry,
10 Your Honor.

11 THE COURT: That's okay.

12 (WHEREUPON, State's Exhibit 44 is continued.)

13 BY MR. FERGUSON:

14 Q Is that you?

15 A That's me, 133.

16 (WHEREUPON, State's Exhibit 44 is continued.)

17 BY MR. FERGUSON:

18 Q What are those beeps?

19 A Those are what we call beacons. As you heard,
20 there's a lot of other radio traffic from other calls.
21 Once a deputy, any deputy calls for the radio to go into
22 emergency status, the beacon or channel marker beeps
23 every so often to let other deputies know that the radio
24 is in emergency status in case they hadn't been on the
25 channel.

1 Q Why do you put the radio in emergency status?

2 A To --

3 Q Why did you put it in this situation?

4 A It's, uh, -- it's basically standard practice
5 for us, for officer safety primarily to cut down on all
6 that other radio traffic. You heard people talking about
7 other calls. When anybody calls for it to go into
8 emergency status, they know to basically be quiet and let
9 us have the radio because we're going into a high risk
10 situation that we might need the radio instantly.

11 Q What was the high risk situation in this
12 instance?

13 A It was having been dispatched to a domestic
14 call with an open door with no contact made thus far.

15 (WHEREUPON, State's Exhibit 44 is continued.)

16 BY MR. FERGUSON:

17 Q Now, those beeps, that lasted probably like 10
18 or 12 seconds, did it last -- did your search of that
19 house for a person last 10 or 12 seconds?

20 A No, it did last longer.

21 Q So why did it only show 10 or 12 seconds?

22 A What we learned later upon initially hearing it
23 and having heard the emergency beacon so often, just in
24 practice and at work, the beeps, and I'm not sure of the
25 exact number, but I want to say there's 10 seconds in

1 between each beep. Obviously, if that was going on in
2 our ear the whole time, it wouldn't be safe and
3 practical. Those beeps, basically we learned later they
4 were condensed. It was just dead air.

5 Q So approximately how long did it take you to
6 protective sweep? Would four minutes be about right?

7 A Yes.

8 Q You've got your report in front of you, is that
9 right?

10 A I do, yes, sir.

11 Q Does your report show what time you arrived on
12 the scene?

13 A It shows we arrived on scene at 11:24.

14 Q You arrived on the scene at 11:24. Thank you.
15 No further questions.

16 THE COURT: Okay. All right. Sir, you may
17 step down.

18 Oh, you have anything else?

19 MRS. TAYLOR: No.

20 THE COURT: Okay.

21 THE WITNESS: Okay. Thank you, Your Honor.

22 THE COURT: Everybody okay?

23 MR. FERGUSON: The State calls Robert Hess.

24 THE COURT: Robert Hess?

25 MR. FERGUSON: Robert Hess.

1 **THE COURT:** Thank you, sir. If you would,
2 come on up and be sworn please.

3 **THE WITNESS:** Here?

4 **THE COURT:** Yes, right over there.

5 **THE CLERK:** Sir, I'm going to ask that you
6 place your left hand on Bible and raise your right
7 please.

8 **ROBERT HESS**

9 having first been sworn, testifies as follows:

10 **THE CLERK:** Thank you, sir. Please be
11 seated. For the record, if you will, please state
12 your full name, spelling your last name.

13 **THE WITNESS:** Robert William Hess, H-E-S-S.

14 **DIRECT EXAMINATION**

15 **BY MR. FERGUSON:**

16 **Q** Good afternoon, Mr. Hess. Thank you for coming
17 today. Can you tell the jury about how old you are?

18 **A** I'm 77.

19 **Q** Uh, are you retired?

20 **A** Yes, sir. I am.

21 **Q** Where are retired from?

22 **A** I'm retired from U.S. Navy and Lockheed
23 Missiles and Space Company.

24 **Q** How long were you in the U.S. Navy?

25 **A** 20 years.

1 Q 20 years. Where do you live right now? What's
2 your address?

3 A Avenue, Charleston.

4 Q And how long have you lived there?

5 A 12 years, going on 13 this April.

6 Q Now, do you live across the street from
7 Old Fort Avenue?

8 A Yes, I do.

9 Q Uh, did you know who lived at that house across
10 the street?

11 A Yes, I do.

12 Q Who lived in the house across the street?

13 A Previous?

14 Q Yes, sir. Previous.

15 A Uh, Therron.

16 Q Did he live there in 2010?

17 A Yes.

18 Q Two years ago. Is that Therron sitting at that
19 table over there?

20 A Yes.

21 Q Now, I'm going to take you back to a specific
22 date. You may remember the date as the day the police
23 cars were across the street. Do you remember October
24 17th, 2010?

25 A The police cars. I don't know the date itself.

1 Q You remember that there were police cars about
2 two years ago?

3 A Yes, sir.

4 Q And, uh, what were you doing when you saw those
5 police cars?

6 A I went out to get my newspaper.

7 Q What did you see?

8 A Across the street and down the side street were
9 quite a few police cars.

10 Q Did you see the defendant at all that day?

11 A Yes, I did.

12 Q Where did you see him?

13 A It was later. He had -- I seen Therron drive
14 down the road. He seen me standing in my driveway.

15 Q Uh-huh.

16 A He drove up. He said, Bob, what's going on. I
17 said, Therron, I don't know. There's just a bunch of
18 police over at your house.

19 Q Then what happened?

20 A Therron just backed up, turned around and drove
21 back down the street onto Fruitwood and parked.

22 Q He didn't park in his driveway?

23 A No.

24 Q He parked down the street?

25 A Right.

1 Q And then what happened?

2 A He got out of his truck and he walked across
3 the road into his yard, went up to his house, on the
4 front porch and went in his back yard. Just a few
5 minutes later, he came back out and walked back the same
6 way and got in his truck and left.

7 Q Did you see him make any contact with any
8 police that were there?

9 A No.

10 Q Did you see him go inside of his house?

11 A No. I couldn't see in the back. When he went
12 in the back, I couldn't see.

13 Q So he asked you what those police cars were
14 doing there. Then he parked across the street.

15 A Right.

16 Q Walked around his house for some reason and he
17 got back in his car and drove off?

18 A Exactly.

19 Q Did you ever see Therron after that?

20 A No.

21 Q Is this the first time you've seen him since?

22 A Yes.

23 Q Thank you, Mr. Hess. I do appreciate your time
24 here. Please answer any questions the defense may have.

25 **THE COURT:** Cross-examination.

CROSS-EXAMINATION**BY MRS. TAYLOR:**

Q Good morning, Mr. Hess.

A Good morning.

Q Uh, do you remember what time this was?

A Not exactly the time, no. It must have been around -- I would say around 9:30 or 10:00.

Q In the morning.

A That's just a guess. Yes, ma'am. In the morning.

Q It was daylight?

A Yeah.

Q And do you remember when you first noticed -- you said there were a lot of police there?

A Yeah, that's when I first -- when I went out in the morning to get my newspaper.

Q When would that had been?

A I would say around 7:00. Generally, on Saturdays, that's about the time I go out to get my newspaper.

Q How did you know they were police, first of all?

A They were parked up on the road.

Q In marked cars?

A Yes.

1 Q How many cars do you think?

2 A Well, I really didn't count them, but there
3 were five or more.

4 Q How long do you think the police were there
5 through this entire process?

6 A Well, they were there all day. Yeah, they were
7 there all day.

8 Q And, sorry, I know you told us. What time do
9 you think you saw Therron come?

10 A I really can't -- it was around, I would say
11 9:00, 9:30.

12 Q And daylight?

13 A Yes.

14 Q And when he pulled up, I think you told us you
15 were in your driveway?

16 A Yes.

17 Q He pulled up to you in his vehicle?

18 A Correct.

19 Q Was he in the car alone or with anyone?

20 A He was by himself.

21 Q And he addressed you as Bob. Obviously, y'all
22 know each other or knew each other.

23 A Yeah.

24 Q And asked you what was going on?

25 A Right.

1 Q And you told him you didn't know but there was
2 a lot of police over there?

3 A Right.

4 Q And he pulled some distance away, parked and
5 walked back?

6 A Correct.

7 Q I think you told us he walked to the front
8 door?

9 A Yes.

10 Q And then walked around the house?

11 A Yes.

12 Q Could you see whether he stopped at the side
13 door?

14 A No, I couldn't see from there.

15 Q Once he left that front porch area --

16 A Right. And walked around to his back.

17 Q And he was just walking?

18 A Yes.

19 Q Up on the porch?

20 A Yes.

21 Q And around the house to the back?

22 A Right.

23 Q Any idea how long that process lasted? How
24 long was he gone out of your view?

25 A I would say maybe three or four minutes.

1 Q And then he came walking back?

2 A Yes.

3 Q Did you have any conversation with him as he
4 walked back to his truck?

5 A No.

6 Q Wasn't running?

7 A No.

8 Q Got in his truck. Drove away?

9 A Correct.

10 Q Did you subsequently that day speak to a police
11 officer?

12 A Yes, I think I did. It was later in the
13 afternoon. I left. Had errands to do. I come back and
14 they was still there. A police lady or -- I think it was
15 a police lady that came over to talk to me.

16 Q And what did they want to know?

17 A They asked me if I knew Therron. I said yes.
18 She asked me how well I knew him. I said I know him
19 fairly well. I said he's a neighbor. I told her we
20 talked and all that. She said when was the last time you
21 seen him. I said, well, must have been a few minutes ago
22 or something to that effect. She said where did you see
23 him. I said in his yard, around his house and on his
24 front porch. I don't remember now if it was a police
25 lady or police woman. She said we must all been inside.

1 Q Did they seem surprised when you told them that
2 he had been there at his house?

3 A I can't really say. I don't know.

4 Q It's been a while?

5 A Yeah.

6 Q Just give me one second. (Pause.)

7 Nothing further. Thank you very much.

8 THE COURT: Thank you.

9 MR. FERGUSON: Few questions.

10 THE COURT: Yes, sir.

11 **REDIRECT EXAMINATION**

12 **BY MR. FERGUSON:**

13 Q Mr. Hess, this was two years ago, right?

14 A Yes, sir.

15 Q And, uh, you didn't make any notes, write down
16 what time you saw these things happen?

17 A No.

18 Q You just approximating today around what time
19 you saw the things you saw?

20 A Correct.

21 Q But you are sure you saw Therron park his car
22 away from his house?

23 A Yes.

24 Q You are sure you saw Therron get back in his
25 car and leave away from his house?

1 A Correct.

2 Q And when all that happened, when Therron left,
3 were the police cars still there?

4 A Yes.

5 Q When Therron got there, were the police cars
6 there?

7 A Yes.

8 Q You say Therron was only at his house for about
9 five minutes you said? Three to four minutes the whole
10 time?

11 A In the back -- yes, it's just hard to remember.
12 He walked across the street. Up on his porch. Around
13 the back and back.

14 Q Okay. So it's your testimony today that the
15 defendant, Therron Richardson, did not stay at his house
16 when the police were there?

17 A No. No.

18 MR. FERGUSON: No further questions.

19 THE COURT: Okay.

20 **RECROSS-EXAMINATION**

21 **BY MRS. TAYLOR:**

22 Q These police cars that you recall, from the
23 best of your recollection, were parked across from your
24 house for some period of time, where they parked in
25 Therron's yard, driveway --

1 **A** Yes.

2 **Q** I'm sorry. In the driveway?

3 **A** Well, they were parked down the street on Old
4 Fort, on each side. They were parked in the driveway.

5 **MRS. TAYLOR:** Thank you very much.

6 **THE COURT:** Okay. Thank you, sir.

7 **MR. FERGUSON:** Your Honor, can Mr. Hess be
8 released from him subpoena?

9 **THE COURT:** Sure.

10 Sir, you may be excused. You are released from
11 your subpoena. You do not have to stay unless you
12 just want to.

13 **THE WITNESS:** Thank you.

14 **THE COURT:** You're welcome.

15 **MR. KIDD:** The State calls Tim Ketcham.

16 **THE COURT:** Okay.

17 **THE CLERK:** Place your left hand on the Bible
18 and raise your right please.

19 **TIM KETCHAM**

20 having first been sworn, testifies as follows:

21 **THE CLERK:** Thank you. Please be seated.

22 Sir, for the record, if you would, please state your
23 name spelling your last name.

24 **THE WITNESS:** First name Tim. Last name
25 Ketcham, K-E-T-C-H-A-M.

1 DIRECT EXAMINATION

2 BY MR. KIDD:

3 Q Good morning, Mr. Ketcham.

4 A Good morning.

5 Q Could you tell the jury where you're employed?

6 A I'm employed at ADT Security.

7 Q And how long have you been employed there?

8 A Uh, 15 years.

9 Q What's your current position with ADT?

10 A I'm the District Installation Manager.

11 Q Back in, uh, -- uh, are you familiar with the
12 way the records are kept and created and stored with ADT?

13 A Yes, sir.

14 Q When someone comes and creates or signs up for
15 an ADT Security system, they fill out certain paperwork?16 A Yes, sir. They fill out a contract with the
17 terms on it along with a scope of work as to what we're
18 going to put into the premise.19 Q Okay. And as a part of that contract that they
20 fill out, do they provide contact information?21 A Yes, sir. They provide all their emergency
22 contacts.23 Q And is their residence, their address which is
24 going to be secured or that you're going to provide that
25 service, that was in that contract?

1 **A** Yes, sir. The address to the facility, the
2 emergency contacts.

3 **Q** Are these computer-generated contracts or are
4 they handwritten?

5 **A** They are handwritten by the sales rep.

6 **Q** How do they get entered into your system?

7 **A** We have an internal processor that just loads
8 the information that's written down by the sales rep into
9 our database.

10 **Q** Is the contract scanned in? Is that how it
11 works?

12 **A** Yes, sir. They are all scanned into a document
13 management process.

14 **Q** Okay. And that's stored on your --

15 **A** It's stored on servers.

16 **Q** On servers. Okay.

17 **A** Yes, sir.

18 **Q** And that's something y'all maintain as the way
19 you regularly conduct business?

20 **A** Yes. Standard operating procedure.

21 **MR. KIDD:** If I may approach, Your Honor.

22 **THE COURT:** You may.

23 **BY MR. KIDD:**

24 **Q** I'm going to show you what's been marked for ID
25 as State's 42. Do you recognize that?

1 **A** Yes, sir. It's a typical residential service
2 contract.

3 **Q** Have you seen that contract before?

4 **A** Yes, sir.

5 **Q** Uh, is that the contract which y'all would have
6 maintained in the regular course of your business?

7 **A** Yes, sir. Typical residential contract.

8 **Q** Can you say what address that contract is, uh,
9 supporting or is for?

10 **A** Therron Richardson at Old Fort Ave,
11 Charleston, South Carolina.

12 **MR. KIDD:** Your Honor, at this time, the
13 State would like to move State's Exhibit number 42
14 into evidence.

15 **MRS. TAYLOR:** No objection.

16 **THE COURT:** State's 42 is admitted without
17 objection.

18 **(WHEREUPON, State's Exhibit 42 is admitted into the**
19 **record.)**

20 **BY MR. KIDD:**

21 **Q** As we just said, can you tell off that contract
22 when the services that ADT was providing for that
23 address, when they initiated?

24 **A** April 25th, '08.

25 **Q** So the services from ADT started for Therron

1 Richardson at Old Fort Avenue in April of 2008?

2 A Yes, sir.

3 Q Okay. And as a part of that contract, are you
4 able to, uh, -- are you able to tell what sort of sensors
5 or things like that are installed in the residence?

6 A Yes, sir.

7 Q How many door sensors were installed in that
8 residence?

9 A It says, uh, a total of three. It says there
10 are two doors and extra door contact. It states on the
11 back. So there's a total of three.

12 Q Okay.

13 A It looks like there's, uh, four windows and
14 smoke detector.

15 Q What about, uh, -- what about motion?

16 A There is one motion detector, yes, sir.

17 Q And then also when the customer is filling out
18 one of these service contracts, they then provide contact
19 information?

20 A Yes, sir. They do.

21 Q What contract information was provided to ADT
22 as a part of the services contract?

23 A On Section 8 is the emergency contact list. We
24 just take a primary phone number, a secondary phone
25 number. The next person that's placed upon the list, we

1 take their primary number that's provided to us. Of
2 course, the third person. We try to have three points of
3 contact in order for us to try to have a progression of
4 getting in touch with somebody.

5 Q Yeah. So in the event the alarm goes off or
6 something happens, you have people to contact to try to
7 figure out what's going on?

8 A Correct.

9 Q Who was the number one point of contact on this
10 residential services contract?

11 A Therron Richardson.

12 Q And then does he provide telephone numbers?

13 A Yes, sir. He provided two numbers.

14 Q Okay. And who is the secondary contact?

15 A Sharman Richardson.

16 Q Is there a number provided for, uh, them as
17 well?

18 A Yes, sir.

19 Q Who is the third point of contact?

20 A Mary Ann Richardson.

21 Q Is there a number provided for her as well?

22 A Yes, sir.

23 MR. KIDD: Court's indulgence. (Pause.)

24 BY MR. KIDD:

25 Q Now, when alarms are triggered or motion

1 sensors are triggered or doors are triggered, uh, is
2 there some sort of law created by ADT of those events?

3 A Yes, sir. As soon as a signal comes in, it's a
4 time stamped, documented, auto-recorded.

5 Q You said audio recorded?

6 A Uh, no.

7 Q Auto-recorded.

8 A Auto-recorded, yes, sir.

9 Q Excuse me. I'm sorry. I misunderstood.

10 A Just a sequence of information.

11 Q The sequence of events. So if a door -- if the
12 alarm is set and the door is opened, does that make a
13 recording on ADT's system?

14 A It makes a documented line item, yes, sir.

15 Q Okay. And as a part of the services that ADT
16 provides, uh, a list of any sort of events that occurs
17 while that contract is active, is that maintained by ADT?

18 A Yes, sir.

19 Q Okay. And that's maintained in your standard
20 operating procedure or your regular course of business?

21 A Yes, sir.

22 Q Is that stored on the same sort of server as
23 the residential contract would be stored?

24 A Yes, sir.

25 Q Are you familiar -- if you were to look at one

1 of these event logs, uh, would you be able to kind of
2 interpret it?

3 A Yes, sir.

4 Q And, uh, at this time, I'd like to show --

5 MR. KIDD: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. KIDD:

8 Q I'm going to show you what's been marked for
9 identification, State's Exhibit number 43. Can you kind
10 of flip through that and see if you recognize that
11 document.

12 A Yes, sir. It's an event log.

13 Q It's an event log. Are you able to tell from
14 that what, uh, residence it's for?

15 A Yes, sir. It says Therron Richardson.

16 Q Can you tell what dates this event log covers?

17 A Uh, it covers from the initial installation on
18 April 29, '08 -- this right here goes all the way to
19 June.

20 Q June of what year?

21 A Uh, '08. Going through the initial listing.

22 Q June of '08? Doesn't it go through 2010? I
23 mean, doesn't it go through December of 2010?

24 A Not on this front sheet. Not on this
25 particular date of activity.

1 Q Okay. But the entire packet that you're
2 holding there, that's --

3 A Yeah, yeah, yeah.

4 Q That is the log for Mr. Richardson, right?

5 A Yes, sir.

6 Q And when you get to those back pages, is that
7 different from the front sheet you were looking at?

8 A It's just a final break out of what had
9 occurred at the Central Station.

10 Q And do those pages depict what occurred in
11 October of 2010?

12 A Yes, sir.

13 Q So although we have a long report here starting
14 in April of '08 --

15 A Yes, sir.

16 Q Or event log, I guess.

17 A Yes, sir.

18 Q It includes, uh, any events that would have
19 occurred on Mr. Richardson's security system up to and
20 through October of 2010, is that accurate?

21 A Yes, sir. It goes all the way to June 2nd,
22 2011.

23 Q June 2nd, 2011?

24 A So it's quite detailed.

25 Q I'm sorry. I forgot the number that I put on

1 there. 43.

2 MR. KIDD: Your Honor, at this time, the
3 State would offer State's Exhibit 43 into evidence.

4 MRS. TAYLOR: No objection.

5 THE COURT: State's 43 is admitted without
6 objection.

7 (WHEREUPON, State's Exhibit 43 is admitted into
8 the record.)

9 BY MR. KIDD:

10 Q Mr. Ketcham, I'd like to direct your attention
11 to, uh, the logs for October of 2000 --

12 A 2010?

13 Q October of 2010, yes, sir. Give me a second to
14 get that up. And what -- go ahead and start kind of
15 towards even before then. Let's start in August of 2010,
16 so two months earlier.

17 A Okay.

18 Q Are there any times in August or in September
19 where the alarm for that residence was tripped or sensor
20 goes off or an event which would, uh, be logged in your
21 system occurred?

22 A Yes, sir.

23 Q What occurred?

24 A Oh, we've got timer tests. We've got some
25 troubles on some zones.

1 Q What's a timer test?

2 A A timer test, the customer has a smoke
3 detector. We program it in 24-hour timer tests so we get
4 a verification of communication between the central
5 station and the actual alarm system when you have a smoke
6 detector. It just goes off once every 24 hours just to
7 verify communication.

8 Q So what we're looking at, I guess the first one
9 would be August 25th of 2010. There's a timer test.
10 That's the smoke alarms every 24 hours testing them self?

11 A Yes.

12 Q And that occurs -- that's the only sort of
13 activity that would occur on your -- on this log up until
14 October 17th of 2010. Is that accurate?

15 A Yes.

16 Q So in the months leading up to October 17th,
17 2010, the only activity noted by ADT would have been the
18 smoke alarms self-check?

19 A Yes. Prior to that time, there are some
20 trouble signals. Other than that, it's just the daily
21 timer tests.

22 Q Okay. What -- when you say prior to that time
23 there's some trouble signals, what are you talking about?

24 A Well, on August 16th, there was some troubles.

25 Q Oh, yeah. On August 16th?

1 **A** Yeah.

2 **Q** So two months earlier.. And what were those
3 troubles? A sensor battery?

4 **A** Yeah, it looks like they are sensor batteries
5 that just may be going in and checking. And then they
6 just called the premise. And they spoke to a Mary Ann on
7 August 16th.

8 **Q** That's back in August?

9 **A** Yes, sir.

10 **Q** Okay. I guess what I'm getting at or
11 specifically what I'm getting at is in the days, weeks
12 and even the month prior to October 17th, 2010, there was
13 no -- there were no alarms that went off or sensors
14 triggered, motion sensors, anything like that?

15 **A** No general burglar alarm system.

16 **Q** No general burglar alarm activity in the weeks
17 or month even, or two months even leading up to October
18 17th, 2010?

19 **A** That's correct.

20 **Q** Okay. Now, when was the first indication from
21 the alarm on the house on October 17th, 2010 that
22 something was tripped or something had gone off?

23 **A** October 17th, 2010, 11:29 and 51 seconds, we
24 got a Zone 3.

25 **Q** So 11:29 and 51 seconds. So it's roughly 11:30

1 in the morning, Zone 3. Do we know what Zone 3 is?

2 A I do not have a zone list to indicate exactly
3 what it is.

4 Q So 11:29 and 51 seconds on October 17th a
5 sensor of some sort, be it motion, door, window, of some
6 sort is tripped?

7 A That's correct.

8 Q What does ADT do when a sensor is activated or
9 tripped?

10 A This particular system has what they call a
11 two-way listen-in or two-way listen-in which is an alarm
12 verification. So when it goes off, it's a little speaker
13 built into the unit and we try to listen. So on this
14 particular system, this is what it's going to try to do.
15 So you can see a line item that shows that we had a
16 listen-in pending. And then of course, it says a listen-
17 in start. It shows a line slot on it, but it did not
18 activate, which means we couldn't get communication
19 between the unit and actual central station. But our
20 process is once we get an alarm, we start going to a
21 contact situation. So we'll call the premise first.
22 Then we'll go down the emergency contact list.

23 Q And so when we are looking at -- I'm just kind
24 of going through this line item. But 11:29:54, so three
25 seconds after that trip, your report says listen-in.

1 A Yes, sir.

2 Q And that's what you're describing right there?
3 Some employee at ADT is trying to listen in through the
4 two-way speaker microphone ---

5 A Exactly.

6 Q --- inside the residence to try to see what's
7 going on?

8 A Right. They were trying to start that process.

9 Q In this case, they were unable to establish
10 that contact?

11 A That's correct.

12 Q That's through the built-in unit?

13 A That's through the built-in unit.

14 Q Okay.

15 A That was verified 11:30:23 seconds. It says
16 two-way didn't activate.

17 Q Okay. Let's just go to the very next thing
18 that would record on your sheet, which would have been
19 11:29 and 55 seconds. Can you describe to the jury what
20 that line indicates?

21 A It shows that an operator accessed the account.

22 Q That's just someone said something's wrong.
23 Someone on your end logs onto the account.

24 A That's all it is. Somebody just looking,
25 logging onto the account.

1 Q Okay. And at 11:29:56, uh, listen-in start.

2 A It means the initiation process along with the
3 particular line cards that's listed in the location, the
4 shelf, the slot, it's just our data indicating what
5 channel she's trying to open up.

6 Q Okay. And that's once again what we were just
7 talking about. She's trying to listen in to that two-way
8 microphone speaker inside the residence.

9 A Correct.

10 Q Then she makes that next comment which I
11 believe you were just referring to at 11:30:23 which two-
12 way didn't activate?

13 A That's correct.

14 Q So that's just whoever the operator was log in
15 the system and say I wasn't able to establish contact
16 with that unit?

17 A That's correct.

18 Q And then 11:31:23, uh, can you tell the jury
19 what that line item is about?

20 A Uh, they tried calling the premise. They got
21 an answering machine message.

22 Q So the first place you called would have been
23 that primary contact?

24 A It would have been the premise number.

25 Q On the premise?

1 A Yeah.

2 Q And you received an answering machine?

3 A Yes, sir.

4 Q What, uh, occurred next?

5 A They called the next phone number at 11:32:06,

6 Therron Richardson. They put that he answered.

7 Q And that -- so they are just kind of going down
8 the list of contact information that was provided to them
9 in the residential contract ---

10 A Yes.

11 Q --- that we had gone through earlier, right?

12 A Exactly.

13 Q So the first number, they call the premise
14 number and received an answering machine. The second
15 number that they would have called, is the number listed
16 on the event log?

17 A Yes, sir. It sure is.

18 Q Are you able to --

19 A Read it?

20 Q Sure. What number is that that y'all called?

21 A It says 843 0.

22 Q And are you able to tell what number that is on
23 the residential contract?

24 A It is the second contact phone number.

25 Q And are you able to tell if that's like home,

1 work, cell?

2 A Indicates it's a cell.

3 Q So the second call that y'all placed through
4 ADT after receiving an answering machine at the premise
5 was to his cell phone?

6 A Yes, sir.

7 Q Uh, have you had the opportunity to listen --
8 well, before I even get there, those calls that you make
9 through ADT, or not that you personally make, but the
10 operators or whoever's on duty on that day when they make
11 those phone calls, are those calls recorded?

12 A Yes, sir.

13 Q And that is also done in the regular course of
14 business?

15 A Yes, sir.

16 Q And those two would be stored on your, uh,
17 servers?

18 A Yes, sir.

19 Q Uh, I'm going to show you, uh, -- have you had
20 the opportunity to listen to those phone calls?

21 A Uh, I have listened to some audio.

22 Q You've listened to some of those phone calls
23 before?

24 A Yeah.

25 Q I'm going to show you a disk which is actually

1 part of what's already in evidence as State's Exhibit
2 number 40. Do you recognize that disk?

3 A Yes, sir.

4 Q Are your initials on that disk?

5 A Uh, yes, sir.

6 Q Did you also date it as well?

7 A Yes, sir.

8 Q When you listened to that disk, were you
9 listening to the, uh, audio call, audio recordings from
10 ADT to Mr. Richardson?

11 A Yes, sir.

12 Q That we just referenced?

13 A Yes, sir.

14 MR. KIDD: Uh, Your Honor, we probably made
15 this more confusing than we should have. I
16 apologize. We entered State's Exhibit number 40 in,
17 which was the 911 call. Unfortunately, we also had
18 these recordings on the same disk.

19 THE COURT: Okay.

20 MR. KIDD: I would like to now enter the, uh,
21 ADT calls which are also on this disk, which I
22 believe I've laid the proper foundation for. But if
23 we do it as the same number or if not, we can try to
24 break it up.

25 THE COURT: Let me see if there's an

1 objection first. I think we should put two stickers
2 on it. Wouldn't that be an okay way to, if there's
3 no objection?

4 **MRS. TAYLOR:** The only concern that I have,
5 Judge, is I'm not sure that we got this.

6 **THE COURT:** Okay.

7 **MRS. TAYLOR:** That's what I'm checking.

8 **THE COURT:** Okay. (Pause.)

9 Let me see the lawyers for just a minute.

10 **(WHEREUPON, a bench conference is held off the**
11 **record.)**

12 **THE COURT:** Ladies and Gentlemen, we're going
13 to try to sort through our exhibits and get straight
14 on those and make sure we get everything marked
15 properly. I can give y'all about a five-minute
16 break now and come back or if you're starving, we
17 can break for lunch now and come back at two
18 o'clock. Y'all let me know what you prefer.
19 Anybody have any big preference one way or the
20 other? (No response.)

21 No? Y'all want to just take a quick break now
22 and we can finish with the witness? Okay. Let's
23 take about five. I know the lawyers need a quick
24 break. Then we'll get going from there. Thank you.

25 **(WHEREUPON, the jury exits at approximately**

1 12:10 p.m.)

2 (WHEREUPON, a short recess is taken.)

3 THE COURT: All right. Thank you, ma'am.

4 MR. KIDD: I'm just going to have another
5 sticker marked on the same disk for the ADT calls.

6 THE COURT: Okay.

7 MR. KIDD: So we'll have two stickers.

8 THE COURT: Sounds good to me.

9 (WHEREUPON, State's Exhibit 45 is marked for
10 identification purposes.)

11 (WHEREUPON, the jury enters at approximately
12 12:20 p.m.)

13 THE BAILIFF: All jurors are seated, Your
14 Honor.

15 THE COURT: Thank you, ma'am.

16 Yes, sir.

17 MR. KIDD: Thank you, Your Honor.

18 BY MR. KIDD:

19 Q Mr. Ketcham, as we talked about right before we
20 took a break, you initialed this disk and dated it
21 before?

22 A Yes, sir.

23 Q And so you listened to the call recordings from
24 ADT that were made on October 17th of 2010?

25 A Yes, sir.

1 **Q** And do those calls accurately reflect the calls
2 that were made in response to these alarm triggers?

3 **A** Yes, sir.

4 **MR. KIDD:** Your Honor, at this time, the
5 State would offer State's Exhibit number 45 into
6 evidence.

7 **MRS. TAYLOR:** No objection.

8 **THE COURT:** State's 45 is admitted without
9 objection.

10 **(WHEREUPON, State's Exhibit 45 is admitted into the**
11 **record.)**

12 **MR. KIDD:** Thank you. And may I publish it?

13 **THE COURT:** Uh-huh.

14 **BY MR. KIDD:**

15 **Q** I believe the first call we'll hear will be the
16 answering machine which I believe we just spoke about.
17 Uh, I believe it occurred at 11:31:23, the call to the
18 premise?

19 **A** That would be 11:29.

20 **Q** 11:29? I'm sorry. I'm looking at the wrong
21 page. The first call to the premise, where would that
22 be?

23 **A** I'm sorry. Yeah. 11:31. 11:31:23 seconds.

24 **Q** So at 11:31 and 23 seconds, a member of ADT
25 placed a phone call to the premise, is that accurate?

1 A Yes, sir.

2 (WHEREUPON, State's Exhibit 45 is played.)

3 BY MR. KIDD:

4 Q Okay. So that was the first attempt to contact
5 Therron Richardson or anyone on that premise ---

6 A Yes, sir.

7 Q --- after the alarm triggered. And after
8 receiving that answering machine message, the ADT
9 representative then went down the contact number list and
10 then tried to place a call at the next number?

11 A Yes, sir.

12 Q And that call would have been placed at
13 11:32:06?

14 A Yes, sir.

15 Q Right after?

16 A Yes, sir.

17 (WHEREUPON, State's Exhibit 45 is continued.)

18 BY MR. KIDD:

19 Q So, uh, after calling the number that was
20 listed in, uh, the services contract as Mr. Richardson's
21 cell phone, uh, a gentleman answered the phone and
22 identified himself as Therron Richardson and asked to
23 cancel the alarm?

24 A Yes, sir.

25 Q Is that accurate?

1 A Yes, sir.

2 Q Uh, keep going down this event history. And
3 we're still at -- let's just keep going right down.
4 11:32:39. We get that listen in pending again. Why do
5 we get that trigger again?

6 A We had another zone trip in the premise.

7 Q Okay. So for example, and correct me if I'm
8 wrong, we have a sensor go off?

9 A Yes, sir.

10 Q ADT calls?

11 A Uh-huh.

12 Q It gets canceled or disregarded and then
13 another trigger goes off within 30 seconds.

14 A While they are having their conversation.

15 Q Really at the same time while they were having
16 that conversation.

17 A Yes, sir.

18 Q So maybe a motion sensor gets triggered or
19 something else. It starts the process over again?

20 A Yes, sir.

21 Q That how it works?

22 A Yes, sir.

23 Q That's why at 11:32:39, uh, you get the two-way
24 voice listen-in pending activated again?

25 A That's correct.

1 Q Which, once again, is just kind of an automated
2 thing where ADT tries to salvage contact with the unit
3 inside the residence?

4 A That's correct.

5 Q And then that occurs on the next one 11:32:42.
6 So the next few seconds, that's what's going on?

7 A Yes, sir.

8 Q Then we get down to 11:33:05. I guess this is
9 towards the end of the conversation which we just heard?

10 A Yes, sir.

11 Q Is that correct?

12 A Yes, sir.

13 Q What is that entry of the event log?

14 A Says spoke with Therron Richardson. Stated
15 disregard. Stated everything is okay.

16 Q So these are just kind of notes that your
17 operator enters in as different things occur?

18 A Yes, sir.

19 Q So basically, they just make notations of that
20 phone call we just heard?

21 A That's correct.

22 Q Then at 11:33:10, you get a full clear, is that
23 right?

24 A Yeah. It's just an electronic notation of what
25 she had just spoke to him about which is a full clear of

1 the alarm.

2 Q And so what's the next notation?

3 A Alarm suppressed. It's just another notation
4 of her taking note of the account.

5 Q And then 11:35:34. So within a minute or two.
6 What's that? Restore interior. What is that?

7 A That's restore from the Zone 9 that triggered
8 at 11:32 and 39. It indicates that it reset itself or we
9 get a restoral. So depending upon the device, once the
10 device is opened or it gets tripped, it sends an alarm.
11 Once it kind of resets itself, it sends a restoral.

12 Q So at that point, Zone 9 or whatever that is,
13 it's been restored?

14 A Yes, sir.

15 Q Okay. And then 11:35:39, uh, you get the
16 listen-in pending again.

17 A Zone 9 tripped again. Yes, sir.

18 Q So Zone 9, which had just been restored tripped
19 again. So either door opened again that was closed or a
20 motion sensor, which hadn't detected any motion detected
21 motion.

22 A Correct.

23 Q Okay. Uh, and I don't want to get too far off
24 track here, but sometimes my brain gets a little crazy.
25 Is there ways to set an alarm to where only a motion

1 sensor is active and the door is like -- for example, uh,
2 I guess you can set the alarm where only certain zones
3 would actually set the alarm off.

4 A Uh --

5 Q Like only the doors and not the motion sensor.
6 Like if you are at home and wanted to close the doors at
7 night, but wanted to be able to walk in the kitchen and
8 get something out of the refrigerator without setting the
9 alarm off. Could you set the alarm that way?

10 A Yes, sir.

11 Q So you could activate certain zones and not
12 activate certain zones?

13 A Yes.

14 Q So for example, -- and we don't know whether
15 the door zones were active or the motion zones were
16 active?

17 A Yeah, I have no way of knowing about the
18 documentation.

19 Q Gotcha. And, uh, -- sorry. Once again, I
20 apologize. Let me get back on track. Uh, so I believe
21 the next event that we have, we have the listen-in
22 inactive. Then at 11:36:57, you have an inbound call.

23 A Yes, sir.

24 Q Can you tell us what that means and what that
25 is?

1 **A** It looks like Therron Richardson had called the
2 Central Station.

3 **Q** So after that first call where ADT called Mr.
4 Richardson, then Mr. Richardson called back?

5 **A** Yes, sir.

6 **(WHEREUPON, State's Exhibit 45 is continued.)**

7 **BY MR. KIDD:**

8 **Q** And so that was the recording of the call that
9 we had just discussed where he called back in to ADT
10 within a minute, not a minute. We'll say at 11:36. And
11 the other call ended at 11:33. So within three minutes
12 approximately, he called back to ADT and indicated to
13 disregard, wanted to ensure that ADT disregarded the
14 alarm.

15 **A** Yes, sir.

16 **Q** Uh, and then it looks like another call was
17 placed by ADT at 12:51. This is roughly -- excuse me.
18 You had an inbound call at roughly 12:50, so about an
19 hour and 12 minutes after that call we just heard, there
20 was an inbound call to ADT. Is that accurate?

21 **A** Yes, sir.

22 **Q** And can you tell the jury what that call was
23 about?

24 **A** That was Operator 35. It stated open rear
25 doors. It looks like someone broke in.

1 Q All right. Can we play that call?

2 (WHEREUPON, State's Exhibit 45 is continued.)

3 BY MR. KIDD:

4 Q So that was the police contacting ADT?

5 A Yes, sir.

6 Q They indicated that they were trying to
7 establish contact with the key holder?

8 A Yes, sir.

9 Q Because there has been an open door. What they
10 relayed was that it was like someone broke in. We need
11 to talk to the key holder?

12 A Yes.

13 Q And, uh, following that call, did ADT make a
14 subsequent call?

15 A Yes, we went ahead and called the premise to
16 get verification.

17 Q And that's at 12:51:08?

18 A Yes, sir.

19 Q Okay.

20 A And then, uh, -- yeah, that's the -- the
21 following thing is that they spoke to Deputy Bowen on
22 scene.

23 Q I'm sorry. So the call that we're playing
24 right now would be the call that ADT placed to the
25 premise?

1 A Yes, sir.

2 Q Okay.

3 (WHEREUPON, State's Exhibit 45 is continued.)

4 BY MR. KIDD:

5 Q So that was a call that we just heard that ADT
6 called the premise and Deputy Bowen answered, is that
7 correct?

8 A Yes.

9 Q Okay. And he was trying to get information to
10 contact whoever was on the service contract or whoever
11 the key holder was?

12 A Yes.

13 Q And then following that call, the next log, I
14 think, just indicates or summarizes that call, is that
15 accurate?

16 A Yes, sir.

17 Q And then, uh, what's this update at 12:51:42?

18 A It's just a general notation.

19 Q Then the next one you get at 12:53:30 is an
20 inbound call. Is that accurate?

21 A Yes, sir. A call from Operator 30. Stated
22 that it was an officer. Will disregard further contact
23 per Deputy Bowen.

24 (WHEREUPON, State's Exhibit 44 is continued.)

25 BY MR. KIDD:

1 Q So that was ADT calling -- that was ADT calling
2 the police department to double check and make sure that
3 who they talked to on the scene and who identified
4 themselves as Deputy Bowen was who they say they were --
5 was who he said he was.

6 A Yes, sir.

7 Q Is that accurate? And I just want to summarize
8 real briefly. The first indication that something had
9 tripped this alarm on October 17th of 2010 was at 11:29
10 in the morning?

11 A Yes, sir.

12 Q And in the hours and days leading up to that,
13 that alarm had not been tripped?

14 A No.

15 Q And then after that, there was a continuous
16 amount of activity in zones being fired off from 11:29
17 on?

18 A Yes, as the data reflects.

19 MR. KIDD: Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. KIDD: I have no further questions.

22 THE COURT: Thank you. Cross-examination.

23 MRS. TAYLOR: Thank you.

24 CROSS-EXAMINATION

25 BY MRS. TAYLOR:

1 Q Good afternoon.

2 A Good afternoon.

3 Q Just a few questions. Obviously, ADT is a
4 security company.

5 A Yes, ma'am.

6 Q People put them in their homes to protect from
7 whatever.

8 A Yes, ma'am.

9 Q And part of providing security for break-ins or
10 other related stuff, do y'all have internal security?
11 How do you know who you are talking to when you are just
12 talking to somebody on the phone? I understand you dial
13 the number that you're given. But do you give your
14 clients pass codes?

15 A Customers have pass codes.

16 Q And when are those pass codes required to be
17 used?

18 A During alarms or calling in for service.

19 General verification of whom the person is.

20 Q In these, at least two, conversations, I think,
21 that we heard, were those the conversations in their
22 entirety?

23 A Uh, as far as I could tell.

24 Q And was a pass code requested by ADT personnel?

25 A I did not hear one.

1 Q Could you hear the individual that's supposed
2 to be Therron Richardson give a pass code?

3 A I did not hear that.

4 Q Uh, I think you told us this, there were three
5 door sensors.

6 A Total security. Yes, it said there is three
7 door sensors.

8 Q And you believed that the sliding glass door,
9 that would have been a trigger of that first one?

10 A I would have no way of knowing.

11 Q So y'all don't -- didn't get any -- you got a
12 phone call at some point later from the police saying
13 we're letting you know it looks like a back door was
14 broken in, burglar alarm or y'all called the police to
15 tell them. Somebody notified somebody.

16 A Yeah.

17 Q Nothing to indicate any other entry damage or
18 signs of anything on the exterior of the house as far as
19 you know?

20 A We would have no way of knowing.

21 Q And, uh, you were answering questions from the
22 Solicitor about the historical nature of this reporting
23 system. Obviously, October 17th is the data we're mostly
24 interested in. But do you see in the several pages of
25 stuff you have provided, and let me just make it a little

1 bit quicker and direct you to, for instance, January
2 17th, 2010. I think there was perhaps a trigger or a
3 problem.

4 Q And do you see -- and I'm looking specifically
5 at the 1/17/2010 12:40:57.

6 A Okay.

7 Q At the history comment.

8 A Yes, ma'am.

9 Q And that indicates that someone again from ADT
10 spoke with Mr. Richardson, Therron Richardson?

11 A Yes, ma'am.

12 Q And that Mr. Richardson requested -- does P.D.
13 mean Police Department?

14 A Yes, ma'am.

15 Q On that same day, would you tell us what
16 happened on this 1/17? I see where it says listen-in
17 pending, but do you know what triggered the alarm at that
18 that point?

19 A Just Zone 2.

20 Q So a zone?

21 A A zone.

22 Q So on that day, or on October 17th, when your
23 people are calling someone who identifies himself as
24 Therron Richardson, do you have any idea knowing where
25 that person is when you are asking the question and

1 telling them we got a call, what do you want us to do?

2 **A** I have no way of knowing where they are at.

3 **Q** You have no way of knowing whether he was two
4 minutes from his house or 30 minutes from his house?

5 **A** I have no way of knowing.

6 **Q** I think that's everything. Just give me -- no,
7 I have one other question for you.

8 **A** Yes, ma'am.

9 **Q** These security systems, you were familiar with
10 the key pads and stuff. If someone is breaking in, that
11 would set off an alarm. Did this particular system have
12 what is called a panic button? Do you know?

13 **A** I don't know. I know we had a key fob, which
14 is just the remote turn on and off like a car alarm.

15 **Q** And so -- but that wouldn't tell us whether
16 someone is in the house and in trouble and need it, y'all
17 could access them?

18 **A** No way of knowing.

19 **Q** One second. That's all the questions I have.
20 Thank you.

21 **THE COURT:** Thank you. Any redirect?

22 **MR. KIDD:** Just one follow up.

23 **REDIRECT EXAMINATION**

24 **BY MR. KIDD:**

25 **Q** Just to be clear, the part she's talking about

1 where Mr. Richardson requested the police, that was some
2 nine months before October 17th that we are concerned
3 with?

4 **A** Yes, sir.

5 **Q** And was that eventually cleared out or full
6 clear given?

7 **A** Yes, sir.

8 **Q** And how long after was the full clear given on
9 that?

10 **A** Looks like about six minutes.

11 **MR. KIDD:** Uh, I have no further questions,
12 Your Honor.

13 **THE COURT:** Thank you. Sir, you may step
14 down and be excused. Thank you.

15 **THE WITNESS:** Thank you.

16 **THE COURT:** Okay. Let's hold on one second.

17 Ladies and Gentlemen, we're going to break for
18 lunch now. Sometimes takes a little longer to get
19 lunch downtown than other places, so I'm going to
20 give you about an hour and a half. If you could, be
21 back at 2:15. Please don't discuss the case yet as
22 you have not heard all the evidence.

23 While y'all are gone, I'll be figuring out how
24 many more witnesses we have and how long we'll be
25 here today. So y'all have a nice lunch. I'll see

1 you back at 2:15.

2 **(WHEREUPON, the jury exits at approximately**
3 12:45 p.m.)

4 **THE COURT:** I'm sorry, Mr. Ferguson, to cut
5 you off. I just wanted to get them on out the door.
6 How many more witnesses do y'all have?

7 **MR. FERGUSON:** We expect to call two or three
8 more witnesses. All police officers.

9 **THE COURT:** Okay.

10 **MR. FERGUSON:** Two of them may take a minute
11 because they were doing the search warrant. One of
12 them should not take very long.

13 **THE COURT:** Okay. That sounds good.

14 Do you know y'all's plan yet? You don't have
15 to tell me if you don't want to.

16 **MRS. TAYLOR:** We haven't had a final
17 discussion on it.

18 **THE COURT:** Okay.

19 **MRS. TAYLOR:** But I believe that once they
20 rest, we will only have matters of law and we're
21 done.

22 **THE COURT:** Okay. I have been working on the
23 jury charges. But if y'all have any specific
24 charges you want to ask for or submit, you know, let
25 me know. What I generally do is put it all

1 together. If we have a charge conference, then I'll
2 give y'all a hard copy of the draft and you can kind
3 of take -- I think it's easier to work off of a
4 draft in the charge conference. But if there's
5 anything y'all want me to go ahead and work in there
6 that we can talk about in detail, just give it to me
7 after lunch. We may have to, since we haven't even
8 started looking at the charges yet, bring them back
9 tomorrow to argue and charge, even if he finishes up
10 because we're not starting til 2:15. I think that
11 makes the most sense. Does that give anybody
12 heartburn?

13 **MRS. TAYLOR:** We would enjoy that.

14 **THE COURT:** I thought that might be helpful.
15 Then y'all chat at lunch. After the State rests,
16 you know, I'll give any necessary instructions in
17 the morning. Then we'll go from there. All right.
18 Y'all have a nice lunch. I'll see y'all at 2:15.
19 I'll be in here because we have something else at
20 1:30. Let me know if you need anything.

21 **MR. FERGUSON:** Thank you, Judge.

22 **MRS. TAYLOR:** Thank you.

23 (WHEREUPON, a lunch recess is taken.)

24 (WHEREUPON, the jury enters at approximately
25 3:22 p.m.)

1 **THE COURT:** Thank you, Ladies and Gentlemen.
2 I hope y'all had a nice lunch. We are ready to
3 continue with the next witness.

4 **MR. FERGUSON:** Thank you, Your Honor. The
5 State calls Fletcher Ferguson.

6 **THE COURT:** Sir, if you would, come on
7 forward and be sworn.

8 **FLETCHER FERGUSON**
9 having first been sworn, testifies as follows:

10 **THE CLERK:** Have a seat please. State your
11 full name and spell your last please.

12 **THE WITNESS:** Detective Fletcher Ferguson.
13 F-E-R-G-U-S-O-N.

14 **DIRECT EXAMINATION**

15 **BY MR. FERGUSON:**

16 **Q** Good afternoon, Detective. Where are you
17 presently employed?

18 **A** Charleston County Sheriff's Office.

19 **Q** And how long you been there?

20 **A** Over nine years.

21 **Q** And what are your current duties?

22 **A** I'm a metro narcotic detective.

23 **Q** What are the duties of a metro narcotics
24 detective?

25 **A** General duties are narcotics investigations.

1 We handle making controlled purchases, subsequent
2 investigations, search warrants, we also handle call
3 outs. If a member of the agency or another agency needs
4 assistance with a narcotics issue in the county.

5 Q By narcotics, you mean illegal drugs?

6 A Yes, ma'am.

7 Q Where -- were those your duties on October of
8 2010?

9 A Yes, sir. I was in the metro major case unit.
10 I was also a vice detective. I handled narcotics and
11 vice.

12 Q Do you remember being involved in the execution
13 of a search warrant on October 17th, 2010?

14 A Yes, sir.

15 Q Where was that search warrant executed?

16 A 1956 Old Fort Avenue.

17 Q Is that Charleston County?

18 A Yes, sir.

19 Q Uh, what, if anything, led that house or about
20 that house led your officers to pursue a search warrant?

21 A We were notified by our supervisor, Sergeant
22 Stanley, that patrol had a situation there involving some
23 narcotics in plain view.

24 Q So patrol had a situation involving narcotics
25 in plain view and they called the narcotics unit?

1 A Yes, sir.

2 Q Now, what is the main goal of the narcotics
3 unit when entering a residence to execute a search
4 warrant?

5 A To locate evidence that leads to probable cause
6 of a crime occurring.

7 Q Does each member of your team have specific
8 roles in investigation?

9 A Yes, sir.

10 Q So when you say team, I guess it's not just you
11 by yourself going over to , right?

12 A No, sir. It would be myself and whatever other
13 members are involved.

14 Q And do you assign roles to these other members?

15 A Yes, sir.

16 Q Uh, what was your primary role during the
17 execution of the search warrant?

18 A I was the cold case agent along with Detective
19 Plyler. I was also the evidence collection custodian.

20 Q What are the duties of a case agent?

21 A Case agent makes the general decisions
22 involving the case, whether it be making charges or just
23 what may be the -- what they may need involving the case
24 from other members.

25 Q What is the role of an evidence custodian?

1 **A** Any evidence that may be located, I will go and
2 take a photograph of it and then collect it. Then when
3 we're done, I'll be in charge of actually packaging it
4 and getting it to the evidence compound.

5 **Q** When executing a search warrant, how many
6 evidence custodians are there?

7 **A** Only one.

8 **Q** Is that the only person that touches any of the
9 evidence that's found?

10 **A** Yes, sir.

11 **Q** Does any other officer touch the evidence
12 that's found?

13 **A** No, sir.

14 **Q** Now, in executing a search warrant, what is the
15 first step that's taken in executing a search warrant?

16 **A** We take overall photographs of the residence to
17 show the state of the residence prior to beginning the
18 search.

19 **Q** Did you take photographs when you executed the
20 search warrant at Old Fort?

21 **A** Yes, sir.

22 **Q** Do you have, uh, -- when you executed the
23 search warrant at Old Fort, uh, did you find any
24 evidence?

25 **A** Yes, sir.

1 Q Did you take photographs of that evidence?

2 A Yes, sir.

3 Q I'm showing you what's already been marked as
4 -- what's already entered into evidence as State's
5 Exhibit number 2. I'm showing you what's been marked as
6 State's Exhibit number 2. Do you recognize that?

7 A Yes, sir.

8 Q What is that?

9 A That's the truck that we seized from the
10 residence.

11 Q That's the truck you seized from the residence?

12 A Yes, sir.

13 Q What was the condition of that truck?

14 A It was in poor shape.

15 Q It was in poor shape?

16 A Yes, sir.

17 Q You said you seized it. That means you took it
18 off the property?

19 A Yes, sir.

20 Q Did you drive it off the property?

21 A Yes, sir.

22 Q Did the truck start when you turned the key?

23 A No, sir. We actually had to jump it.

24 Q You had to jump it with jumper cables?

25 A Yes, sir.

1 Q Can you tell the jury what the condition of
2 that truck was?

3 A It was poor, in poor condition..

4 Q So did it look like it had been driven on a
5 regular basis?

6 A No, sir. It looked like it had been sitting.

7 Q Looked like it had been sitting for a while?

8 A Yes, sir.

9 Q And again, it didn't start when you turned the
10 key ---

11 A No, sir.

12 Q --- initially. I'm going to show you what's
13 been marked as State's Exhibit number 3. Do you
14 recognize that?

15 A Yes, sir.

16 Q What is that?

17 A That's the residence at Old Fort Avenue.

18 Q Did you take that picture?

19 A Yes, sir.

20 Q That's the house that you executed the search
21 warrant on?

22 A Yes, sir.

23 Q I'm going to show you what's been marked as
24 State's Exhibit 7. Do you recognize that?

25 A Yes, sir.

1 Q What is that?

2 A That appears to be the master bathroom attached
3 to the master bedroom.

4 Q Did you locate any narcotics in the master
5 bathroom?

6 A I believe we did, sir. We found two plastic
7 bags containing a white powder substance, one plastic bag
8 containing green plant material which field tested
9 presumptive for marijuana. Also found some scales.

10 Q In that master bathroom?

11 A Yes, sir.

12 Q I'm showing you what's been marked as State's
13 Exhibit number 9. Do you recognize that?

14 A Yes, sir.

15 Q Uh, are those the items that you found?

16 A Yes, sir.

17 Q Can you point to the jury and point out what
18 exactly you had found?

19 A Yes, sir.

20 Q You can stand up and walk over there.

21 A Right here, we have two digital scales commonly
22 used for weighing narcotics or illegal drugs. We have a
23 couple of bags of -- or boxes of plastic baggies which
24 are used for packaging illegal narcotics. Right here is
25 a white plastic bag with a white powder substance in it

1 later field test presumptive for cocaine.

2 Q I'm also going to show you what has been marked
3 as State's Exhibit number 10.

4 A Yes, sir. That's another quantity of white
5 powder substance field test presumptive for cocaine.
6 That's the digital scale.

7 Q Is that a zoom-in picture of what we see right
8 there?

9 A Yes, sir.

10 Q As State's Exhibit 9?

11 A Yes, sir.

12 MRS. TAYLOR: Excuse me. What Exhibit was
13 that?

14 MR. FERGUSON: That's State's Exhibit 10.

15 MRS. TAYLOR: 10. Thank you.

16 BY MR. FERGUSON:

17 Q I'm also going to show you what's been marked
18 as State's Exhibit 11. Do you recognize that photo?

19 A Uh, yes, sir. That appears to be another
20 digital scale or a digital scale box, more baggies and I
21 believe that's going to be possibly a bottle of Inositol.

22 Q Is that the same bathroom, the same master
23 bathroom that was -- that the previous items were in?

24 A Yes, sir.

25 Q And that bottle right there, what did you say

1 it was?

2 A I believe it's going to be Inositol. I'd have
3 to look at the report.

4 Q Inositol?

5 A Yes.

6 Q Sure. Take a look.

7 A (Reviewing.) Yes, sir. It's a bottle of -- a
8 four-ounce bottle of Superior Inositol.

9 Q I'm showing you what's marked as State's
10 Exhibit 12. Is that the bottle?

11 A Yes, sir. It is.

12 Q Superior Inositol. In your training and
13 experience as a narcotics officer, what is that used for?

14 A It's usually used as a cutting agent with
15 cocaine to expand your, uh, -- the amount you have.

16 Q Cutting agent for cocaine?

17 A Yes, sir. You might add it to the products you
18 already have. Say you have a quantity of cocaine. You
19 would add that to it to expand your product so that you
20 have more, more product.

21 Q Okay. So you would mix this stuff with powder
22 cocaine?

23 A Yes, sir.

24 Q I'm going to show you what's been marked as
25 State's Exhibit 13. Recognize that?

1 A Yes, sir.

2 Q What is that?

3 A It appears to be another digital scale.

4 Q And State's Exhibit 14. What is that?

5 A It looks like a box or at least a cover for a
6 digital CD scale.

7 Q And this exhibit, State's 14 and State's 13,
8 were they both -- was this still in the master bathroom
9 at this point?

10 A Yes, sir.

11 Q And State's Exhibit 15. Can you identify what
12 this is right here?

13 A That appears to be a plastic bag with a white
14 powder residue in it.

15 Q I'm going to show you what's been marked as
16 State's Exhibit 16. That's a funny looking picture. Do
17 you recognize what that is?

18 A Not right off. I apologize.

19 Q It is a little funny looking when you see it on
20 camera.

21 (WHEREUPON, State's Exhibit 46 is marked for
22 identification purposes.)

23 **BY MR. FERGUSON:**

24 Q I'm showing you what's been marked as State's
25 46 for identification purposes. Do you recognize that?

1 **A** Sir, we seized that bag from the residence.

2 **COURT REPORTER:** I'm sorry.

3 **THE COURT:** I'm sorry. We just can't hear
4 you.

5 **THE WITNESS:** Oh, I apologize.

6 **THE COURT:** Speak up a little bit for us.
7 Sometimes when you're talking to the jury, we just
8 can't quite hear.

9 **THE WITNESS:** Yes, ma'am.

10 I do recognize that bag.

11 **BY MR. FERGUSON:**

12 **Q** How do you recognize that bag?

13 **A** It was seized at the search warrant.

14 **Q** Uh, that bag and its contents, was that also
15 seized at the search warrant, during the search warrant?

16 **A** Yes, sir.

17 **Q** Reach in that bag. Tell us what's inside of
18 it. What is that?

19 **A** These are small baggies commonly used in
20 narcotics distribution to package small amounts of
21 narcotics.

22 **Q** Small amounts of narcotics. How many little
23 baggies do you have in there?

24 **A** Uh, 10 baggies full of smaller bags and one
25 empty bag.

1 **MR. FERGUSON:** Your Honor, at this time, I'd
2 like to enter State's Exhibit 46 into evidence.

3 **THE COURT:** Okay.

4 **MRS. TAYLOR:** No objections to what is being
5 physically entered into evidence.

6 **THE COURT:** The Exhibit is entered without
7 objection as State's 46.

8 **MR. FERGUSON:** And just to be clear, State's
9 46 is the bag and its contents.

10 **(WHEREUPON, State's Exhibit 46 is admitted into the**
11 **record.)**

12 **BY MR. FERGUSON:**

13 **Q** Now, is that the same bag that is in this
14 picture here on State's 16?

15 **A** It appears so.

16 **Q** You also searched the master bedroom, is that
17 correct?

18 **A** Yes, sir.

19 **Q** And you took photos of the master bedroom?

20 **A** Yes, sir.

21 **Q** I'm going to show you what's marked as State's
22 Exhibit 17. Is that the master bedroom that you
23 searched?

24 **A** Yes, sir.

25 **Q** And is that how it looked when you searched it

1 on October 17th, 2010?

2 A Yes, sir.

3 Q I'm going to show you another closeup of
4 State's -- I'm showing you State's Exhibit 18. Is that a
5 closeup of that same bed?

6 A Yes, sir.

7 Q Is that how it looked on October 17th, 2010?

8 A Yes, sir.

9 Q I'm going to show you what's been marked as
10 State's Exhibit 19. Do you recognize that?

11 A Yes, sir. That appears to be handguns.

12 Q And where were those handguns?

13 A They were on the bed, on top of the bed,
14 underneath the pillows.

15 Q I'm going to show you what's marked as State's
16 Exhibit 20. You recognize that?

17 A Yes, sir.

18 Q What is that?

19 A Those appear to be the two Glock handguns that
20 were seized.

21 Q Were they in that condition when you came
22 across them?

23 A No, sir.

24 Q So they were more like what's seen in State's
25 Exhibit 19?

1 A Yes, sir.

2 Q Chambered and loaded?

3 A Yes, sir.

4 Q Okay. I'm going to show you what's marked as
5 State's Exhibit 21. You recognize that?

6 A Yes, sir.

7 Q What is that?

8 A That's two more of the -- three of the firearms
9 seized from underneath the bed.

10 Q State's Exhibit 22. Is that one of the
11 firearms that were seized?

12 A Yes, sir.

13 Q State's Exhibit 23. Is that one of the
14 firearms that were seized?

15 A Yes, sir.

16 Q State's Exhibit 24. Is that one of the
17 firearms that were seized?

18 A Yes, sir.

19 Q I want to go back to State's Exhibit -- sorry
20 to be fumbling through here -- State's Exhibit 21. That
21 background there seems to be underneath the bed. There's
22 a bin there. Do you see that?

23 A Yes, sir.

24 Q Did you find that bin during the search
25 warrant?

1. A Yes, sir. We did.

2 Q Did you pull that bin out and take a look
3 inside?

4 A We moved the bed.

5 Q You moved the bed? You lifted up the bed?

6 A Yes, sir.

7 Q I'm going to show you what's been marked as
8 State's Exhibit 25. Is that that same bin that was in
9 the previous picture?

10 A Yes, sir. It is.

11 Q And what is inside that bin?

12 A Uh, it's a bin full of rice. Inside the bins
13 are four plastic bags. They all contained white powder
14 substance field tested presumptive for cocaine.

15 Q They all tested presumptive for cocaine. In
16 your training experience as a law enforcement officer,
17 why is it sitting in rice?

18 A Uh, to help keep it dry. To keep the moisture
19 -- to keep the moisture out.

20 Q Is that important for a drug dealer to keep
21 their cocaine dry?

22 A Yes, sir.

23 Q Why is that?

24 A When it gets moist, it starts clumping
25 together. It's like any powder substance. Once you

1 start getting moisture on it, it starts --

2 Q So the rice protects it and keeps the cocaine
3 sellable?

4 A Yes, sir.

5 Q Uh, show you what's been marked as State's
6 Exhibit 26. Is that a picture of that same bin?

7 A Yes, sir.

8 Q Showing you a picture of State's Exhibit 27.
9 You recognize that? Let me see if I can zoom in.

10 A Oh, that's the, uh, -- it appears to be the
11 bank bag or some sort of bag that contained money in it,
12 U.S. Currency.

13 Q Does your search warrant reflect where you
14 found that bag?

15 A Yes, sir. This is in the master bath, excuse
16 me, master bedroom. It's a blue money bag.

17 Q It was in the master bedroom?

18 A Yes, sir.

19 Q I'm showing you what's marked as State's 28.
20 This is going to be hard to see. Do you recognize that?

21 A Yes, sir. That appears to be the money that
22 was on the floor in the closet.

23 Q Is that -- that was the closet in the master
24 bedroom?

25 A Yes, sir.

1 Q State's 29. Is that also a picture of the
2 closet in the master bedroom?

3 A Yes, sir.

4 Q Back behind the money, what is that item there?

5 A It appears to be a safe.

6 Q Safe? Did you search that safe as well?

7 A Yes, sir.

8 Q I'm going to show you what's been marked as
9 State's Exhibit 30. Do you recognize that?

10 A Yes, sir.

11 Q What is that?

12 A That's the safe once it's been opened.

13 Q What did you locate inside of that safe?

14 A Located a total money, uh, \$20,430 -- excuse me
15 -- \$20,430.

16 Q State's Exhibit 31. Is that a closer shot of
17 that same safe?

18 A Yes, sir.

19 Q I'm showing you what's been marked as State's
20 Exhibit 32. What's that?

21 A It appears to be a Social Security card and a
22 birth certificate for Therron Richardson.

23 Q And where was that found?

24 A Those were in the closet of the master
25 bathroom, excuse me, master bedroom inside the safe.

1 Q Okay. I want to take you to the kitchen of
2 Old Fort, Detective Ferguson. I want to show you
3 what's been marked as State's Exhibit 35. Is that the
4 kitchen of Old Fort?

5 A Yes, sir.

6 Q Did you take that picture?

7 A Yes, sir.

8 Q I'm going to show you what's been marked as
9 State's Exhibit 36. You recognize that?

10 A Yes, sir.

11 Q What is that?

12 A That's paperwork in the name of Therron
13 Richardson with Old Fort Avenue.

14 Q The address is Old Fort under Therron
15 Richardson's name?

16 A Yes, sir.

17 Q Also want to show you what's been marked as
18 State's Exhibit 37. What is that white device up top
19 there?

20 A That is a vacuum sealer.

21 Q Vacuum sealer. In your training experience as
22 a, uh, law enforcement officer, would a vacuum sealer be
23 useful to someone who deals in drugs, narcotics?

24 A Yes, sir.

25 Q How so?

1 A Again, like the rice, with narco -- that the
2 cocaine was packaged in, this will help keep moisture
3 out, keep it dry.

4 Q All right. We all may have a vacuum sealer,
5 but a vacuum sealer also could be used for an illegal
6 purpose such as containing -- packaging narcotics, right?

7 A Yes, sir.

8 (WHEREUPON, State's Exhibits 47 through 59 are
9 marked for identification purposes.)

10 BY MR. FERGUSON:

11 Q Detective, I'm going to show you what has been
12 premarked as State's Exhibit 48 to 50 -- 47, excuse me,
13 through 59 for identification purposes. First, State's
14 47. You recognize this?

15 A Yes, sir. It's one of the boxes of baggies
16 from the bathroom.

17 Q From the bathroom?

18 A Yes, sir.

19 Q State's 49?

20 A Another box of baggies.

21 Q All right. Sir, I'm sorry. This is State's
22 48?

23 A Yes, sir.

24 Q State's 49?

25 A Another box of baggies.

1 Q State's 50?

2 A That appears to be a box for a digital scale.

3 Q State's 51?

4 A Spoons.

5 Q State's 52?

6 A Another digital scale.

7 Q State's 53?

8 A Another digital scale.

9 Q State's 54?

10 A It appears to be a digital scale covering.

11 Q State's 55?

12 A The box for the digital CD scale.

13 Q State's 56?

14 A It's baggie with white powder residue.

15 Q State's 57?

16 A Uh, small baggies.

17 Q State's 58?

18 A Another bag with white powder residue.

19 Q And State's 59?

20 A A vacuum sealed bag.

21 Q Do you recognize each of these items?

22 A Yes, sir.

23 Q How do you recognize them?

24 A They were items seized pursuant to the search

25 warrant.

1 **MR. FERGUSON:** Your Honor, at this time, I
2 would like to enter State's 47 through 59 into
3 evidence.

4 **MRS. TAYLOR:** No objection.

5 **THE COURT:** Okay. State's 47 through 59 are
6 admitted without objection.

7 **(WHEREUPON, State's Exhibits 47 through 59 are**
8 **admitted into the record.)**

9 **BY MR. FERGUSON:**

10 **Q** Detective Ferguson, when I look at these -- let
11 me ask you this. Where were these bags found?

12 **A** They were in the master bathroom.

13 **Q** The master bathroom?

14 **A** Yes, sir.

15 **Q** All of these sandwich bags were found in the
16 master bathroom?

17 **A** Yes, sir.

18 **Q** They weren't found in the kitchen?

19 **A** No, sir.

20 **Q** If I could show you State's Exhibit 50. Could
21 you take a look at that and open it up?

22 **A** (Reviewing.)

23 **Q** What is that?

24 **A** It's a digital scale.

25 **Q** Does it look to have been used?

1 A Yes, sir. It appears to be white powder
2 residue on the face of it.

3 Q On the measuring surface?

4 A Yes, sir. As well as the reading area.

5 Q Speak up for us.

6 A I apologize. Yes, sir. On the measuring
7 surface and a little bit on the reading area.

8 Q I'm going to show you State's 52. Can you open
9 that up?

10 A Yes, sir.

11 Q What is that?

12 A Another digital scale.

13 Q And does it appear to have been used?

14 A Yes, sir.

15 Q How do you know that?

16 A It appears to be white powder residue upon the
17 measuring surface. I also see the blue from the
18 presumptive test of cocaine.

19 Q I'm going to show you State's 55. Can you open
20 that up? What is that?

21 A It's a digital scale made to look like an
22 actual CD that you might purchase with a music CD inside.

23 Q Hold that up. Let me see. Turn it around.
24 Let me see the face of it. It looks like a -- what did
25 you say it looked like?

1 A It appears to be a Hard Rock Live CD or a case
2 for a CD that you might purchase music in.

3 Q Open it up. What is it really?

4 A It's a digital scale.

5 Q Okay. I'll show you State's 51. What is that?

6 A It appears to be two spoons.

7 Q What condition are those spoons in?

8 A The smaller spoon appears to be in relatively
9 bad shape. Maybe some rust on it. They both appear to
10 have traces of white powder residue on them.

11 Q Show you State's 53. What is that?

12 A This is another digital scale.

13 Q Does it appear to have been used?

14 A Yes, sir.

15 Q How so?

16 A It looks old and worn. Possibly a little bit
17 of white powder residue on the measuring surface.

18 Q I'm going to speed this along. I'll show you
19 State's 56, 59 and State's 58. Do you recognize those
20 things?

21 A Yes, sir.

22 Q What are those?

23 A Three plastic baggies. One of them is actually
24 a vacuum sealed bag. The other two are ziplock baggies.
25 They all appear to have white powder residue.

1 Q That baggie you said looked like a vacuum
2 sealed bag?

3 A Yes, sir.

4 Q And you said it appeared to have what on it?

5 A White powder residue.

6 Q That's the kind of bag you use in like a vacuum
7 sealer?

8 A Yes, sir.

9 Q Okay. I'm just going to show you State's 54
10 and 57. What is that?

11 A This is another bag containing the smaller
12 plastic baggies. This appears to be a digital scale
13 cover.

14 Q Can you tell the jury where you found all these
15 things?

16 A Yes, sir. Those are all located in the master
17 bathroom.

18 (WHEREUPON, State's Exhibit 60 is marked for
19 identification purposes.)

20 **BY MR. FERGUSON:**

21 Q I'm going to show you what's been marked
22 State's Exhibit number 60 for identification purposes.
23 Do you recognize that?

24 A Yes, sir.

25 Q What is that?

1 **A** That's a bottle of Inositol.

2 **Q** And you testified that -- what is this used
3 for?

4 **A** Generally used in the narcotics trade for
5 cutting an agent, a cocaine substance to increase your
6 yield or your product.

7 **MR. FERGUSON:** All right. At this time, I'd
8 like to enter State's Exhibit 60 into evidence.

9 **THE COURT:** 60?

10 **MR. FERGUSON:** Yes, Your Honor.

11 **MRS. TAYLOR:** No objection.

12 **THE COURT:** State's 60 is admitted without
13 objection.

14 **(WHEREUPON, State's Exhibit 60 is admitted into the**
15 **record.)**

16 **BY MR. FERGUSON:**

17 **Q** And where did you find this?

18 **A** That was in the bathroom as well, master
19 bathroom.

20 **Q** Master bathroom.

21 **(WHEREUPON, State's Exhibits 61 through 66 are**
22 **marked for identification purposes.)**

23 **BY MR. FERGUSON:**

24 **Q** I'm going to show you what's been marked for
25 identification purposes as State's 61 through 66. Do you

1 recognize these items?

2 **A** Uh, yes, sir. This is Therron Richardson's --

3 **Q** Let's take them one at a time. Look through
4 all the evidence and tell me if you recognize all of
5 them.

6 **A** Yes, sir. (Reviewing.)

7 **A** Yes, sir.

8 **Q** How do you recognize all of them?

9 **A** These were all items that were seized at the
10 search warrant.

11 **Q** They were seized at Old Fort?

12 **A** Yes, sir.

13 **Q** All right.

14 **MR. FERGUSON:** Your Honor, at this time, I'd
15 like to move State's 61 through 66 into evidence.

16 **MRS. TAYLOR:** No objection.

17 **THE COURT:** Okay. State's 61 through 66 are
18 admitted without objection.

19 **(WHEREUPON, State's Exhibits 61 through 66 are**
20 **admitted into the record.)**

21 **BY MR. FERGUSON:**

22 **Q** Take a look at 61, State's 61.

23 **A** All right.

24 **Q** What is that?

25 **A** This appears to be Rooms To Go coupon circular

1 addressed to Therron Richardson at Old Fort Avenue.

2 Q It has the defendant's name on it?

3 A Yes, sir.

4 Q And what was that address?

5 A Old Fort Avenue.

6 Q And State's 62?

7 A 62 is the Charleston Water Systems bill

8 addressed to Therron Richardson at Old Fort Avenue.

9 Q And 63?

10 A 63 appears to be a bill from Rooms To Go with
11 the customer name of Therron Richardson and the address
12 of Old Fort Avenue.

13 Q What number at Old Fort Avenue?

14 A It doesn't appear to have an actual address on
15 it. It just says Old Fort Avenue.

16 Q It says Old Fort Avenue?

17 A Yes, sir.

18 Q And 64.

19 A 64 is a rental agreement.

20 Q A rental agreement. And whose name is on that
21 rental agreement?

22 A Therron Richardson.

23 Q And what is the address of that rental
24 agreement?

25 A Old Fort. It actually says Old Fort Road.

1 Q And, uh, do you know what year? Does it say
2 what year is on that rental agreement?

3 A It shows that it a period beginning, uh,
4 March 6, 2008 through February 28, 2009.

5 Q And State's 65?

6 A 65 is a Social Security card belonging to
7 Therron Richardson.

8 Q And State's 66?

9 A It's a birth certificate for Therron
10 Richardson.

11 Q And all of these were found at Old Fort?

12 A Yes, sir.

13 (WHEREUPON, State's Exhibit 67 is marked for
14 identification purposes.)

15 **BY MR. FERGUSON:**

16 Q I'm showing you what's been marked as State's
17 Exhibit 67. You recognize this?

18 A Yes, sir.

19 Q How do you recognize it?

20 A It's the vacuum sealer located in the kitchen.

21 **MR. FERGUSON:** Your Honor, I'd like to admit
22 State's 67 into evidence.

23 **THE COURT:** Okay. Without objection, 67 is
24 admitted.

25 (WHEREUPON, State's Exhibit 67 is admitted into the

1 record.)

2 **BY MR. FERGUSON:**

3 **Q** And this -- where did you find this vacuum
4 sealer?

5 **A** That was located in the kitchen, specifically
6 under the counter next to the stove.

7 **Q** Now, would this be the same type of vacuum
8 sealer that, uh, this type of bag, State's Exhibit 59
9 would use?

10 **A** Yes, sir.

11 **Q** And this is the bag with the cocaine residue in
12 it?

13 **A** Yes, sir.

14 **Q** With the white powder residue in it?

15 **A** Yes, sir.

16 **(WHEREUPON, State's Exhibits 68 is marked for**
17 **identification purposes.)**

18 **BY MR. FERGUSON:**

19 **Q** I'm going to show you what's been marked as
20 State's Exhibit 68 for identification purposes. You
21 receive this?

22 **A** Yes, sir.

23 **Q** How do you recognize it?

24 **A** This is an H&R revolver. We seized that at the
25 search warrant Old Fort from under the bed.

1 **MR. FERGUSON:** Your Honor, at this time, I'd
2 like to admit State's 68 into evidence.

3 **MRS. TAYLOR:** No objection.

4 **THE COURT:** Admitted without objection.

5 (WHEREUPON, State's Exhibit 68 is admitted into the
6 record.)

7 **BY MR. FERGUSON:**

8 Q Where did you find this revolver?

9 A That was under the bed in the master bedroom.

10 Q Under the bed in the master bedroom?

11 A Yes, sir.

12 Q Was it loaded?

13 A Yes, sir.

14 (WHEREUPON, State's Exhibits 69 through 78 are
15 marked for identification purposes.)

16 **BY MR. FERGUSON:**

17 Q Detective Ferguson, I'm going to show you a
18 series of items, State's 69 through 78. You recognize
19 this?

20 A Yes, sir.

21 Q State's number 71?

22 A Yes, sir.

23 Q What is that?

24 A It appears to be a Sig Sauer handgun.

25 Q All right. State's 70?

- 1 A That is a Glock handgun.
- 2 Q State's 69?
- 3 A That is also a Glock handgun.
- 4 Q State's 72?
- 5 A It appears to be a magazine, ammunition
- 6 magazine.
- 7 Q State's 73?
- 8 A It's an Intratec handgun.
- 9 Q State's 75?
- 10 A Miscellaneous ammunition rounds. I can't see
- 11 the caliber.
- 12 Q Would you be able to determine the caliber if I
- 13 came a little closer?
- 14 A Yes, sir. Nine millimeter.
- 15 Q State's 74?
- 16 A 40 caliber ammunition.
- 17 Q State's 76?
- 18 A Nine millimeter ammunition.
- 19 Q Nine millimeter ammunition?
- 20 A Yes, sir.
- 21 Q State's 77?
- 22 A 380 ammunition.
- 23 Q 380 ammunition. And State's 78?
- 24 A 32 caliber ammunition.
- 25 Q Were these a result of the search warrant

1 executed on Old Fort?

2 **A** Yes, sir.

3 **MR. FERGUSON:** Your Honor, at this time, I'd
4 like to enter State's 69 through 78 into evidence.

5 **MRS. TAYLOR:** No objection.

6 **THE COURT:** Okay. 69 through 78 are admitted
7 without objection.

8 **(WHEREUPON, State's Exhibits 69 through 78 are**
9 admitted into the record.)

10 **BY MR. FERGUSON:**

11 **Q** Now, these, uh, handguns, these pistols, were
12 they loaded when you found them?

13 **A** Yes, sir.

14 **Q** The Glock nine millimeter was loaded?

15 **A** Yes, sir.

16 **Q** What type of ammunition does this gun take?

17 **A** It depends on which model it is.

18 **Q** Would you be able to tell?

19 **A** I could. This is a Model 17. It's nine
20 millimeter ammunition.

21 **Q** And wasn't nine millimeter ammunition
22 retrieved?

23 **A** Yes, sir.

24 **Q** Was it retrieved from out of that gun?

25 **A** Yes, sir.

1 Q Where do you load ammunition?

2 A Into the magazine.

3 Q Ammunition was inside of that magazine?

4 A Yes, sir. Ammunition was in the magazine and
5 then loaded into the firearm.

6 Q What type of Glock is this?

7 A Glock 22, 40 caliber.

8 Q And was it also loaded?

9 A Yes, sir.

10 Q We've already spoken about this gun, the Sig
11 Sauer.

12 A Sig Sauer.

13 Q Sig Sauer?

14 A Yes, sir.

15 Q Do you know what type of ammunition this gun
16 takes?

17 A It's a 32 caliber handgun.

18 Q 32 caliber?

19 A Yes, sir.

20 Q Was that loaded as well?

21 A Excuse me. Correction. It's a nine millimeter
22 handgun.

23 Q It's a nine millimeter handgun?

24 A Yes, sir.

25 Q And was that loaded as well?

1 A Yes, sir.

2 Q All right. I'm going to show you State's 72.

3 What is that?

4 A This is a Intratec handgun. This is a high
5 capacity ammunition magazine.

6 Q What is a high capacity ammunition magazine?

7 A It holds a higher number of ammunition rounds
8 than your standard magazine, such as the ones in the
9 Glocks.

10 Q About how many rounds does that hold?

11 A (No response.)

12 Q Approximately.

13 A It looks as though it can hold probably at 45,
14 close to 50 rounds.

15 Q And was that loaded when you found it when you
16 were executing your search warrant?

17 A It was.

18 Q Now, what is done when all the evidence is
19 seized?

20 A When the evidence is seized, it's taken back to
21 our office. We process it, weigh it, field test it and
22 then it's eventually packaged up and taken to our
23 evidence lockers.

24 Q Did someone have a job to record what's seized
25 on location?

1 **A** Yes, sir. That is the person completing the
2 return.

3 **Q** The search warrant return?

4 **A** Yes, sir.

5 **Q** What is a search warrant return?

6 **A** A return is just a written copy of what's
7 seized from the search warrant.

8 **Q** And was a return done this instance?

9 **A** Yes, sir.

10 **Q** Uh, now, once evidence is collected, where is
11 it taken?

12 **A** Once it's collected, it's taken to the return
13 location that's provided to that return person that put
14 it on the search warrant return.

15 **Q** All right. Was that done in this instance?

16 **A** Yes, sir.

17 **Q** I'm showing you what is marked as State's
18 Exhibit number 1. Can you open that bag and identify it?

19 **A** Yes, sir. This is an evidence bag containing a
20 large amount of white powder substance.

21 **Q** All right.

22 **A** An additional evidence bag with white powder
23 substance in it and a third evidence bag containing white
24 powder substance.

25 **Q** Was that also located when you were executing

1 your search warrant at Old Fort Avenue?

2 A Yes, sir.

3 MR. FERGUSON: Your Honor, at this time, the
4 State would move to enter State's Exhibit number 1
5 into evidence.

6 MRS. TAYLOR: No objection.

7 THE COURT: State's 1 is admitted without
8 objection.

9 (WHEREUPON, State's Exhibit 1 is admitted into the
10 record.)

11 BY MR. FERGUSON:

12 Q Now, these bags of cocaine, where were they
13 found?

14 A I believe those bags were located under the bed
15 in the plastic container.

16 Q The plastic container. That's the one we saw
17 in the picture that had the rice in it?

18 A Yes, sir.

19 Q And these were right next to the guns, right?

20 A Yes, sir.

21 Q In the master bedroom?

22 A Yes, sir.

23 Q And that was also documented on your search
24 warrant return?

25 A Yes, sir.

1 Q Now, once the evidence is taken to the
2 centralized location, uh, do you take any precautions or
3 procedures to make sure it's secure, no one could
4 manipulate it or mess with them?

5 A Yes, sir. We place it in a bag. Then -- are
6 you asking during the actual search as each item is taken
7 to a return person?

8 Q Yeah. Take us from there.

9 A I go and collect evidence, photograph it. I
10 then place it in a bag. I take it to Detective Plyler
11 who completed the return. He would document what was
12 taken. I'd place it in a bag and place it near him so
13 it's in a safe, secure location.

14 Q Then when you take it back to your, uh, --
15 where do you take it after you completed Old Fort?

16 A Take it back to our office.

17 Q And who took it back in this instance?

18 A I did.

19 Q And what did you do when you got back to your
20 house?

21 A We then measure it. If it's a narcotic or
22 illegal drug, we measure it and get an approximate
23 weight. We conduct field tests. Then we log it into the
24 evidence system.

25 Q In the evidence system? And where does it go

1 from there?

2 **A** It's then taken to our headquarters. We have
3 evidence lockers. It's placed in a secure locker and
4 it's locked.

5 **Q** Those lockers, like you said, are secure?

6 **A** Yes, sir.

7 **Q** Can anybody access them without -- can anybody
8 access them -- once you put them in the locker, can you
9 re-access it?

10 **A** No, sir. I can not.

11 **Q** Who is the only person who can access it after
12 it is in that locker?

13 **A** Members of our evidence, uh, unit and forensic,
14 I believe, forensic services unit. They have the ability
15 to take it out.

16 **Q** Once you put it in, you can't go back and
17 retrieve it?

18 **A** Correct.

19 **Q** I just want to clear up one more point. You've
20 got your search warrant return with you?

21 **A** Yes, sir. I do.

22 **Q** Now, was all of the cocaine found under the
23 bed?

24 **A** No, sir.

25 **Q** Where was other cocaine found?

1 **A** There were two smaller, two smaller bags.
2 located in the master bathroom. Two bags containing
3 white powder substance that field tested presumptive for
4 cocaine.

5 **Q** So there was cocaine in multiple, multiple, uh,
6 locations in the house, the bathroom and the bedroom?

7 **A** Yes, sir.

8 **Q** All right. That's probably why these baggies
9 are separated here?

10 **A** Yes, sir.

11 **Q** Different baggies, within baggies that we were
12 talking about yesterday. Thank you, Detective. Please
13 answer any questions the defense may have.

14 **A** Yes, sir.

15 **MRS. TAYLOR:** Thank you.

16 **THE COURT:** Cross-examination.

17 **MRS. TAYLOR:** Court's indulgence.

18 **THE COURT:** Sure.

19 **CROSS-EXAMINATION**

20 **BY MRS. TAYLOR:**

21 **Q** Good afternoon.

22 **A** Good afternoon.

23 **Q** A lot of stuff here. Let me start by asking
24 you, you told us you're narcotics department?

25 **A** Yes, ma'am.

1 Q And you were sent, summoned, called to this
2 house when?

3 A It was the -- it was October 17th, 2010.

4 Q Okay. Did you prepare reports as a result of
5 what you did involving this case?

6 A No, I did not.

7 Q Are you reading something? I saw you look
8 down.

9 A Yes, ma'am. I'm looking at the search warrant
10 return and a copy of Detective Plyler's report.

11 Q So you have Detective Plyler's?

12 A Yes, ma'am.

13 Q Does it either tell you there or do you
14 remember what time you actually arrived at this house?

15 A The report has approximately two o'clock as the
16 time we began.

17 Q The search warrant had already been obtained?

18 A I have to look at the search warrant and see if
19 the judge wrote the time when she actually signed it.

20 Q Did you go and get the search warrant?

21 A I was with Detective Plyler.

22 Q Had you and he been to the home before the
23 search warrant?

24 A No, ma'am.

25 Q So you talked to somebody from there?

1 A I was summoned by my supervisor. Detective
2 Plyler communicated with the deputies on the scene.

3 Q And based on what they told you they saw, you
4 went to the magistrate and got a search warrant?

5 A I believe Detective Plyler handled that.

6 Q And after that, you went to the house?

7 A Yes, ma'am.

8 Q Okay. And you told us you are in charge of
9 collecting evidence?

10 A Yes. And during that search warrant, I
11 collected evidence.

12 Q And also took photographs?

13 A Yes, ma'am.

14 Q And it seemed to be one of those photographs
15 like you had on a pair of gloves.

16 A Yes, ma'am.

17 Q And why did you have on gloves?

18 A I always wear gloves to protect from possible
19 contamination.

20 Q And no one else is supposed to touch any of the
21 stuff that you're going to be presumptively collecting?

22 A Correct.

23 Q That's part of the rules with the police
24 officers?

25 A Yes, ma'am. Try to maintain --

1 Q Preserve the scene.

2 A Yes, ma'am.

3 Q And is there any particular reason that you
4 don't want to contaminate any of these items?

5 A I don't want to contaminate myself with
6 narcotics.

7 Q Okay. And you had mentioned the possibility of
8 testing. Some of these things were tested.

9 A Are you speaking of the cocaine?

10 Q Actually, I heard you mention it regarding one
11 of the digital scales.

12 A Cocaine swipe presumptive test was swiped
13 across the measuring surface.

14 Q And I think you said there were, what, maybe
15 three scales found in the house?

16 A Actually have, it appears to be three digital
17 scales and an Ohaus CS5000 scale.

18 Q What's this?

19 A It appears to be a digital scale.

20 Q And do you remember which one was the one that
21 you said you saw the blue trace on?

22 A I would have to look at them again. It's going
23 to be this one right here. As you can see the blue tint
24 to it.

25 Q And do you recall that this was the one in the

1 bathroom?

2 **A** Yes, ma'am. That was in the bathroom.

3 **Q** On the counter?

4 **A** I'd have to look at the picture again.

5 **Q** Okay. So it looks like I've got these three.

6 This, this and this fellow.

7 **A** The silver one right there is also a digital
8 scale.

9 **Q** So we got -- all together.

10 **A** Yes, ma'am.

11 **Q** Which one is the one that you said was
12 something different than a digital scale?

13 **A** On the report, we have two digital scales, one
14 digital CD scale and one Ohaus CS5000. It appears just
15 to be a name on the scales.

16 **Q** Okay. Who decides what of what you find to
17 test? Is that your job or someone else's?

18 **A** Generally, it would be the case agent. But we
19 were all given the opportunity to decide if something
20 looks as though it may need to be tested. Generally, you
21 run that through the case agent, which would be Detective
22 Tommy Plyler.

23 **Q** And anything that would add what you would
24 presume to be narcotic substances would have been for
25 them to be tested where?

1 **A** The narcotics that are tested are sent to our
2 crime scene unit. Then from there, I believe at the time
3 we were testing with the Charleston City Police.

4 **Q** I don't think you were here earlier this week
5 and saw, I think her name is Mrs. Moore. You don't even
6 deal with that?

7 **A** No, ma'am.

8 **Q** Okay. What about other forensic testing,
9 fingerprints? Was any of that done?

10 **A** I have to look at our evidence tags. I believe
11 we did request fingerprinting on the handgun.

12 **Q** Okay. And would you -- you sent them
13 elsewhere? You would not have conducted fingerprint
14 testing?

15 **A** No, ma'am. That would have been submitted to
16 our evidence unit.

17 **Q** Do you know whether that was done?

18 **A** I believe it was done. I would not have been
19 privy to any results, not being the case agent.

20 **Q** And that would have been then -- who would know
21 the answer to that question?

22 **A** Detective Plyler.

23 **Q** Now, the stuff that was taken, you were present
24 and you were reviewing different pieces of information
25 with Mr. Ferguson, the guns in particular?

1 **A** Yes, ma'am.

2 **Q** Is it you who prepared -- there were three
3 different lists of what was taken from this house. Let
4 me show you --

5 **MRS. TAYLOR:** May I approach, Your Honor?

6 **THE COURT:** You may.

7 **BY MRS. TAYLOR:**

8 **Q** This is one. Does that look familiar to you?

9 **A** Yes, ma'am. This is a, uh, all the evidence
10 seized under our particular case. Each case is assigned
11 a case number. You can then go into our system and
12 review all the evidence in one centralized location
13 instead of individual.

14 **Q** And who created this list?

15 **A** That list, I don't know who actually printed it
16 out, but it would be taken from our evidence system.

17 **Q** Okay. And then there is also the formal
18 return. Is that the other part?

19 **A** Yes, ma'am.

20 **Q** That would have three pages of what you have?

21 **A** Yes, ma'am.

22 **Q** Okay. Who prepared that?

23 **A** Detective Plyler completed the return.

24 **Q** But that's what you were referring to earlier
25 as well?

1 A Yes, ma'am.

2 Q And you were present when all this stuff was
3 found?

4 A Yes, ma'am. I actually collected it, collected
5 all the evidence.

6 Q And then this report by Detective Plyler that
7 you have, is it a two-page report?

8 A No, ma'am. I have a three-page incident
9 supplement.

10 Q Can I take a look at what you have?

11 A Yes, ma'am.

12 Q Now you took photographs of the weapons and
13 talked to Mr. Ferguson about the ammunition in this
14 matter.

15 A Yes, sir.

16 Q The ammunition was in the weapons. They were
17 loaded?

18 A Yes, ma'am.

19 Q And when we see up here these bags and
20 envelopes and containers, that's the ammunition that was
21 taken out of these bags?

22 A Yes, ma'am.

23 Q How extensive would you call the search of this
24 residence?

25 A Very extensive.

1 Q You think you found anything that could have
2 been found in that house?

3 A I would like to believe so.

4 Q And you took, in addition to the stuff that
5 we're talking about here, furniture?

6 A Yes, ma'am.

7 Q Beds, chairs?

8 A Yes, ma'am.

9 Q Gameboys, rockers?

10 A Yes, ma'am.

11 Q Washing machine, dryer?

12 A Yes, ma'am.

13 Q Jewelry, DVD player, computers, cell phone?

14 A Yes, ma'am.

15 Q An elliptical. Is that an exercise machine?

16 A Yes, ma'am.

17 Q A bed, a dresser?

18 A Yes, ma'am.

19 Q End tables, coffee tables, leather chairs,
20 glass tables, Bissell ProHeat something. I guess that's
21 like a carpet cleaner maybe?

22 A I don't know.

23 Q Last page of the return.

24 A Yes, ma'am. Without looking at it, I wouldn't
25 know what a Bissell pro --

1 Q But it's written down there?

2 A Yes, ma'am. It is on here. If it's on here,
3 we received it.

4 Q Okay. Why did y'all take all that stuff?

5 A We seize assets, seize assets as though if it
6 were illegally obtained -- the money used to purchase it
7 was illegally obtained, we'll seize items.

8 Q So none of that is necessarily related to the
9 theory of this case that there's drug dealing. It's used
10 in drug dealings that may have been purchased by
11 money ---

12 A Correct.

13 Q --- then you get to keep it all.

14 A Correct. Pending a civil case.

15 Q And the truck you were talking about that we
16 saw the picture of, were you the one that tried to crank
17 it?

18 A Yes.

19 Q Where did you find the key to it?

20 A (Reviewing.) I don't remember where the key
21 was and it's not notated in the documentation.

22 Q Do you know what a remote start is?

23 A A remote start for a vehicle?

24 Q Yes.

25 A Yes, ma'am.

1 Q Do you know whether that truck used a remote
2 start to crank?

3 A I don't remember. I don't remember if it did
4 or not.

5 Q The safe you took photographs of before it was
6 opened. ---

7 A Yes, ma'am.

8 Q --- how was it opened?

9 A We had to force it open.

10 Q It was locked?

11 A Yes, ma'am.

12 Q How did you force it open?

13 A I believe we used a tool.

14 Q Busted it open?

15 A Forced it open, yes, ma'am.

16 Q And this was the condition in which you found
17 it?

18 A Yes, ma'am.

19 Q You didn't close it up?

20 A You asking about the sealing on there? No,
21 ma'am. I did not put a seal on there.

22 Q Hasn't been opened yet, has it?

23 A It does not appear so.

24 Q Newly purchased?

25 A It appears so.

1 Q Did you look in the refrigerator or freezer at
2 the house?

3 A I don't specifically remember looking in there.
4 It doesn't mean I didn't.

5 Q You don't have any recollection of seeing any
6 frozen vegetables or anything like that.

7 A I don't have a recollection.

8 Q You didn't take photographs of that?

9 A No, ma'am.

10 Q And you talked with Mr. Ferguson about this
11 stuff in plain view. What is that?

12 A Plain view is when you see something and you
13 have a legal right to be there and it's in your view.

14 Q It's a legal term on the one hand?

15 A Yes, ma'am.

16 Q Which means that as a police officer and you're
17 legally somewhere and it's in plain view, you can act on
18 it?

19 A Yes, ma'am.

20 Q But connotatively, in the real world, it means
21 just what it says, doesn't it? Out in the open
22 basically, correct?

23 A Yes, ma'am.

24 **MRS. TAYLOR:** Court's indulgence.

25 **THE COURT:** Certainly.

1 (WHEREUPON, there is a pause.)

2 BY MRS. TAYLOR:

3 Q Did you take the photographs, all the
4 photographs taken of the house on the outside, inside?

5 A Yes, ma'am.

6 Q You the only photographer there?

7 A Yes, ma'am.

8 Q How many doors were on this house, do you
9 remember?

10 A I do not remember. I know at least a front
11 door and a rear door.

12 Q And a glass sliding door?

13 A I believe so.

14 Q And you don't remember whether there's a side
15 door or not?

16 A I do not remember.

17 Q You don't remember how many pictures you may
18 have taken?

19 A Yes, ma'am.

20 Q And just so I'm perfectly clear, all this stuff
21 belonged to thinking, okay, this will prove a case that
22 we're making against this individual owner of the house.
23 Had you see any other stuff like this, you would have
24 seized that as well?

25 A Yes, ma'am.

1 Q And related to any of this stuff, you would
2 have seized it.

3 A Yes, ma'am.

4 Q Thank you.

5 THE COURT: Any redirect?

6 MR. FERGUSON: Briefly, Your Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. FERGUSON:

9 Q You were talking about plain view just a minute
10 ago. Did you have anything to do with the initial
11 officers who responded to the scene?

12 A No, sir. Detective Plyler interacted with him.

13 Q Did, uh, -- were you concerned at all with how
14 the officers got there?

15 A No, sir.

16 Q Were you concerned at all with the reasoning
17 behind the 911 call or anything like that?

18 A No, sir.

19 Q What was your job in regard to this case?

20 A Once being notified, being the co-case with
21 Detective Plyler, was assisting him in the investigation
22 and collecting evidence once I was assigned to do so.

23 Q So you were only concerned with the narcotics
24 part of this investigation?

25 A Yes, sir.

1 **Q** You said you drove that truck off from the
2 scene, the green truck that was in the front yard?

3 **A** Yes.

4 **Q** Did it look like it would have a remote start
5 function?

6 **A** No, sir.

7 **MR. FERGUSON:** Thank you very much.

8 **THE COURT:** Thank you. Okay. Sir, you may
9 step down.

10 **THE WITNESS:** Thank you, Your Honor.

11 **THE COURT:** Yes, sir.

12 **MR. FERGUSON:** The State calls --

13 **THE COURT:** Well, let's -- I think I'm going
14 to give the jury about a 10-minute break. Let me
15 let the officer get down. I appreciate your
16 efficiency, but I think it's time for about a 10-
17 minute stretch. Please do not discuss the case yet.
18 Thank you.

19 **(WHEREUPON, the jury exits at approximately**
20 **3:35 p.m.)**

21 **THE COURT:** All right. Why don't y'all take
22 about a 10-minute break. We'll be at ease.
23 Anything we need to deal with when y'all come back?

24 **MR. FERGUSON:** No, Your Honor.

25 **MRS. TAYLOR:** Just the charges.

1 **THE COURT:** Yeah, I've got the draft ready
2 for you. These are all taken right out of the
3 charge book. Any change I've made, we can still
4 discuss them when I give you the full draft. I
5 added some information about the weight and what the
6 burden of proof is as to the weight. Y'all may want
7 to tinker where that is. Then you might not like
8 the order that they are in. I'm happy to -- it's
9 not a long charge. I will have printed copies of
10 those ready for you probably after the next witness.
11 Okay. We'll be at ease.

12 (WHEREUPON, a recess is taken.)

13 **THE COURT:** All right. Y'all ready for the
14 jury?

15 **MRS. TAYLOR:** Yes, ma'am.

16 **THE COURT:** Okay. Thank you, sir.

17 (WHEREUPON, the jury enters at approximately
18 4:00 p.m.)

19 **THE COURT:** Call your next witness.

20 **MR. FERGUSON:** Thank you, Your Honor. The
21 State calls Detective Thomas Plyler.

22 **THE COURT:** Okay, Detective. If you would,
23 come forward and be sworn please.

24 **THOMAS PLYLER**

25 having first been sworn, testifies as follows:

1 **THE CLERK:** Have a seat please. State your
2 full name and spell your last please.

3 **THE WITNESS:** Detective Thomas Plyler.
4 That's P-L-Y-L-E-R.

5 **DIRECT EXAMINATION**

6 **BY MR. FERGUSON:**

7 **Q** Good afternoon, Detective. Uh, where do you
8 presently work?

9 **A** I'm employed with Mt. Pleasant Police
10 Department.

11 **Q** How long were you with Mt. Pleasant Police
12 Department?

13 **A** A little over five and a half years.

14 **Q** What are you current duties there?

15 **A** My current duties, I'm assigned as a narcotics
16 detective in the narcotics bureau.

17 **Q** Where were you working, uh, in October 2010?

18 **A** In October 2010, I was assigned to the task
19 force, Charleston County Sheriff's Office Metro Major
20 Case.

21 **Q** And what does Metro Major Case focus on?

22 **A** Uh, focus mainly on illegal narcotics.

23 **Q** Were you involved in the execution of a search
24 warrant on October 17th, 2010?

25 **A** Yes, sir.

1 Q Where was that search warrant executed?

2 A Old Fort Avenue.

3 Q What, if anything, about that house led your
4 office to pursue a search warrant?

5 A Myself and Detective Ferguson was actually on
6 call for that week. It was on a Sunday, non-workday for
7 us. My supervisor, Sergeant Stanley, gave me a phone
8 call and told me what patrol officers had and told me to
9 contact the on-scene patrol deputy, Deputy Bowen.

10 Q Okay. And so you are not involved with
11 anything that occurred before you got that call just to
12 execute a search warrant?

13 A No, sir.

14 Q You weren't aware -- were you aware of a 911
15 call for the reasons that you needed to go to Old
16 Fort yet?

17 A No, sir. I was not.

18 Q Uh, when were you made aware that you needed to
19 go to Old Fort?

20 A Once my supervisor, Sergeant Stanley gave me a
21 call.

22 Q When you got that call, where did you go? How
23 do you -- give me the steps to initiate a search warrant?

24 A He gave me a call. I called the deputy on
25 scene, Deputy Bowen. He told me what he had. Basically,

1 scales with a white residue consistent with, uh, cocaine.
2 Also he advised me that it field tested presumptive
3 present for cocaine.

4 Q Once you get that information, what do you do
5 with it?

6 A I take it and then I have to go to my office,
7 to my computer, type up a search warrant. In addition,
8 we have to contact the on-call judge, find out where that
9 judge is, travel from our office to the judge and present
10 our affidavit for the search warrant.

11 Q Did you do that in this case?

12 A Yes, sir. I did.

13 Q And so you presented that to a judge?

14 A Yes, sir.

15 Q And the judge needs to sign that so you can
16 execute a lawful search warrant?

17 A Yes, sir.

18 Q Do you know what time the judge signed that
19 document?

20 A Judge, on October 17th, 2010, Judge Kunst
21 signed my search warrant at 1:45 in the afternoon.

22 Q Okay. And when you got that signature, what
23 did you do?

24 A Left, uh, the judge and traveled directly to
25 1956 Old Fort Avenue.

1 Q And what time did you arrive at Old Fort
2 Avenue?

3 A Approximately two o'clock in the afternoon.

4 Q And what time did you start the execution of
5 the search warrant?

6 A Once we arrived, Detective Ferguson, I assigned
7 him as the evidence custodian. So he had to take over
8 all the pictures. So at approximately 2:12 in the
9 afternoon, we executed the search warrant.

10 Q So before 2:12, Detective Ferguson was taking
11 pictures. So you are on the scene a little before, so
12 approximately two o'clock?

13 A Yes, sir. In addition, I wanted to confirm
14 what Deputy Bowen told me and that I got in the search
15 warrant. I wanted to make sure that PC, probable cause,
16 was legitimate. If not, I would have to void the
17 warrant, step away and back out of the house. We
18 confirmed what Deputy Bowen observed to be true. At that
19 time, Detective Ferguson started taking pictures.

20 Q All right. And what was your primary role
21 during the execution of this search warrant?

22 A My primary role was the case agent and also I
23 assigned myself to type the return.

24 Q Now, tell us a little bit about your job of
25 typing the return. What does that entail?

1 **A** Basically, we have a computer and a printer
2 that we take with us to all search warrants. I set up,
3 cut everything on and everything. The evidence
4 custodian, which was Detective Ferguson for this case,
5 every time he locates something, he brings it back to me.
6 And I document on the return what is taken and where it
7 is taken from.

8 **Q** I'm not going to go through each exhibit here.
9 But the evidence that was collected, was that collected
10 at Old Fort?

11 **A** Yes, sir. It was.

12 **Q** How do you know it was collected at Old
13 Fort?

14 **A** Cause once Detective Ferguson photographed it
15 at the spot it was collected at, he brought it to me,
16 showed it to me and that's how it got on the return. I
17 observed it at Old Fort Avenue.

18 **Q** Detective Plyler, tell me a little bit about
19 your background as a narcotics officer. Do you have any
20 special training?

21 **A** Yes, I been working narcotics for a little over
22 three years. I have approximately a little over 500
23 hours of training recognized through the South Carolina
24 Criminal Justice Academy. Of those 500 hours,
25 approximately 242 are specialized in narcotics training.

1 Q In your experience as a narcotics officer, do
2 you deal with setting up drug purchases and drug sales?
3 Drug purchases?

4 A Yes, sir. I do. In the little over three
5 years, I been a case agent for 28 distribution cases
6 ranging from marijuana, uh, crack cocaine, powder cocaine
7 and "Molly", which is a powder form of ecstasy.

8 Q Have you ever been an uncover officer?

9 A I have.

10 Q In your role as an undercover officer, have you
11 ever dealt with someone trying to buy or sell cocaine?

12 A Yes, I have. I been in a complex DEA
13 investigation where I purchased ounces of cocaine from a
14 subject involved in that investigation.

15 Q In your training and experience as a law
16 enforcement officer, are you familiar with the street
17 value of different quantities of cocaine?

18 A Yes, sir. I am.

19 Q Uh, in your experience, how much would 2000
20 grams of cocaine be sold for on the street in 2010?

21 A In 2010, 2000 kilos or 2000 kilograms we would
22 call two kilos.

23 Q Full price.

24 A \$26-30,000 per kilo. So for 2000 grams,
25 anywhere between \$52-60,000.

1 Q So State's Exhibit 1, and we heard from Anita
2 Moore that this is 2000, approximately 2026 grams of
3 cocaine. In 2010, what would be the street value of the
4 drugs I'm holding in my hand?

5 A I would approximate between \$52,000 and
6 \$60,000.

7 Q So it's safe to say I'm holding \$60,000 worth
8 of drugs in my hand?

9 A Yes, sir.

10 Q Now, that's full price?

11 A Yes.

12 Q Now, what if I used something like State's
13 Exhibit 57 to package it in smaller quantities. How much
14 would a gram of cocaine go for in street value?

15 A Street value of a gram of cocaine is anywhere
16 between \$60 to \$70 a gram.

17 Q So for one gram of cocaine, someone on the
18 street would pay \$60 for it?

19 A Yes, sir.

20 Q And I'm not good at math. But \$60 of cocaine,
21 \$60 a gram times 2000 grams would be?

22 A Approximately \$120,000.

23 Q So for a drug dealer, this is potentially
24 \$120,000?

25 A Yes, sir.

1 Q Now, in your training and experience as a law
2 enforcement officer dealing in narcotics, what stands out
3 about the location in which we found or you found these,
4 uh, just ordinary Great Value plastic baggies?

5 A Close proximity to his main product, the white
6 powder you see there. Not stored in a common area the as
7 kitchen or pantry that most people store their plastic
8 bags in.

9 Q Detective Plyler, you also seen a couple of
10 things like the truck that you found?

11 A Yes, sir.

12 Q Now, what condition was that truck in?

13 A In my opinion, it was in very poor condition.

14 Q All right. It looked like it had been moved or
15 recently driven?

16 A No, sir. It did not.

17 Q Did you notice any industrial type of lawn
18 equipment anywhere?

19 A Yes, sir. I did.

20 Q Uh, what kind of law equipment did you see?

21 A I saw a very small lawn mower.

22 Q Not a --

23 A No, sir. Just very small riding lawn mower and
24 very small push mower.

25 Q And what type of condition was that in?

1 A Very poor as well.

2 Q They looked like they had been used at all?

3 A Not recently. It was covered with a black tarp
4 near where the truck was parked. There were leaves on
5 top of the black tarp and also leaves on the lawn mower
6 up under the black tarp.

7 Q Did you seize any of that?

8 A No, sir.

9 Q Why not?

10 A That wouldn't have any value to us.

11 Q Now, there was talk earlier about seizing a
12 couch, elliptical and things like that. Why do you seize
13 those things?

14 A We seize those things because we believe
15 through our training and experience that they were bought
16 with illegal proceeds from drug sales.

17 Q So in your training and experience, you thought
18 those were somehow connected to drugs?

19 A Yes, sir.

20 Q Is that why you seized them?

21 A Yes, sir. And to benefit our agency.

22 Q If you didn't think that they were connected to
23 drugs, would you have seized them?

24 A No, sir.

25 Q And, uh, during your execution of the search

1 warrant, you collected some cash, is that right?

2 A Yes, sir. I did.

3 Q And you remember a proximate value of the cash
4 you collected?

5 A The approximate value was \$21,750.

6 Q Now how did you learn that value? Did you
7 count that on the scene?

8 A No, sir. We did not.

9 Q Is that standard procedure to not mess with the
10 money on the scene?

11 A Yes, sir. With a large sum like that, yes,
12 sir.

13 Q Uh, now, what do you do with that cash?

14 A That cash was collected by Detective Ferguson,
15 transported to our office. The cash was located in three
16 different areas. The blue bag in the bedroom, the cash
17 that was laying on the floor in front of the safe was the
18 second location. And the third location was the cash
19 inside the safe. All that cash is kept separate until a
20 total count from our supervisor.

21 Q So I want to -- cash isn't -- the cash is put
22 in a secure location, meaning we don't have it up here in
23 evidence room because it's not used as evidence, right?

24 A Yes, sir. Correct.

25 Q But you have pictures of the cash that

1 Detective Ferguson took?

2 A Yes, sir.

3 Q Thank you. No further questions.

4 THE COURT: Okay. Cross-examination.

5 MRS. TAYLOR: Thank you.

6 CROSS-EXAMINATION

7 BY MRS. TAYLOR:

8 Q Good afternoon. You were present in the
9 courtroom when Detective Ferguson was on the stand,
10 right?

11 A Yes, ma'am.

12 Q You were here when we went through the whole
13 paperwork issue of the return and then your report is a
14 three-page report that also basically has a list. Do you
15 have those up there with you?

16 A Yes, ma'am. I do.

17 Q And that sort of have the same thing as on the
18 return, just list particular information. And that other
19 document, which was five pages, uh, which I will show
20 you. Could you tell me, this is generated by some other
21 individual in the police department based on your
22 statements as he explained it. Do you know what that is?

23 A Basically, it's a printout from the evidence
24 facility of everything that was submitted into evidence.

25 Q So basically, we have these three documents

1 which specify everything that y'all took out of that
2 house?

3 A Yes, ma'am.

4 Q They all match up?

5 A Yes, ma'am.

6 Q And you were here and heard me ask Detective
7 Ferguson would you share his opinion this was a fairly
8 extensive search?

9 A Yes, ma'am. I would.

10 Q Searched drawers, that you took furniture out?

11 A I was stationary at a table for the return. So
12 yes, I believe Detective Ferguson conducted an extensive
13 search.

14 Q And of these, you were the case agent?

15 A Yes, ma'am.

16 Q So that basically means what it sounds like.
17 You are in charge of this investigation?

18 A Yes, ma'am.

19 Q And we call it an investigation, would you call
20 it an investigation?

21 A I would. Yes, ma'am.

22 Q Did your participation and knowledge of this
23 investigation begin when you were called by the two
24 deputies or the two officers that responded to the
25 criminal domestic call and said they saw stuff?

1 A Yes, ma'am.

2 Q You told us you were a member of a task force?

3 A Yes, ma'am.

4 Q You didn't know Therron Richardson?

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

6 Q You didn't have informants telling you he was
7 selling drugs?

8 A No, ma'am.

9 Q He didn't have reports from the neighbors
10 saying you got a lot of traffic coming and going and we
11 got us a drug dealer?

12 A No, ma'am.

13 Q From that day, when you executed the search
14 warrant, tell us how the investigation transpired. What
15 happened in the investigation?

16 A Uh, once we executed the search warrant, I was
17 assigned to draft the arrest warrants for Mr. Richardson
18 based on what we located inside the residence. Those
19 warrants were drafted, signed by a judge. Then we
20 started the process of looking for it.

21 Q In between executing the search warrant,
22 bringing in all this stuff, going through -- you been in
23 the courtroom the last few days and everything you heard
24 testified. Drugs were sent off to be tested. Were the
25 weapons tested in any way?

1 **A** I submitted that they be tested. I never got
2 any results so I assume that no fingerprints were
3 located.

4 **Q** And when you say tested, they wanted to print
5 it.

6 **A** Yes, ma'am. What we do is on the evidence
7 sheet, we request latent prints. We do that for all
8 firearms and ammunition that we receive.

9 **Q** Did they have serial numbers?

10 **A** Yes, ma'am. All five guns had serial numbers.

11 **Q** Did you run a check on --

12 **A** Yes, ma'am. On the scene, while I was typing
13 up one of the returns, one of the deputies had his
14 uniform on so he had his police number. So I provided
15 the serial numbers and requested one of the deputies to
16 run it through dispatch which they all came back not
17 stolen.

18 **Q** And not stolen, they weren't reported
19 somewhere?

20 **A** Correct.

21 **Q** Do you check to see if they were registered to
22 any particular individuals?

23 **A** No, ma'am.

24 **Q** Did you, I should have said.

25 **A** No. We usually don't and, no, I did not.

1 Q Okay. Anything else of an investigative
2 nature? Any other forensic testing? Anything else that
3 you can think of?

4 A No, ma'am.

5 Q So the investigation started when you executed
6 the warrant and as far as leading up to the arrest
7 warrant, when did you execute the arrest warrant?

8 A Uh, I believe it was January 24th, 2011.

9 Q That's when you got an arrest warrant?

10 A That's when we executed our arrest warrants.

11 Q When did you get your arrest warrant?

12 A I would have to look at the copy of the arrest
13 warrant. The judge usually puts the date and the time.

14 Q Do you remember -- would it have been a matter
15 of days? I think you just sort of told us.

16 A Yes, it would have been as quick as possible.

17 Q So you wrapped up the search issues, made all
18 these lists, sent what needed to be sent different places
19 and put the other stuff just in y'all's locker and that's
20 it.

21 A Yes, ma'am.

22 Q And you just told us the date. Tell us again
23 please when the warrant that you had gotten in October
24 was executed, which you explained to us means that he was
25 arrested?

1 **A** He was arrested Monday, January 24th,
2 approximately 10:30 in the morning.

3 **Q** And correct me if I'm wrong. But as I
4 understand it, he turned himself in with a lawyer present
5 to you and met you at Charleston County Jail.

6 **A** Yes, ma'am, after approximately three months.

7 **Q** And he went into Charleston County Jail?

8 **A** He was placed under arrest, so yes, ma'am.

9 **Q** Did you do anything else of an investigative
10 nature?

11 **A** We attempted to speak with Mr. Richardson. He
12 was not cooperative.

13 **Q** Did you interview any witnesses?

14 **A** No, ma'am.

15 **Q** Did you seize computers and cell phones from
16 his home that were presumably his?

17 **A** Yes, ma'am.

18 **Q** Did you ask that those be forensically
19 investigated?

20 **A** Yes, I did.

21 **Q** And what were the results?

22 **A** Nothing. Nothing to, uh, make our case
23 stronger.

24 **Q** No evidence of any criminal activity, would
25 that be a fair to say as well?

1 A Yes, ma'am. Yes, ma'am.

2 Q And did you check the cell phone or cell phones
3 that you had in your possession from the home as far as
4 running numbers with your database with the task force to
5 see anybody's numbers coordinated?

6 A We usually, uh, -- we do have ability to check
7 that. But if it's an older phone, then sometimes we
8 can't do it.

9 Q Would the answer to my question be yes or no?

10 A No.

11 Q Did you interview neighbors to see if anybody
12 saw anything that morning?

13 A I personally did not.

14 Q Did you have any officer to do that?

15 A I believe one deputy voluntarily conducted an
16 interview with a neighbor.

17 Q That would have been Mr. Hess, the older
18 gentleman we had in here today?

19 A Yes, ma'am.

20 Q Anybody else?

21 A No, ma'am.

22 Q And Mr. Ferguson asked you and I think again
23 you were here when Detective Ferguson was testifying
24 about the truck?

25 A Yes, ma'am.

1 Q Mr. Ferguson, Emmanuel Ferguson asked you today
2 what your opinion of the condition of the truck was. You
3 said it was very poor?

4 A Yes, ma'am.

5 MRS. TAYLOR: May I approach the witness?

6 THE COURT: You may.

7 BY MRS. TAYLOR:

8 Q Can you tell me what this is?

9 A It's a form that we, uh, fill out called tow
10 sheet. Whether we tow it or drive it away, we fill this
11 form out.

12 Q Okay.. And your signature is on that?

13 A Uh, my name is on it, yes, ma'am.

14 Q And somebody checked some boxes and put some
15 information. Would that be you?

16 A Uh, that is my name, but I don't believe that's
17 my signature.

18 Q Do you know as a case agent who would be
19 responsible for that form?

20 A Probably the person that drove the truck back,
21 probably Detective Ferguson.

22 Q Is his name on it somewhere?

23 A No, ma'am.

24 Q Just your name?

25 A Just my name because I was the case agent.

1 Q And on that form, what's the condition of the
2 truck checked?

3 A Fair is checked.

4 Q What's the date?

5 A The date is October 17th, 2010.

6 Q And the other options would be good and poor,
7 is that right?

8 A The good options are bad, fair and good.

9 Q Okay.

10 A All right.

11 Q Just a moment. (Pause.)

12 And you did seize that truck, right?

13 A Yes, ma'am.

14 Q All right. And just to make perfectly clear
15 here, earlier when you were talking for, uh, sort of been
16 some period of time about your experience as a drug
17 narcotics officer and your expertise in that regard and
18 you were discussing with Mr. Ferguson, the bags that you
19 obtained, uh, you called it 2000 kilograms.

20 A Yeah. I must have -- I meant 2000 grams.

21 Q That was --

22 A Two kilos.

23 Q It was a little bit of an error.

24 A Yes, ma'am.

25 Q Okay. Only other question I have for you is

1 about the cost of what's in that bag.

2 A Yes, ma'am.

3 Q The weight can vary a little bit when you pick
4 it up between you and the lab. It's not unusual for
5 there to be minor discrepancies. Is that fair to say?

6 A It's fair to say.

7 Q You were present when Mrs. Moore was in here
8 testifying?

9 A Yes, ma'am.

10 Q And one of the questions that was asked of her
11 was regarding the purity of what's in this?

12 A Yes, ma'am.

13 Q And she testified that she didn't test for
14 that. You remember that?

15 A Correct.

16 Q Do you have some independent basis other than
17 what we have heard about in this court today that tells
18 you what purity that may or may not be?

19 A No, ma'am. I don't have a degree in chemistry.
20 So we don't test the purity of cocaine.

21 Q So if that was decent sellable cocaine, it
22 would be in the neighborhood of what you were talking
23 about?

24 A Yes, ma'am.

25 Q If it was perhaps, say, just a smaller amount

1 of cocaine, but some other stuff like they were talking
2 about that was used to put in cocaine. Would that
3 increase or decrease the value?

4 **A** Well, if -- if the Inositol was added to what's
5 in these bags, it would increase the amount because
6 you're adding more product. Commonly, when we buy drugs
7 off the streets, the grams are sometimes cut or not cut.
8 We don't know. But clearly, if you add a cutting agent
9 to the product there, you are increasing your value
10 because you are making your product bigger.

11 **Q** Excuse me. I was inarticulate with my
12 question.

13 **A** Oh, okay.

14 **Q** Let me ask it this way. Say I have two baggies
15 like that of flour or baby powder or something like that
16 or any other cocaine white like substance ---

17 **A** Okay.

18 **Q** --- and I mix that, you've got to have enough
19 to have the cocaine there to test obviously, right?

20 **A** Right.

21 **Q** Can you make -- sort of along the lines of what
22 you were just saying, you can make more stuff that might
23 have a little bit of cocaine, seems like cocaine, in a
24 larger bag, but not as much actual cocaine. That's why
25 these guys cut.

1 **A** My impression is if there's a little bit of
2 cocaine or a bag full of white powder or white flour,
3 that's a lot of cocaine. I might not understand your
4 question.

5 **Q** I probably --

6 **A** I'm sorry.

7 **Q** I'm probably asking it the wrong way, but I
8 think probably everybody understands what was going on.
9 So I'll stop there. Okay. Thank you.

10 **A** Okay.

11 **THE COURT:** Any redirect?

12 **MR. FERGUSON:** Briefly.

13 **REDIRECT EXAMINATION**

14 **BY MR. FERGUSON:**

15 **Q** You said you checked the computers and you
16 didn't find any notice of drug activity, right?

17 **A** Yes, sir.

18 **Q** In your training and experience as a law
19 enforcement officer, do drug dealers write down that they
20 deal drugs?

21 **A** On occasions, a smaller level dealer would
22 probably have a ledger. But a mid-level dealer, which
23 this is here, a mid-level, would typically not write down
24 what people owe them.

25 **Q** They're not going to keep a record that they

1 are committing an illegal crime, are they?

2 A No, sir.

3 Q And about the truck, uh, you were able to jump
4 start it, you said?

5 A Yes, sir. We had to use a jump pack that we
6 had.

7 Q So it was operable?

8 A It was operable, yes, sir.

9 Q Would you consider a bad -- car in bad
10 condition inoperable?

11 A Yes, sir.

12 Q Uh, in your training and experience as a law
13 enforcement officer and as an officer in a narcotics
14 unit, when drugs are bought and sold on the streets, uh,
15 do -- how fast do transactions like that --

16 A Really quick.

17 Q Are the drug dealers typically standing around
18 talking about the drugs or do they just do a quick hand-
19 to-hand?

20 A Quick. Really quick hand-to-hand.

21 Q Thank you.

22 THE COURT: Okay. Sir, you may step down.

23 THE WITNESS: Thank you.

24 MR. FERGUSON: If we could approach just
25 briefly.

1 **THE COURT:** You need a quick break?

2 **MR. FERGUSON:** No, if I could approach just
3 briefly.

4 **THE COURT:** Yes. Come on up.

5 **(WHEREUPON,** a bench conference is held off the
6 record.)

7 **THE COURT:** Okay. Ladies and Gentlemen, the
8 lawyers have given me kind of the work outline for
9 the rest of the day and for tomorrow morning. And
10 we hope to have the case to you, maybe even by lunch
11 time. I'm not sure yet. But we are going to order
12 lunch for you tomorrow if that's okay so that y'all
13 can work straight through.

14 I will go ahead and let y'all go this evening.
15 We've got several matters of law that we need to
16 deal with this afternoon. Then I have some things I
17 need the attorneys to work on overnight. I'm going
18 to ask y'all to be back in your jury room again at
19 10:30. If you will, come back at 10:30. Please do
20 not discuss the case.

21 In fact, if you want to come back maybe around
22 10:15, y'all need to go ahead and select a
23 foreperson for your jury who will sit in this chair
24 right here where the gentleman in the purple chair
25 is seated. He might be the foreman. I don't know.

1 Y'all can pick. Y'all can either do that this
2 afternoon before you leave or in the morning before
3 we get started. We'll start at 10:30. We'll get
4 you back in here. We'll be ready to go then. Thank
5 you so much.

6 (WHEREUPON, the jury exits at approximately
7 4:33 p.m.)

8 THE COURT: Sarah is going to print the
9 charges for y'all to take home and look at tonight
10 or we can look at them this afternoon. Whichever
11 you prefer. I can email them to you as well if
12 y'all want to write down your email addresses for
13 me.

14 Mr.. Ferguson, when will you know tomorrow
15 whether you are going to put Deputy Alexander up?

16 MR. FERGUSON: First thing in the morning,
17 Your Honor.

18 THE COURT: Okay.

19 MR. FERGUSON: We're going to make contact
20 when we leave today.

21 THE COURT: Okay.

22 MR. FERGUSON: And figure out --

23 THE COURT: Sure. Well, we have a hearing in
24 a medical malpractice case in the morning. I think
25 it's at 9:03 or 9:15. 9:15 or 9:30. It should only

1 **THE COURT:** No, I'm happy for you to go ahead
2 and do that now if you don't mind. I'm going to
3 have to send them out anyway because we got to get
4 the charges printed.

5 **MRS. TAYLOR:** Between closing.

6 **THE COURT:** Okay. Yeah. Go ahead and do
7 that now if y'all want to do that now.

8 **MR. FERGUSON:** Just to talk about mine as
9 well, does the Court have --

10 **THE COURT:** I'm still working on it. So,
11 sorry. I'll have that for y'all shortly. Okay. I'm
12 happy to hear from you.

13 **MRS. TAYLOR:** Thank you, Your Honor. Just,
14 again, slightly out of order, but the State has now
15 concluded its case. The defense does not intend to
16 present a case. But we would ask the Court at this
17 time, first of all, we would renew all prior
18 arguments. And now that the Court has heard -- I'm
19 not arguing with you -- but now that you've heard
20 all the evidence regarding everything related to our
21 earlier argument to exclude, if the Court has heard
22 anything to reconsider, I would ask that you do so.
23 Both the application of the statute and the
24 exclusionary nature of it.

25 **THE COURT:** I'm glad you brought that up.

1 Looking at the application of the Criminal Domestic
2 Violence statute that we argued about extensively on
3 suppression, it does appear to me -- I haven't heard
4 the evidence, but that is what took the police
5 officers on the call there. However, uh, it is
6 still my opinion, and I may be wrong, but it's just
7 my interpretation that they entered the house
8 pursuant to an exigent circumstance. It may have
9 been pursuant to the statute as well, but I just
10 don't see under State v. Cannon and the other cases
11 and the plain language of the statute, the statute
12 intending to be interpreted to discount an exigent
13 circumstance that would have otherwise allowed law
14 enforcement to enter for the sole purpose of doing a
15 protective sweep.

16 I understand that it could be interpreted
17 differently by another court. But looking
18 specifically at -- I don't have the site right in
19 front of me -- in Title 16 of the Criminal Domestic
20 Violence statute in subsection H and the fact that
21 the language, as I read it, it sets out one standard
22 in the two subsections of H, then it says something
23 different in the next sentence. The it goes back
24 and says something different again. I read that in
25 light of the purpose and function of the domestic

1 violence statute as well as the Supreme Court State
2 v. Cannon decision to not mandate exclusion here.
3 But I welcome someone else to tell me the answer to
4 that. Anything you want to put on the record with
5 respect to that, Mr. Ferguson?

6 **MR. FERGUSON:** Yes, Your Honor. I did a
7 little research earlier this morning to that effect.
8 A supplement of the Rules of Criminal Procedure Rule
9 4(b) is entitled Subsequent Application for Order
10 after Refusal. If you will bare with me a moment.

11 **THE COURT:** Okay.

12 **MR. FERGUSON:** It says that any motion be
13 made to any judge and be denied in whole or in part
14 or be granted. No subsequent motion upon the same
15 set of facts shall be made to any other judge in
16 that action. Upon such, subsequent motion and the
17 order being made shall be void.

18 **THE COURT:** Okay.

19 **MR. FERGUSON:** I think that applies here.
20 We're talking about the same set of facts that Judge
21 Dennis has ruled on earlier. I just want to put
22 that on the record.

23 **THE COURT:** No. I appreciate you. I'm
24 finding that because I did ask that question at the
25 beginning of the trial with respect to how am I

1 bound by Judge Dennis' ruling. I think clearly he
2 did rule on the suppression issue and considered it
3 extensively based on the transcript and the order
4 that I read. I do believe that Mrs. Taylor raised
5 it different and a new ground. That may still bar
6 me from considering it. But either way, I'm still
7 denying it and I'm sticking by my prior ruling. So
8 that will be a couple of different things y'all can
9 tussle about if it becomes necessary.

10 **MRS. TAYLOR:** Very short response to him
11 first as to the application of that rule
12 specifically. We inherited this case with that
13 prior motion already in place. And at the hearing
14 which we only appeared in front of Judge Dennis for
15 him to put on the record his changing his position
16 and denying the reconsideration, we specifically
17 also put on the record and had him made the
18 determination and ruling that he was in no way
19 either considering our motion, which had been filed
20 at that point, nor was he putting any rulings on his
21 prior motion that might apply to our motion. So I
22 think that rule is inapplicable specifically to our
23 facts here.

24 **THE COURT:** Okay.

25 **MRS. TAYLOR:** Jumping right back to what you

1 determined again, just to make sure the record is
2 clear. I understand and accept your interpretation
3 of the application under 16-23-70(h). But there's a
4 precedent that you might have changed your mind on.
5 I just want to clarify that. There was argument by
6 the State that the CDV statute was inapplicable
7 here. Are you now finding ---

8 **THE COURT:** No.

9 **MRS. TAYLOR:** --- yes or no? Or you never
10 made that determination?

11 **THE COURT:** I still don't think it's
12 applicable here. I believe they entered the house
13 pursuant -- independently to an exigent circumstance
14 of somebody being in danger.

15 **MRS. TAYLOR:** Okay.

16 **THE COURT:** I believe that the CDV statute is
17 much more narrowly tailored and specific to a
18 Criminal Domestic Violence situation. For example,
19 you've got two people arguing on a porch. They roll
20 up because the neighbors have called and people are
21 making noise and screaming and throwing pots and
22 pans or whatever could happen in various domestic
23 violence situations. They follow this into the
24 house. They know there's no kidnaping. Somebody's
25 in danger clearly cause there's a scuffle going on.

1 To me, that's what that was meant to address. That
2 statute, that type of, I hate to use the word
3 classic, but classic domestic violence situation.
4 Not a situation where there could be some victim
5 trapped in a house in a bathroom like we allegedly
6 had here, although it turns out it may have been a
7 hoax or certainly seemed suspicious.

8 I think there was a separate exigency that went
9 in. I just wanted to acknowledge the fact that you
10 were correct in your interpretation of the way the
11 dispatch calls went down and certainly the way the
12 officers responded. We heard from them on the
13 stand. It was domestic. We were going through a
14 domestic -- really, they didn't know what it was is
15 just the way I see it. I just think the CDV statute
16 is more narrowly tailored than what we have here.

17 **MRS. TAYLOR:** I just wanted to clarify that
18 part.

19 **THE COURT:** No, no. I appreciate that.

20 **MRS. TAYLOR:** Thank you. I think that might
21 be it.

22 **THE COURT:** All right.

23 **MR. FERGUSON:** Your Honor, I just want to
24 make sure that my response to motion is -- my
25 response to the motion is incorporated into the

1 record.

2 THE COURT: I think it's all going to be
3 incorporated into the record.

4 MR. FERGUSON: Nothing else.

5 THE COURT: Probably more than they want to
6 have.

7 MRS. TAYLOR: There is one small thing.

8 THE COURT: Yeah.

9 MRS. TAYLOR: I forgot the actual legal
10 argument I'm required to make, which is to ask the
11 Court now to direct a verdict of not guilty. You've
12 heard all the evidence. This is primarily a
13 circumstantial case. There's a lot of talk about
14 different drug activities and knowledge, but there's
15 no specific facts that connect Mr. Richardson to
16 actually, constructively, with knowledge possessing
17 either the drugs or the guns. There's no extrinsic
18 direct evidence. There is no informant. There's no
19 transaction. There is no finding drugs on his
20 person.

21 In light of looking at all of the
22 circumstances, we would ask the Court, and
23 especially in light again, going back to how this
24 case evolved. If this had been an inadvertent
25 stumbling on, it would be one issue. But when it

1 begins with a false claim, it carries the taint of a
2 set up. It throws a different light on the
3 reliability of everything that might transpire from
4 that beginning stage. So in light of all that, we
5 would ask that you direct a verdict of not guilty.

6 **THE COURT:** Okay. Anything from the State?

7 **MR. FERGUSON:** Yes, Your Honor. Uh, first,
8 the State understands the circumstances of the 911
9 call and just wants to ensure that there is no
10 concession that that call was false.

11 **THE COURT:** Oh, I understand that.
12 Certainly... Certainly.

13 **MR. FERGUSON:** Also, uh, we do believe that
14 the State has provided evidence that a jury could
15 find, uh, that the defendant had dominion and
16 control over those drugs as well as knowledge. The
17 ADT record shows that no one had broken into that
18 house, but for those police officers, uh, opening
19 the door and went in that day, no one -- no
20 transaction in the last few months. The drugs were
21 found in a location that is verified that its his
22 home. Evidence, documents, lease agreement,
23 mailings, power bills have his name and address on
24 it. The State just feels that in the light most
25 favorable to the nonmoving party that we have met

1 with regard to, uh, -- we have leaped over this
2 hurdle at this stage.

3 **THE COURT:** Okay. Anything further?

4 **MRS. TAYLOR:** No, ma'am.

5 **THE COURT:** While I certainly appreciate your
6 argument, but Mr. Ferguson is correct. If there's
7 an direct evidence or any substantial circumstantial
8 evidence that could reasonably tend to prove the
9 guilt of the defendant, then I have to send it to
10 the jury properly.

11 The circumstantial evidence here, the jury
12 certainly could find it to be overwhelming. We've
13 got the guns. We've got the cocaine in separate
14 baggies. We've got the safe. We've got the cocaine
15 in the rice. We've got -- you know, certainly, it's
16 fine for people to have an alarm system. But
17 strange calls to ADT regarding the tripping of an
18 alarm. We've got the cash everywhere. The lock on
19 the door. All of that taken together, I think, is
20 certainly substantial enough to send this to the
21 jury.

22 Now, that being said, uh, the call is very
23 suspicious to me, to the Court. I know Mrs. Taylor,
24 they are going to argue setup all day long because
25 that's probably what this was. I don't know. But

1 the bottom line is, I think the officers were
2 properly in the house and they found what they
3 found. It's certainly -- abundant evidence has been
4 presented from which the jury could determine that
5 the defendant had appropriate dominion and control
6 over those items. So I'm going to deny the motion
7 for direct verdict although it certainly is a
8 strange situation.

9 That being said, anything else before I give
10 y'all a little break. And then we'll get ready to
11 bring the jury in. I'm just going to let y'all
12 rest. Let you say something quick. Do the
13 stipulation. Rest. Say you are ready to go forward
14 or resting. And then let y'all argue.

15 **MR. FERGUSON:** Your Honor, we still need to
16 publish the, uh, --

17 **THE COURT:** Right.

18 **MR. FERGUSON:** We haven't officially rested
19 yet. We still need to publish the stipulation ---

20 **THE COURT:** Right.

21 **MR. FERGUSON:** --- and then we'll rest.

22 **MR. KIDD:** How do you want us to publish it?
23 You want us to read it?

24 **THE COURT:** I don't mind. I can read it. If
25 you want to, you can read it. Why don't y'all read

1 that the jury has reached a verdict. So what my
2 proposal is is to bring them in, take the verdict.
3 And then if any further proceedings are needed at
4 that point, take a break so that y'all can make any
5 arguments that may be necessary at that time. Let's
6 see what they do first.

7 **MRS. TAYLOR:** Yeah.

8 **THE COURT:** There may be nothing left to do.

9 **MRS. TAYLOR:** Unless there is some
10 peculiarity in the verdict form, it could be --

11 **THE COURT:** Okay. That's fine. Are we ready
12 for the jury?

13 **MR. FERGUSON:** Yes, Your Honor.

14 **THE COURT:** All right. Let's bring them in.
15 Thank you.

16 (WHEREUPON, the jury enters at approximately
17 3:43 p.m.)

18 **THE COURT:** Okay. Uh, Ladies and Gentlemen,
19 Mr. Foreman, I understand y'all have reached a
20 verdict. Is that correct?

21 **THE JUROR:** That's correct.

22 **THE COURT:** All right.

23 (WHEREUPON, the verdict form is passed to the
24 Court.)

25 **THE CLERK:** Will the defendant stand?

1 The verdict form in the matter of the State of
2 South Carolina versus Therron Renard Richardson, the
3 defendant, on the charge of Trafficking Cocaine, we,
4 the jury, unanimously find the defendant guilty.
5 We, the jury, unanimously find that the defendant
6 possessed 2028 grams of cocaine including additive.

7 On the charge of Possession of a Firearm during
8 the Commission of a Violent Crime, we, the jury,
9 unanimously find the defendant guilty. On the
10 charge of Unlawful Possession of a Firearm by a
11 Person Convicted of a Crime of Violence as to the
12 Model 17, we, the jury, unanimously find the
13 defendant guilty. On the charge of Unlawful
14 Possession of a Firearm by a Person convicted of a
15 Crime of Violence as to the Sig Sauer, Model P232
16 nine millimeter, we, the jury, unanimously find the
17 defendant guilty. On the charge of Unlawful
18 Possession of a Firearm by a Person Convicted of a
19 Crime of Violence as to the H&R Model 733, 32
20 millimeter, we, the jury, unanimously find the
21 defendant guilty. On the charge of Unlawful
22 Possession of a Firearm by a Person convicted of a
23 Crime of Violence as to the Intratec Model 810, nine
24 millimeter, we, the jury, unanimously find the
25 defendant guilty. Signed by the foreperson of the

1 jury on November 15th, 2012.

2 Ladies and Gentlemen of the jury, if these were
3 your verdicts, please raise your right hand.

4 (WHEREUPON, each juror responds.)

5 THE CLERK: Thank you. Let the record
6 reflect that all 12 jurors raised their right hand.

7 THE COURT: Okay... Thank you, sir.

8 Anything from the defense at this time?

9 MRS. TAYLOR: Not regarding the verdict.

10 THE COURT: Not regarding the verdict.

11 Okay.

12 Anything from the State regarding the verdict?

13 MR. FERGUSON: No, Your Honor.

14 THE COURT: Do y'all need a few minutes or
15 are we ready to hear from the defense and the State
16 on sentencing?

17 MRS. TAYLOR: We are ready to proceed with
18 that. We would renew at this time any motions that
19 needed to be renewed that we made.

20 THE COURT: Certainly. And I will -- let's
21 note for the record that those motions are renewed
22 and I'm going to stand by my prior rulings and
23 respectfully deny those. But we will preserve those
24 for any future proceedings. I'm happy to hear from
25 y'all on sentencing.

1 police to this house.

2 Prior to that phone call, police had never been
3 called to this home. Never been any issues. There
4 was no criminal domestic violence with his personal
5 relationship with the girl who was his girlfriend
6 who was with him at the time this call was made. It
7 wasn't her clearly.

8 We'd ask the Court to consider that whatever he
9 may have been guilty of doing as may have been
10 reflected by what was found in that home, he wasn't
11 known to narcotics officers. He wasn't out on the
12 street. He didn't hire employees. There's none of
13 the serious circumstances that can be attached to
14 this type of activity that we are aware of that he
15 ever participated in. There obviously are
16 questions. It's not his decision that anything that
17 was found in that house was his. Based just on,
18 considering his age, we would ask the Court to
19 impose the mandatory 25 years and allow that to be
20 sufficient.

21 **THE COURT:** Okay. Anything further?

22 **MR. FERGUSON:** No, Your Honor.

23 **THE COURT:** Thank you.

24 Well, I agree that we're not sure exactly what
25 happened, what brought the police to that residence.

1 I think we can all speculate as to what that might
2 have been, whether it was a disgruntled female or
3 competitor. I don't know. But the exigencies that
4 caused them to enter and what they found are
5 certainly of concern to the Court and obviously to
6 this jury. And when I hear the record that's been
7 recited now by Mr. Ferguson and the State, uh, it
8 gives me less pause as to the circumstances of what
9 took them to the house although I certainly want to
10 evaluate this on the face of what happened here.

11 You are correct. Under the statute, I am faced
12 with a 25-year mandatory minimum sentence for
13 trafficking with the amount that the jury found, the
14 over 400 grams for which he was indicted. Based on
15 the prior record, which is lengthy and concerning,
16 particularly prior gun charges, the ABHAN,
17 aggravated assault, other drug charges in the past,
18 including at least one prior trafficking, the
19 sentence on the Trafficking count is 30 years. The
20 sentencing on the Possession of a Firearm by a
21 Person Convicted of a Crime of Violence,
22 specifically 2323, I think is the first indictment
23 for that, will be five years. Those two will run
24 consecutive.

25 The sentence on the other indictments, the one

1 indictment for Possession of a Firearm during the
2 Commission of a Violent Crime and the other three
3 Possession of a Firearm by a Person Convicted of a
4 Crime of Violence -- and I will get those for the
5 record -- I believe it's 2324, 2325 and 2326, those
6 are going to also be five years, but those will be
7 consecutive to the other time that we have. Not
8 consecutive -- I apologize -- concurrent. It's just
9 the one consecutive five years. The other will be
10 concurrent.

11 **MRS. TAYLOR:** Yes, ma'am.

12 **THE COURT:** I'll make sure to construct the
13 sentencing sheet so that it reflects that. If there
14 are any issues, any confusion, y'all let me know so
15 that I can write it so that SCDC does understand
16 what I intended. It's just the 20 -- I'm sorry.
17 The 30 years for the Trafficking, the five years for
18 the one Possession of a Firearm by a Person
19 Previously Convicted of a Crime of Violence, five
20 years on the other four indictments, but that will
21 be concurrent to the 35, which is what it will
22 essentially work out to.

23 I do believe that Mrs. Taylor is correct about
24 the 85 percent because of the most serious nature of
25 the crime. I understand that we'll all be following

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

STATE OF SOUTH CAROLINA)

vs.)

THERRON RICHARDSON)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

INDICTMENT NOS.

2011-GS-10-02320

2011-GS-10-02321

~~2011-GS-10-02322~~ *RM*

2011-GS-10-02323

2011-GS-10-02324

2011-GS-10-02325

2011-GS-10-02326

WARRANT NOS.

K684132

K684138

K684140

K684141

K684142

K684143

~~K684143~~ *K684144*

ORDER DENYING DEFENDANT'S
MOTION TO SUPPRESS

BY *[Signature]*
JULIE J. ARMSTRONG
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This matter came before the Court upon the Defendant's Motion to Suppress dated May 7, 2012 and filed with the clerk's office on May 9, 2012. A suppression hearing on this Motion was held on May 9, 2012. Defendant was present at the hearing and represented by his attorneys Alicia Penn and Mary Ford of the Charleston County Public Defender's office. Assistant Solicitor Emmanuel Ferguson appeared on behalf of the State.

After hearing the testimony and oral arguments, and reviewing the exhibits and parties' written submissions, the Court finds the warrantless search & seizure to be proper, reasonable and not violative of Defendant's constitutional rights and therefore Defendant's Motion to Suppress is hereby **DENIED**.

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FACTS

On October 17, 2010 at 11:09 a.m., emergency dispatchers received a call from a woman using a disconnected cell phone.¹ The caller identified herself as "Tamika Wilson."² During the call, Ms. Wilson stated to the operator that she had locked herself in a bedroom at 1956 Old Fort Avenue in West Ashley because her boyfriend had attacked and choked her; that the person who had choked her was presently trying to get into the bedroom where she was located; and, that she had no way to get out of the house. Ms. Wilson provided the address "Old Fort Ave" twice to the dispatcher, and the call abruptly ended after Ms. Wilson stated, "He's trying to get in, he's trying to get in."

At 11:15 a.m., Deputies Jason Bowen and Julius Alexander with the Charleston County Sheriff's Department responded to the call and were dispatched to Old Fort Avenue to investigate the possible assault. Sergeant Andrea York of the Charleston County Sheriff's Office was also en route and arrived shortly after the responding officers. On the dispatch recording, the only information available to the deputies as they responded was that the call was in reference to a heated domestic dispute, there was a hang-up, and the caller could not be reached. Additionally, the county operator stated that the 911 caller had locked herself in the front bedroom of Old Fort Ave.

Deputies Bowen and Alexander arrived at the home at 11:24 a.m. Upon arrival, Deputy Bowen approached the front door, while Deputy Alexander secured the side and rear of the residence. Deputy Bowen observed that the front door of the residence did not have a doorknob and was secured by a dead bolt style locking mechanism. Deputy Bowen knocked on the front door, announced himself as a law enforcement officer, and received no answer. Around

¹ A disconnected cell phone can only make emergency 911 calls, and cannot receive incoming calls.

² This caller could not be identified, and was never located.

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11:27 a.m., Deputy Bowen stated over dispatch that he could not make any contact at the residence and asked dispatch to try an alternate number in order to obtain more information about the caller's location. He read the license plate of the truck in the driveway and the business number posted on the truck over dispatch. At the suppression hearing, Deputy Alexander and Deputy Bowen testified that they heard no noises coming from inside the home, such as voices, running feet, or doors closing, and that no one was present outside of the home. Then, at 11:28 a.m. Deputy Alexander requested over dispatch for Deputy Bowen to come around back because he had located a sliding glass door in the rear of the residence. Concerned that Ms. Wilson may be in danger and/or in need of medical attention, the deputies decided to conduct a protective sweep of the home to secure the scene and locate the 911 caller.

At 11:29 a.m., Deputy Alexander and Deputy Bowen entered the residence together through the unlocked sliding glass door located in the rear of the residence. Deputy Bowen and Alexander testified that while conducting the "protective sweep," they observed in plain view a number of guns under the bed in the master bedroom. In addition, upon opening the closet door in the master bedroom the deputies observed a safe and what appeared to be a large sum of money in cash. Further, when deputies proceeded to the master bathroom, they observed in plain view a digital scale and a white powdery residue on the bathroom counter that appeared to be cocaine. The 911 caller who gave her name as Tamika Wilson was never located. There still remains a question of the true identity of the caller.³

In total, the protective sweep of the residence lasted approximately four minutes and 18 seconds. Before entering the house, dispatch recordings show that at 11:29:15 a.m. Deputy

³ At 11:44 a.m. other officers arrived on scene at 1 North Romney Street trying to track down the 911 caller. By 11:53 a.m., nine minutes after their arrival, officers left the scene at North Romney Street. There is no police report from any officer at Romney Street stating what, if anything, was done at that location. The 911 caller who gave her name as Tamika Wilson was never located.

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Bowen radioed dispatch requesting an "Emergency Traffic Only" status be engaged. On the dispatch recording, this is indicated with a beeping sound.⁴ Unable to find a perpetrator or injured person inside the residence, Deputy Bowen radioed dispatch stating, "You can clear the radio. There doesn't appear to be anyone here." At 11:33:33 a.m. the dispatch operator disengaged the emergency status to "Resume Normal Traffic." Both of these time stamps were noted by dispatch in writing and verbally confirmed in the audio recording itself.

At 11:34, approximately forty-three (43) seconds after this statement, Deputy Bowen then stated over dispatch to Sergeant Andrea York of the Charleston County Sheriff's Office, "There are some items I want to discuss with you once you get here." After informing Sergeant York of the contraband, the deputies were instructed to notify the narcotics unit to obtain a search warrant to conduct an investigation of a possible drug crime. Subsequently, the narcotics unit of the Charleston County Sheriff's Office obtained a search warrant based on these facts, and conducted a search of the house. As a result of the search, the narcotics unit discovered more than two thousand grams of powder cocaine, five loaded firearms, more than twenty thousand dollars in cash, numerous digital scales, and other evidence that the defendant was involved in illegal drug activity. The Defendant was subsequently charged with Trafficking Cocaine, Possession of a Firearm During the Commission of a Violent Crime, and five counts of Possession of a Firearm by a Person Convicted of Violent Crimes.

On May 9, 2012, the Defendant's motion to suppress the evidence seized from his home on October 17, 2010 was heard by the Court. The Defendant sought relief claiming that the warrantless search of his home was not supported by exigent circumstances and was therefore unconstitutional. Additionally, the Defendant argued that the evidence seized was not

⁴ "Emergency Traffic Only" protocol requires officers to only communicate emergencies to dispatch.

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discovered in plain view.

During the suppression hearing, the Defense introduced an audio recording that purported to be a reflection of the audible activities during the protective sweep of the Defendant's residence. During the hearing, the Defendant argued, and the Court orally found, that the protective sweep, while justified by the exigent circumstances, lasted approximately 12 seconds. The Court initially suppressed the evidence based on the brevity of the protective sweep. This finding was based on the length of time the radio was placed in emergency status and the protective sweep was conducted. Subsequent to the suppression hearing, the Court revisited the evidence presented at the hearing. At first glance, the audio recording appeared to track the length of time the sweep was being conducted, which is indicated by the intermittent "beeps" contained in the audio recording, to be approximately 12 seconds in real time. Upon further review, the Court modifies its oral ruling and finds that the 12 second time frame was not an accurate reflection of the passage of time. The Court concludes that the protective sweep lasted approximately 4 minutes and 18 seconds, not 12 seconds as argued by the Defendant.⁵ This finding is supported by the time stamps indicated on the written dispatch report as well as the verbal times noted in the verbal audio recording. Thus, this Court finds that the initial warrantless entry of the residence was justified by exigent circumstances, and therefore the deputies acted lawfully in conducting a protective sweep of the home. Furthermore, the Court finds that the contraband was observed in plain view and found contemporaneously with the lawful protective sweep.

LAW

"Generally, a warrantless search is per se unreasonable and thus violative of the Fourth

⁵ The inaccuracy of the timing of events in the recording was not intentionally presented by the Defense.

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Amendment's prohibition against unreasonable searches and seizures." State v. Bultron, 318 S.C. 323, 331, 457 S.E.2d 616, 621 (Ct.App.1995). "However, a warrantless search will withstand constitutional scrutiny where the search falls within one of a few specifically established and well delineated exceptions to the Fourth Amendment exclusionary rule." Id., 318 S.C. at 331-32, 457 S.E.2d at 621. "In such cases, the burden is upon the State to justify a warrantless search. State v. Bailey, 276 S.C. 32, 35, 274 S.E.2d 913, 915 (1981)." This Court finds that the warrantless search in the present case falls within the exceptions to the Fourth Amendment exclusionary rule provided by the exigent circumstances doctrine and the plain view doctrine.

I. Exigent Circumstances

"Law enforcement officials have long been permitted to act without the permission of a magistrate when the exigencies of the situation [have] made that course imperative." McDonald v. U.S., 335 U.S. 451, 456, 69 S.Ct. 191, 93 L.Ed. 153 (1948) (quoting State v. Abdullah, 357 S.C. 344, 592 S.E.2d 344 (S.C. App. 2004)). The exigent circumstances doctrine provides an exception to the Fourth Amendment's protection against warrantless searches, but only where, from an objective standard, a compelling need for official action and no time to secure a warrant exist. State v. Brown, 289 S.C. 581, 587, 347 S.E.2d 882, 886 (1986) (quoting Michigan v. Tyler, 436 U.S. 499, 98 S.Ct. 1942, 56 L.Ed.2d 486 (1978)). For instance, a warrantless search is justified under the exigent circumstances doctrine to prevent a suspect from fleeing or where there is a risk of danger to police or others inside or outside a dwelling. Minnesota v. Olson, 495 U.S. 91, 100, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990). In such circumstances, a protective sweep of the premises may be permitted. See Maryland v. Buie, 494 U.S. 325, 337, 110 S.Ct. 1093, 108 L.Ed.2d 276 (1990). Additionally, the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in

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need of immediate aid. Mincey v. Arizona, 437 U.S. 385, 392, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978). The emergency aid exception to the warrant requirement does not depend on the officer's subjective intent or the seriousness of any crime the are investigating when the emergency arises; it requires only an objectively reasonable basis for believing that a person within the house is in need of immediate aid. Michigan v. Fisher, 130 S.Ct. 546 (2009). Furthermore, officers do not need ironclad proof of a likely serious, life-threatening injury to invoke the emergency aid exception to the warrant requirement. Id. at 549. Warrantless entry is proper whenever the police see someone is injured or threatened with injury. Brigham City v. Stuart, 547 U.S. 398 (2006).

Here, the emergency dispatcher received a call from a female who reported she locked herself in a bedroom after her boyfriend had choked her. The female stated the address of her location twice, and told the dispatcher that there was no way for her to get out of the home. The only information available to the deputies as they responded was that the call was in reference to a heated domestic dispute, that the 911 caller had locked herself in the front bedroom of Old Fort Ave, that there was a hang-up, and that the caller could not be reached. When deputies arrived to the location, there was no answer, and no one was found outside of the home. The deputies observed that the front door lacked a doorknob and was secured only by a dead bolt style lock. Viewed objectively, these facts create a reasonable belief that a person may be inside the residence either in danger and/or in need of immediate medical attention thus compelling the need to conduct a protective sweep of the residence in order to secure the scene and safety of the 911 caller. Therefore, the exigent circumstances doctrine justified the deputies' warrantless entry into the residence to conduct a protective sweep in search for injured persons and/or the alleged perpetrator.

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II. Plain View Doctrine

Under the plain view doctrine, any object falling within the plain view of a law enforcement officer who is lawfully in a position to view the object is subject to lawful seizure. Brown, 289 S.C. at 588, 347 S.E.2d at 885. The plain view exception to the warrant requirement requires that (1) the initial intrusion which afforded the authorities the plain view was lawful; (2) the discovery of the evidence was inadvertent; and (3) the incriminating [nature of the] evidence was immediately apparent to the seizing authorities. State v. Culbreath, 300 S.C. 232, 237, 387 S.E.2d 255, 257 (1990). Further, The United States Supreme Court has concluded that the plain view exception to the Fourth Amendment's warrant requirement applies even if the discovery of the evidence was not inadvertent, if the other requirements of the exception are satisfied. Horton v. California, 496 U.S. 128, 130, 110 S.Ct. 2301 (1990).

Here, the prior valid intrusion requirement was satisfied because the deputies were conducting a lawful protective sweep. The initial warrantless entry and protective sweep of the home was permissible due to the exigency of the circumstances. The protective sweep of the residence revealed both the cocaine residue and guns were located in areas where officers could reasonably believe a person could be hiding, and was therefore in plain view. The cocaine residue was located on the counter of the master bathroom, and the guns were located under the Defendant's bed. The deputies did not look in small drawers, suitcases, or bags; but rather larger areas where a person could reasonably be hiding. The discovery of contraband was the result of a search for the female 911 caller. Further, the evidence was immediately apparent to the officers during their attempt to locate the caller. After locating the guns, cash, digital scale and white powder on the counter, the deputies notified their Sergeant, Andrew York. Sergeant York then

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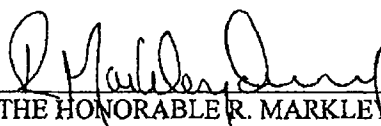
instructed the deputies to have the narcotics unit obtain a warrant to search the house and *then* seize any evidence of a drug related crime. Therefore, the Court finds that the contraband was observed in plain view and found contemporaneously with the lawful protective sweep.

CONCLUSION

For the reasons stated herein the Defendant's Motion to Suppress is hereby respectfully

DENIED.

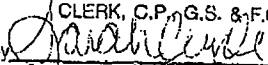
AND IT IS SO ORDERED!


 THE HONORABLE R. MARKLEY DENNIS
 Chief Administrative Judge of General Sessions

Charleston, South Carolina
 Dated: June 19, 2012

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 2012 JUN 29 PM 4: 02) FOR THE NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON)

JULIE J. ARMSTRONG, Warrant No(s): K684132, K684138, K684140,
 CLERK OF COURT K684141, K684142, K684143, K684144

BY [Signature] Charge(s): trafficking cocaine, possession of
 weapon during violent crime, possession of
 weapon by convicted felon (5)

STATE OF SOUTH CAROLINA)

Plaintiff,)

vs.)

THERRON RENARD RICHARDSON,)

Defendant.)

**DEFENDANT'S MOTION TO
 RECONSIDER ORDER DENYING
 MOTION TO SUPPRESS EVIDENCE
 (AND MEMORANDUM)**

COMES NOW THE DEFENDANT, Therron Richardson, by and through his Attorney
 Alicia V. Penn, to move this honorable Court to suppress the evidence obtained from his
 residence in violation of the Fourth Amendment to the United States Constitution and Article I, §
 10 of the South Carolina Constitution. The warrantless search of Defendant's home exceeded
 the scope of a protective sweep under the exigency exception to the warrant requirement of the
 Fourth Amendment and the incriminating nature of the evidence viewed during the initial sweep
 was not immediately apparent and is therefore not admissible under the plain view exception.
 The Defendant hereby moves this Court to suppress the evidence seized from his home.

I. Facts¹

On October 17, 2010 at 11:09 a.m., emergency dispatchers received a call from a woman
 using a disconnected cell phone² at North Romney Street, Charleston, South Carolina.³

¹ The following is based upon discovery provided to the Defense by the State, the results of the Defense's own
 investigations, and the testimony given during a Suppression Hearing heard May 9, 2012.

² A disconnected cell phone can only make emergency 911 calls and cannot receive incoming calls.

The caller said her name was "Tamika Wilson" and told the 911 operator that she had locked herself in the front bedroom at Old Fort Avenue in West Ashley. Old Fort Avenue is almost ten miles away from North Romney Street, the address the call was ultimately traced to. The caller said that her boyfriend had choked her and that she had no way to get out of the house. The call ended after the caller stated, "He's trying to get in, he's trying to get in." The recording of the call contains no sounds besides the caller's own voice; no one can be heard banging on the door, yelling, or screaming.

At 11:15 a.m., Charleston County Sheriff's Department Deputies Julius Alexander and Jason Bowen were dispatched to Old Fort Avenue. They were informed that the situation was a heated domestic, that the caller stated that she had locked herself in the front bedroom of the home, and that she could not be reached by phone.

The deputies arrived at the scene at 11:24 a.m. Deputy Bowen approached the front door while Deputy Alexander secured the side of the residence. At 11:27 a.m., Deputy Bowen informed dispatch that he could not make contact at the residence. At 11:28 a.m., Deputy Alexander told Deputy Bowen to come to the back of the house because he had found an open sliding glass door. At 11:29 a.m., Deputy Bowen radioed dispatch requesting that an "Emergency Traffic Only" status be engaged.⁴ At 11:29 a.m., ADT security records show that the home's alarm was activated as the deputies entered the house.

Unable to find a perpetrator or victim within the house, Deputy Bowen radioed dispatch stating, "You can clear the radio. There doesn't appear to be anyone here." At 11:33 a.m.—four minutes and eighteen seconds after the deputies had entered the residence—the dispatch operator

³ At 11:44 a.m. other officers arrived on scene at North Romney Street in an attempt to locate the 911 caller. By 11:53 a.m., they had left the scene. There is no police report stating what was done at that location. The 911 caller who gave her name as Tamika Wilson was never located.

⁴ This is indicated by a beeping sound on the dispatch recording.

disengaged the emergency status to "resume normal traffic." The time stamps of the beginning and end of the emergency status were verbally noted by dispatch. At some point after stating no one was in the home, Deputy Bowen informed his supervisor Sergeant Andrea York over dispatch. "There are some items I want to discuss with you once you get here." The time this statement was given was not verbally noted by dispatch, nor is it recorded in the time stamp on the written report. The next time stamp recorded is at 11:35 a.m., two minutes after deputies cleared the house.

At a suppression hearing on May 9, 2012, when asked if he knew within twelve seconds that nobody was in the home, Deputy Bowen responded, "Yes. A protective sweep is a very quick, dynamic action." He later testified that he and Deputy Alexander performed two sweeps of the residence: one protective sweep and one search for a person. Deputy Alexander testified that he and Deputy Bowen entered the house together through the back door. He also testified that no one guarded the front door while they were clearing the house since the layout of the house was open and they could clearly see that no one was exiting through the front door. Deputy Bowen testified that he believed all of the doors inside the home were open except for one bathroom door, which enabled them to complete the sweep very quickly.

The deputies remained inside the home long after they declared it clear. At 12:51 p.m., Deputy Bowen answered the home phone at Old Fort Avenue and spoke with an operator from ADT. Judge Koontz did not sign a search warrant for the home until 1:45 p.m.

During the time the deputies were in the home, Deputy Bowen saw a small digital scale with white powder residue and a razor blade in the master bathroom. Deputy Bowen also saw guns on the floor under the bed. The deputies also saw a safe with some money lying beside it in the master bedroom closet. The residue, guns, and money were used as probable cause for the

search warrant that was eventually obtained. The police recovered 2,000 grams of cocaine and five guns, which the Defendant was not lawfully allowed to possess. The Defendant was charged accordingly.

II. Procedural History

A suppression hearing was originally held before the Honorable R. Markley Dennis on May 9, 2012. The Defendant submitted a brief primarily arguing that the original warrantless entry into the home was unlawful. During the hearing, it was believed—and was supported by deputy testimony—that the entire dispatch recording was in real time and that the deputies were only in the house for twelve seconds. The Court found that the deputies could not have seen the residue, guns, and money in such a brief time. Therefore, the Court suppressed the contraband based on the items not having been in plain view. However, when it was discovered that the dispatch tape was not in real time and that the deputies had actually been inside the house for four minutes and eighteen seconds, the Court reversed its decision, finding that the warrantless entry was legal and that the discovered items were seen in plain view.

Based on the new understanding of the time, the Defendant asks the Court to reconsider its ruling.

III. Argument

The Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” by the government, thus requiring that a warrant be procured prior to conducting a search: U.S. Const. amend. IV. The U.S. Supreme Court has repeatedly recognized that “physical entry of the home is the chief evil against which the protections of the Fourth Amendment apply.” Payton v. N.Y., 445 U.S. 573, 589-90 (1980). “Searches and seizures inside a home without a warrant are presumptively

unreasonable absent exigent circumstances,” and the burden is on the State to prove that an exigency existed. State v. Herring, 387 S.C. 201, 209 (2009).

“Evidence seized during [an] unlawful search cannot be proof against the victim of that search,” therefore the remedy for unlawful, unreasonable searches is exclusion. Weeks v. United States, 232 U.S. 383 (1914). The fruit of the poisonous tree doctrine prohibits use of evidence obtained directly or indirectly through an unlawful search or seizure. Wong Sun v. U.S., 371 U.S. 471, 484 (1963). South Carolina follows this doctrine. In State v. Copeland, the South Carolina Supreme Court stated that “The ‘fruit of the poisonous tree’ doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality.” 321 S.C. 318, 323 (1996).

- A. **Although exigent circumstances may have existed to justify the officers’ initial entry into the home, the subsequent search exceeded the scope of a permissible warrantless protective sweep.⁵**

Under the exigent circumstances exception to the Fourth Amendment’s warrant requirement, officers may enter a dwelling without a warrant when they reasonably believe someone inside is in need of immediate aid. State v. Abdullah, 357 S.C. 344, 351(2004) (citing Mincey v. Ariz., 437 U.S. 385, 392 (1978)). That the “initial entry was reasonable does not exhaust the concerns of the Fourth Amendment. Rather the scope of the ensuing search must also be reasonable. Any search following warrantless entry for emergency reasons . . . must then be limited by the type of emergency involved.” U.S. v. Taylor, 624 F.3d 626, 633 (4th Cir. 2010).

⁵ The Defendant still maintains that the initial warrantless entry into the house was unlawful.

1. The officers remained in the house longer than was necessary to perform a protective sweep.

A protective sweep must be quick and limited and "narrowly confined to a cursory visual inspection of those places in which a person may be hiding." Maryland v. Buie, 494 U.S. 325, 327 (1990). The sweep may last no longer than necessary to locate the person. U.S. v. Green, 599 F.3d 360, 376 (4th Cir. 2010); See, e.g., U.S. v. Moses, 540 F.3d 263 (4th Cir. 2008) (less than three minute sweep was reasonable under exigency exception when officers had probable cause to believe that evidence was being destroyed inside); U.S. v. Dean, 243 F.Appx. 780, 782 (4th Cir. 2007) (unpublished) (safety officer entering apartment for less than two minutes was reasonable when gas fumes were visible from outside the apartment indicating an emergency within); U.S. v. Portis, 407 Fed. Appx. 669, 672 (4th Cir. 2011) (unpublished) (two-minute sweep of a home was reasonable when officers had reason to believe that the defendant had just shot at someone and had access to more weapons in his home).

In the present case, the officers remained in the house longer than was necessary to ensure there was no one injured inside the house. Deputy Bowen testified that he knew within twelve seconds that nobody was inside the house. The deputy further testified that all but one of the doors inside the house were open, which is why the officers were able to complete the search so quickly. Deputy Alexander testified that the house had an open floor plan, such that the officers were able to see "clearly inside the house" from the back door where they entered. Four minutes therefore far exceeded the time needed to perform a protective sweep of the home in order to locate persons potentially hidden within.

Additionally, the deputies performed a second sweep of the house after determining that there was nobody inside. Although he testified that a protective sweep and a search for a person are essentially the same thing, Deputy Bowen admitted that after completing the protective

sweep, they were able to "continue to search more thoroughly" for a person. Obviously, the initial protective sweep should have revealed a person in danger since the purpose of both sweeps is to locate a person. By remaining in the house long enough to search more thoroughly the officers exceeded the scope of a protective sweep, thereby violating Defendant's Fourth Amendment rights. Nothing in the deputies' testimonies indicates that there were signs of an emergency underway when they were inside the house. Additionally, there is no indication that either of the deputies remained stationed with the guns once they were discovered in order to be sure that nobody had access to the weapons, thus belying any argument that they were concerned for their own safety due to a threat from others.

Based on the testimony that the majority of the house was visible from the back door where they entered, that they did not find anybody during the initial sweep of the home, and that they executed a second more thorough search of the house after establishing that nobody was inside, it is clear that Deputies Bowen and Alexander exceeded the scope of a protective sweep as permitted by the exigent circumstances exception to the warrant requirement of the Fourth Amendment. The evidence subsequently discovered should therefore be suppressed under the doctrine of the fruit of the poisonous tree.

2. **The deputies' discovery of the incriminating items was not contemporaneous with the protective sweep, but rather occurred between forty-three seconds and two minutes after the sweep ended.**

While law enforcement officers may be justified in entering a residence when there are exigent circumstances, the search must be a "quick and limited search of [the] premises." Buie, 494 U.S. at 327. The warrant requirement of the Fourth Amendment is meant to protect homes against unlawful intrusions by creating a procedural requirement that "minimizes the danger of needless intrusions." Payton, 445 U.S. at 586. Contraband observed in plain view *during* a

protective sweep may provide officers with the probable cause necessary to procure a search warrant, but officers should exit the premises until a search warrant is issued in order to minimize intrusion. In Moses, the court found that the officers acted reasonably when they exited the residence after performing a protective sweep, remaining outside on the front porch to keep the unit secure until the warrant arrived. 540 F.3d at 267. Similarly, in Porter, the court found that the officers were reasonable when they exited the residence after performing a protective sweep and then secured the front door until the warrant arrived. 288 F.Supp.2d at 719.

The deputies did not indicate that they located any contraband within the house until between forty-three seconds and two minutes after they declared that the house was clear. The discovery of the evidence was therefore not contemporaneous with the protective sweep but occurred after the sweep had ended. Furthermore, the deputies remained inside the residence without a warrant for approximately two hours when they easily could have secured the premises from outside. The officers therefore exceeded the permissible limits of a warrantless entry under the exigency exception to the warrant requirement. The evidence discovered as a result of this impermissible search should therefore be excluded.

B. The incriminating character of the contraband discovered during the initial sweep(s) of the home was not immediately apparent as required under the plain view exception to the warrant requirement.

Under the plain view exception, "objects falling within the plain view of a law enforcement officer who is rightfully in position to view these objects" are not subject to the warrant requirement of the Fourth Amendment. State v. Brown, 289 S.C. 581, 588 (1986). In order to satisfy the plain view exception (1) the initial intrusion which afforded the authorities the plain view must have been lawful and (2) the incriminating nature of the evidence was immediately apparent to seizing authorities. State v. Wright, 391 S.C. 436, 443 (2011). The

incriminating nature of an object may be inferred when related to the purpose of the officer's entrance into the home. U.S. v. Green, 599 F.3d 360, 376 (4th Cir. 2010). In Green, the court found that while "[u]nmooted from its context, the incriminating character of what looks to be a large sum of money in a bag under a bed may not be immediately apparent," the incriminating nature of the evidence could be inferred in light of the fact that the arrest warrant had been secured based on charges of drug trafficking and money laundering. Id. In Wright, the court found that the incriminating nature of dogfighting paraphernalia was immediately apparent because the deputies were at the scene to investigate a tip concerning dogfighting. 391 S.C. at 445-46. In U.S. v. Wells, the incriminating nature of a gun was only immediately apparent because the officers had prior knowledge that the defendant was a convicted felon. 98 F.3d 808, 810 (4th Cir. 1996).

Even if Deputies Alexander and Bowen were lawfully in the residence, the incriminating nature of the evidence discovered was not immediately apparent. There is nothing inherently incriminating about a digital scale, money, guns, or a razor blade.⁶ As for the white powder, a variety of items that are legal to possess come in the form of white powder.⁷ Before the deputies obtained the search warrant, they did field test the white powder and it tested presumptive for cocaine. However, there was no reason to field test the powder. Testing the powder exceeded the scope of why the deputies were present in the house. The deputies were at the Defendant's home in response to a 911 call reporting a heated domestic dispute, not drug activity. When viewed in light of the circumstances, the incriminating nature of the evidence discovered was not immediately apparent and therefore did not furnish the probable cause necessary to support a

⁶ While the Defendant was prohibited from having guns, the deputies had no knowledge of this.

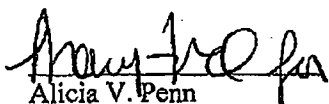
⁷ For example, it is not uncommon for people to take powdered supplements or protein powders. It is very common for people to keep various powders in their bathrooms, such as talc and anti-fungal powders. Other common white powders people keep in their homes include: baby formula, cornstarch, and other baking ingredients.

search warrant. The warrant was therefore invalid, and the evidence subsequently discovered should be suppressed pursuant to the doctrine of the fruit of the poisonous tree.

IV. Conclusion

For all of the foregoing reasons, the Defendant moves that this Court suppress all evidence obtained as a result of the search of the Defendant's residence on October 17, 2010.

Respectfully submitted,



Alicia V. Penn
Charleston County Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, SC

June 29, 2012

BY

JULIE S. ARMSTRONG
CLERK OF COURT

2012 JUN 29 PM 4:02

FILED

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 2012 AUG 13 PM 12:00) THE NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON)

JULIE D. ARMSTRONG
 CLERK OF COURT

BY) Warrant no(s): K684132, K684138, K684140,
) K684141, K684142, K684143, K684144.
) Charges: trafficking cocaine, possession of weapon
) during violent crime, possession of weapon by
) convicted felon (5)

STATE OF SOUTH CAROLINA)

Plaintiff,)

V.)

THERRON R. RICHARDSON,)

Defendant.)

DEFENDANT'S MOTION TO EXCLUDE
 EVIDENCE OBTAINED IN VIOLATION
 OF SC CODE 16-25-70 (H)(1)(a)

COMES NOW THE DEFENDANT, Therron Richardson, by and through his attorney, to
 move this honorable Court to exclude evidence obtained from his residence in violation of the
 Criminal Domestic Violence section of the South Carolina Code, §16-25-70 (H)(1)(a).

I. Facts¹

On October 17, 2010 at 11:09 a.m., emergency dispatchers received a call from a woman using a
 disconnected cell phone² at North Romney Street, Charleston, South Carolina.³ The caller said
 her name was "Tamika Wilson" and told the 911 operator that she had locked herself in the front bedroom
 at Old Fort Avenue in West Ashley. Old Fort Avenue is almost ten miles away from

¹ The following is based upon discovery provided to the Defense by the State, the results of the Defense's own
 investigations, and the testimony given during a Suppression Hearing heard May 9, 2012.

² A disconnected cell phone can only make emergency 911 calls and cannot receive incoming calls.

³ At 11:44 a.m. other officers arrived on scene at North Romney Street in an attempt to locate the 911
 caller. By 11:53 a.m., they had left the scene. There is no police report stating what was done at that location. The
 911 caller who gave her name as Tamika Wilson was never located.

North Romney Street, the address the call was ultimately traced to. The caller said that her boyfriend had choked her and that she had no way to get out of the house. The call ended after the caller stated, "He's trying to get in, he's trying to get in." The recording of the call contains no sounds besides the caller's own voice; no one can be heard banging on the door, yelling, or screaming.

At 11:15 a.m., Charleston County Sheriff's Department Deputies Julius Alexander and Jason Bowen were dispatched to Old Fort Avenue. They were informed that the situation was a heated domestic, that the caller stated that she had locked herself in the front bedroom of the home, and that she could not be reached by phone.

The deputies arrived at the scene at 11:24 a.m. Deputy Bowen approached the front door while Deputy Alexander secured the side of the residence. At 11:27 a.m., Deputy Bowen informed dispatch that he could not make contact at the residence. At 11:28 a.m., Deputy Alexander told Deputy Bowen to come to the back of the house because he had found an open sliding glass door. At 11:29 a.m., Deputy Bowen radioed dispatch requesting that an "Emergency Traffic Only" status be engaged.⁴ At 11:29 a.m., ADT security records show that the home's alarm was activated as the deputies entered the house.

Finding the house empty, Deputy Bowen radioed dispatch stating, "You can clear the radio. There doesn't appear to be anyone here." At 11:33 a.m.—four minutes and eighteen seconds after the deputies had entered the residence—the dispatch operator disengaged the emergency status to "resume normal traffic." The time stamps of the beginning and end of the emergency status were verbally noted by dispatch. At some point after stating no one was in the home, Deputy Bowen informed his supervisor Sergeant Andrea York over dispatch, "There are some items I want to discuss with you once you get here." The time this statement was given was not verbally noted by dispatch, nor is it recorded in the time stamp on the written report. The next time stamp recorded is at 11:35 a.m., two minutes after deputies cleared the house.

⁴ This is indicated by a beeping sound on the dispatch recording.

At the Suppression Hearing on May 9, 2012, when asked if he knew within twelve seconds that nobody was in the home, Deputy Bowen responded, "Yes. A protective sweep is a very quick, dynamic action." He later testified that he and Deputy Alexander performed two sweeps of the residence: one protective sweep and one search for a potential victim.⁵ Deputy Alexander testified that he and Deputy Bowen entered the house together through the back door. He also testified that no one guarded the front door while they were clearing the house since the layout of the house was open and they could clearly see that no one was exiting through the front door. Deputy Bowen testified that he believed all of the doors inside the home were open except for one bathroom door, which enabled them to complete the sweep very quickly.

The deputies remained inside the home long after they declared it clear. At 12:51 p.m., Deputy Bowen answered the home phone at Old Fort Avenue and spoke with an operator from ADT. Judge Koontz did not sign a search warrant for the home until 1:45 p.m.

During the time the deputies were in the home Deputy Bowen saw a small digital scale with white powder residue and a razor blade in the master bathroom. Deputy Bowen also saw guns on the floor under the bed. The residue, guns, and money were used as probable cause for the search warrant that was eventually obtained. The police recovered 2,000 grams of cocaine and five guns. The Defendant was charged accordingly.

II. Argument

South Carolina Code, §16-25-70 (H)(1)(a) states:

- (H) Evidence discovered as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in a court of law
 - (1) if it is found:
 - (a) in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect; or

⁵ Transcript of Suppression Hearing, May 9, 2012, p. 37.

(b) pursuant to a search incident to a lawful arrest for a violation of this article or for a violation of Chapter 3, Title 16; or

(2) if it is evidence of a violation of this article.

An officer may arrest and file criminal charges against a suspect for any offense that arises from evidence discovered pursuant to this section.

Unless otherwise provided for in this section, no evidence of a crime found as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in any court of law.

§16-25-70 (H)(1)(a), South Carolina Code (1976), emphasis added. This statute provides officers responding to a CDV call with an exception to the warrant requirement in certain limited, clearly defined circumstances. In the absence of these specific circumstances, no evidence of a crime the officers may have seen is admissible in any court of law.

The State argues that during the protective sweep of the Defendant's residence pursuant to the CDV call to 911, the digital scale, white powder substance, safe, and guns seen by the officers fall into the plain view exception to the warrantless search. There can certainly be no factual dispute that the 911 call that brought the officers to the Defendant's residence, although shortly thereafter determined to be bogus, was a CDV complaint as contemplated by the above statute. The statute clearly states that evidence discovered in a warrantless search pursuant to a [CDV] complaint is admissible in a court of law if [it is] in plain view of a law enforcement officer in a room in which the officer is *interviewing, detaining, or pursuing a suspect*.

(Emphasis added.) Since there was no one in or around the residence, it is clear there was no "interviewing" or "detaining" of a suspect as contemplated by the statute. This means that the only way for evidence found during the warrantless search under this false CDV complaint to be admissible is for the officers to be pursuing a suspect when they found it.

"Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Gay v. Artail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

While there is no South Carolina case law discussing "pursuing a suspect" in the context of this particular statute, there are cases in other jurisdictions that discuss the terms in various other situations. It is not surprising that the federal and state cases defining "pursuing a suspect" all have two things in common, pursuing and a suspect. The verb "pursuing" means to chase, to follow in order to overtake, capture, kill, etc.⁶ The noun "suspect" refers to a person who is suspected, especially one suspected of a crime, offense or the like.⁷ The case at bar has neither of the two.

Unless the officers meet the specific requirements of the statute, which they did not, its mandate is clear: no evidence of a crime found as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in any court of law. After the warrantless protective sweep that revealed certain suspicious items, the officers used that evidence of a crime to request and obtain a search warrant from a judge in a court of law. The items found could not be used in Judge Kooitz' court to provide the basis for the search warrant. This is clearly in violation of the South Carolina Code.

The Fourth Amendment prohibits unreasonable searches and seizures. The remedy for unlawful, unreasonable searches is exclusion—"Evidence seized during [an] unlawful search

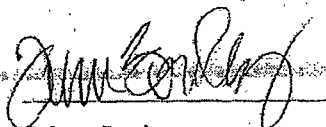
⁶ www.thefreedictionary.com/pursue

⁷ www.thefreedictionary.com/suspect

cannot be proof against the victim of that search." *Weeks v. United States*, 232 U.S. 383 (1914). The fruit of the poisonous tree doctrine prohibits the use of evidence obtained directly or indirectly through an unlawful search of seizure. *Wong Sun v. United States*, 371 U.S. 471, 484 (1963). South Carolina follows this doctrine. In *State v. Copeland*, the South Carolina Supreme Court stated, "The 'fruit of the poisonous tree' doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality." *State v. Copeland*, 321 S.C. 318, 323, 468 S.E. 2d 620, 624 (1996).

In this case, because the search of the residence yielded evidence of a crime that was then illegally used to provide the basis for a search warrant, the violation of the statutory protections requires that all of the tainted evidence, everything found during the execution of the search warrant, be excluded as fruit of the poisonous tree.

RESPECTFULLY SUBMITTED,



D. Lynn Bowley

Attorney for the Defendant

39 Broad Street, Suite 101

Charleston, SC 29401

(843) 723-4020

FILED
2012 AUG 13 PM 12:01
JULIE J. ARMS, CLERK OF COURT
BY _____

STK20110100427

WITNESSES

PLYER

Charleston County Sheriff

AGENCY CASE NUMBER

2010017299B

ARREST WARRANT NUMBER

K684132

DATE OF ARREST

January 24, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 04 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1002320

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

THERRON RENARD RICHARDSON

Indictment for

Trafficking Cocaine

FILED

4/15/2011 3:50:09 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

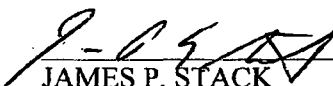
COUNTY OF CHARLESTON)

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about October 17, 2010, the Defendant, THERRON RENARD RICHARDSON, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Cocaine, in excess of 400 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JAMES P. STACK
ASSISTANT SOLICITOR

STK20110100427

WITNESSES

PLYER

Charleston County Sheriff

AGENCY CASE NUMBER

2010017299B

ARREST WARRANT NUMBER

K684138

DATE OF ARREST

January 24, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 04 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO: 2011GS1002321

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

THERRON RENARD RICHARDSON

Indictment for

Possession of a Firearm during the
Commission of a Violent Crime

FILED

4/15/2011 3:50:09 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHARLESTON)

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm during the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about October 17, 2010, the Defendant, THERRON RENARD RICHARDSON, did possess a firearm during the commission, or attempted commission, of Trafficking Cocaine, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JAMES P. STACK
ASSISTANT SOLICITOR.

STK20110100427

WITNESSES

PLYER

Charleston County Sheriff

AGENCY CASE NUMBER

2010017299B

ARREST WARRANT NUMBER

K684141

DATE OF ARREST

January 24, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

APR 04 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1002323

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

THERRON RENARD RICHARDSON

Indictment for

Unlawful Possession of a Firearm by a
Person Convicted of a Crime of Violence

FILED

4/15/2011 3:50:09 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHARLESTON)

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath:

Unlawful Possession of a Firearm by a Person Convicted of a Crime of Violence

That in Charleston County, South Carolina, on or about October 17, 2010, the Defendant, THERRON RENARD RICHARDSON, did unlawfully have in his possession, a firearm, to wit: Glock Model 17 9MM handgun, after having been convicted of a crime of violence, to wit: Trafficking Cocaine, all in violation of Section 16-23-30(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JAMES P. STACK
ASSISTANT SOLICITOR

STK20110100427

WITNESSES

PLYER

Charleston County Sheriff

AGENCY CASE NUMBER

2010017299B

ARREST WARRANT NUMBER

K684142

DATE OF ARREST

January 24, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury -
Date:

APR 04 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1002324

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

THERRON RENARD RICHARDSON

Indictment for

Unlawful Possession of a Firearm by a
Person Convicted of a Crime of Violence

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4/15/2011 3:50:10 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

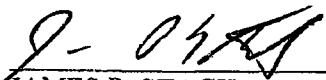
INDICTMENT

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath:

Unlawful Possession of a Firearm by a Person Convicted of a Crime of Violence

That in Charleston County, South Carolina, on or about October 17, 2010, the Defendant, THERRON RENARD RICHARDSON, did unlawfully have in his possession, a firearm, to wit: Sig Sauer Model P 232 9MM handgun, after having been convicted of a crime of violence, to wit: Trafficking Cocaine, all in violation of Section 16-23-30(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JAMES P. STACK
ASSISTANT SOLICITOR

STK20110100427

WITNESSES

PLYER

Charleston County Sheriff

AGENCY CASE NUMBER

2010017299B

ARREST WARRANT NUMBER

K684143

DATE OF ARREST

January 24, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 04 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1002325

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

THERRON RENARD RICHARDSON

Indictment for

Unlawful Possession of a Firearm by a
Person Convicted of a Crime of Violence

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4/15/2011 3:50:09 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

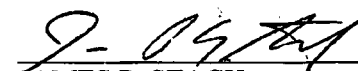
INDICTMENT

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath:

Unlawful Possession of a Firearm by a Person Convicted of a Crime of Violence

That in Charleston County, South Carolina, on or about October 17, 2010, the Defendant, THERRON RENARD RICHARDSON, did unlawfully have in his possession, a firearm, to wit: H&R Inc. Model 733 .32 MM handgun, after having been convicted of a crime of violence, to wit: Trafficking Cocaine, all in violation of Section 16-23-30(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JAMES P. STACK
ASSISTANT SOLICITOR

STK20110100427

WITNESSES

PLYER

Charleston County Sheriff

AGENCY CASE NUMBER

2010017299B

ARREST WARRANT NUMBER

K684144

DATE OF ARREST

January 24, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 14 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1002326

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

THERRON RENARD RICHARDSON

Indictment for

Unlawful Possession of a Firearm by a
Person Convicted of a Crime of Violence

FILED

4/15/2011 3:50:09 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath:

Unlawful Possession of a Firearm by a Person Convicted of a Crime of Violence

That in Charleston County, South Carolina, on or about October 17, 2010, the Defendant, THERRON RENARD RICHARDSON, did unlawfully have in his possession, a firearm, to wit: Intratec Model AB-10 9MM, after having been convicted of a crime of violence, to wit: Trafficking Cocaine, all in violation of Section 16-23-30(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JAMES P. STACK
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATECharleston
VS.

Therron Renard Richardson

AKA:

Race: BLACK Sex: M Age: 43

DOB: SS#:

Address: SET

City, State, Zip: CHARLESTON, SC 294030000

DL#: SID#: SC00697199

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: TRAFFICKING COCAINE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1002320

A/W#: K684132

Date of Offense: 1/24/2011

S.C. Code §: 44-53-0370(e)(2)(a)1

CDR Code #: 0278

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370(e)(2)(a)1 of the S.C. Code of Laws, bearing CDR Code # 0278
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS/CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ferguson, Emmanuel

SC Bar# 21431

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 \$ _____; 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: 2011 GS1002323☒ 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. from 1/24/2011☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (DUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2143

11-15-2012

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
 STATE VS.
Therron Renard Richardson

AKA: _____

Race: BLACK Sex: M Age: 43

DOB: 9 SS#: _____

Address: _____

City, State, Zip: CHARLESTON, SC 294030000

DL#: _____ SID#: SC00697199

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: POSS OF WEAPON DURING CRIME

INDICTMENT/CASE#: 2011GS1002321

A/W#: K684138

Date of Offense: 1/24/2011

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☐ 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 Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 8/13/11 8/14/31
Ferguson, Emmanuel 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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; 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. from 1/24/2011

☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 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 \$ _____

§ 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) \$ 3.90

TOTAL \$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Silva Vizan-Hawes

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2113

Sentence Date: 11-15-2012

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Therron Renard Richardson

AKA:

Race: BLACK Sex: M Age: 43DOB: SS#

Address:

City, State, Zip: CHARLESTON, SC 294030000DL#: SID#: SC00697199*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: POSS OF FIREARM OR AMMUN BY PE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1002323A/W#: K684141Date of Offense: 1/24/2011S.C. Code §: 16-23-0500(A)CDR Code #: 3434

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ferguson, Emmanuel91431
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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; 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. from 1/24/2011☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments (07.5 %))	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Sherron Viza-Hanks

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2163Sentence Date: 11-15-2012

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Therron Renard Richardson
 AKA: _____
 Race: BLACK Sex: M Age: 43
 DOB: _____ SS#: _____
 Address: 3T
 City, State, Zip: CHARLESTON, SC 294030000
 DL#: _____ SID#: SC00697199

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: POSS OF FIREARM OR AMMUN BY PE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1002324
 A/W#: K684142
 Date of Offense: 1/24/2011
 S.C. Code §: 16-23-0500(A)
 CDR Code #: 3434

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 91(43)
Ferguson, Emmanuel 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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; 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. from 1/24/2011

☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: SHARON VIZOR-HANKS

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2163

Sentence Date: 11-15-2012

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Therron Renard Richardson

AKA:
 Race: BLACK Sex: M Age: 43
 DOB: SS#: 1
 Address: 1
 City, State, Zip: CHARLESTON, SC 294030000
 DL#: SID#: SC00697199

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: POSS OF FIREARM OR AMMUN BY PE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1002325

A/W#: K684143

Date of Offense: 1/24/2011

S.C. Code §: 16-23-0500(A)

CDR Code #: 3434

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 91431
Ferguson, Emmanuel 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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; 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. from 1/24/2011

☐ 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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5%) \$

§ 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 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Stephen P. McDaniel
2163
11-15-2012

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Therron Renard Richardson

AKA:

Race: BLACK Sex: M Age: 43DOB: 7 SS#: 7

Address:

City, State, Zip: CHARLESTON, SC 294030000DL#: SC00697199*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: POSS OF FIREARM OR AMMUN BY PE

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1002326A/W#: K684144Date of Offense: 1/24/2011S.C. Code § : 16-23-0500(A)CDR Code #: 3434

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Ferguson, Emmanuel

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 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; 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. from 1/24/2011☐ 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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

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PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

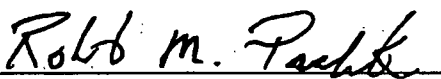
Sentence Date:

2/14/3
11-15-2012

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."

January 3rd, 2014



Robert M. Pachak
Appellate Defender

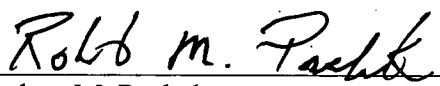
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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."

January 3rd, 2014


Robert M. Pachak
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

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

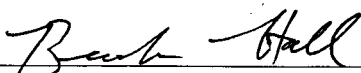
V.

THERRON R. RICHARDSON,

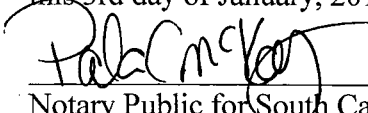
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of January, 2014.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 3rd day of January, 2014.


Notary Public for South Carolina
My Commission Expires: July 24, 2022. (L.S.)

RECEIVED

JAN 03 2014

SC Court of Appeals