

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from York County General Sessions Court
The Honorable Brian Gibbons, Circuit Court Judge

Appellate Case No. 2018-000423

The State

Respondent,

v.

Jonathan Ostrowski,

Appellant.

RECORD ON APPEAL – VOLUME I

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INDEX

Volume I

Trial Transcript.....	1 – 554
a. Pre-trial Matters and Jury Selection.....	1 – 90
b. Motion to Suppress/ <i>Franks v. Delaware</i> Hearing.....	91 – 129
i. <i>In Camera</i> Testimony	
1. Magistrate Tanesha Lonergan	
-Direct Examination by Mr. Phillips.....	91 – 95
2. Investigator Daniel Burkhart	
-Direct Examination by Mr. Phillips.....	95 – 100
-Cross Examination by Solicitor Hayes.....	100 – 103
-Redirect Examination by Mr. Phillips.....	103 – 104
c. <i>Jackson v. Denno</i> Hearing.....	129 – 138
i. <i>In Camera</i> Testimony	
1. Investigator Leland Harrison	
-Direct Examination by Solicitor Hayes.....	130 – 137
-Cross Examination by Mr. Phillips.....	137 – 138
d. Motions and Pretrial Matters.....	139 – 159
e. Opening Statements	
-Solicitor Hayes.....	159 – 167
-Mr. Phillips.....	167 – 170
f. Testimony ¹	
I. Investigator Leland Harrison	
-Direct Examination by Solicitor Hayes.....	171 – 177
- <i>In Camera Voir Dire</i> by Mr. Phillips.....	177 – 178
- <i>In Camera Voir Dire</i> by Solicitor Hayes.....	179
-Direct Examination by Solicitor Hayes.....	189 – 208, 241 – 265, 272 – 275
-Cross Examination by Mr. Phillips.....	276 – 288
-Redirect Examination by Solicitor Hayes.....	288 – 290
-Recross Examination by Mr. Phillips.....	290 – 291
II. Lieutenant Johnny Neal	
-Direct Examination by Solicitor Hayes.....	291 – 296
-Cross Examination by Mr. Phillips.....	296 – 297
III. Jeffrey Deason	
-Direct Examination by Solicitor Hayes.....	298 – 299
-Cross Examination by Mr. Phillips.....	299

¹ Gaps in page ranges of witness testimony account for objections and motions heard *in camera*.

IV. DEA Agent Jason Satterwhite	
-Direct Examination by Solicitor Hayes.....	300 – 303
-Cross Examination by Mr. Phillips.....	303 – 312, 320 – 321
-Redirect Examination by Solicitor Hayes.....	321 – 323
-Recross Examination by Mr. Phillips.....	323 – 326
V. Investigator John Rainier	
-Direct Examination by Solicitor Hayes.....	331 – 336
-Cross Examination by Mr. Phillips.....	336 – 339
VI. Investigator Robert Jenkins	
-Direct Examination by Solicitor Hayes.....	339 – 340
VII. Investigator Christopher Rowe	
-Direct Examination by Solicitor Hayes.....	341 – 343
-Cross Examination by Mr. Phillips.....	343 – 346
-Redirect Examination by Solicitor Hayes.....	346
-Recross Examination by Mr. Phillips.....	346 – 347
VII. Magistrate Doug Sexton	
-Direct Examination by Solicitor Hayes.....	347 – 351
-Cross Examination by Mr. Phillips.....	351
IX. Jimmy Stiles	
-Direct Examination by Solicitor Hayes.....	352 – 356
-Cross Examination by Mr. Phillips.....	356
X. Dee Ann Johnson	
-Direct Examination by Solicitor Hayes.....	357 – 367
-Cross Examination by Mr. Phillips.....	367 – 370
XI. Teresa Scoggins	
-Direct Examination by Solicitor Hayes.....	373 – 375
-Cross Examination by Mr. Phillips.....	375 – 376
XII. Investigator Ryan King	
-Direct Examination by Solicitor Hayes.....	376 – 379, 388 – 396
-Cross Examination by Mr. Phillips.....	396 – 399
XIII. Investigatory Ryan Barnwell	
-Direct Examination by Solicitor Hayes.....	418 – 423
-Cross Examination by Mr. Phillips.....	423 – 424
-Redirect Examination by Solicitor Hayes.....	424 – 425
-Recross Examination by Mr. Phillips.....	425 – 426

XIV. Investigator Curtis Cousins	
-Direct Examination by Solicitor Hayes.....	427 – 428
-Cross Examination by Mr. Phillips.....	428 – 429

XV. Investigator George Weeks	
-Direct Examination by Solicitor Hayes.....	429 – 432
-Cross Examination by Mr. Phillips.....	433 – 435
-Redirect Examination by Solicitor Hayes.....	435 – 436
-Recross Examination by Mr. Phillips.....	436 – 437

XVI. Alexandra Peters	
-Direct Examination by Mr. Phillips.....	446 – 459
-Cross Examination by Solicitor Hayes.....	459 – 462

XVII. Jonathan Ostrowski	
-Direct Examination by Mr. Phillips.....	462 – 469
-Cross Examination by Solicitor Hayes.....	469 – 470
-Redirect Examination by Mr. Phillips.....	470
-Recross Examination by Solicitor Hayes.....	471

g. Closing Arguments	
-Mr. Phillips.....	472 – 481
-Solicitor Hayes.....	481 – 499

Volume II

-Closing Argument by Solicitor Hayes continued.....	500 – 506

h. Motions and Jury Charge Conference.....	506 – 509

i. Jury Charges.....	509 – 524

j. Verdict and Polling.....	530 – 535

k. Sentencing.....	536 – 554

Sentencing Sheets.....	555 – 558

Indictments.....	560 – 566

Exhibits ²	567– 649
Ct. Ex. 2, Second Motion to Compel Discovery.....	567 – 575
Ct. Ex. 3, DEA Report of Investigation.....	580 – 586
Ct. Ex. 4, York County Drug Enforcement Unit Case Summary.....	587 – 590
Ct. Ex. 5, Search Warrant and Affidavit.....	591– 596
Ct. Ex. 8, Jury Note.....	597 – 599
Ct. Ex. 10, Jury Note.....	600
St. Ex. 2-C, Photo of clothes and purses in closet.....	601
St. Ex. 2-D, Photo of clothes and purses in closet.....	601
St. Ex. 2-E, Photo of plate with razor blades.....	602
St. Ex. 2-F, Photo of razor blades.....	602
St. Ex. 2-G, Photo of pistol and ammunition.....	603
St. Ex. 2-H, Photo of shelf in bedroom of residence.....	603
St. Ex. 2-I, Photo of brown pants.....	604
St. Ex. 2-J, Photo of size 38 Columbia work pants.....	604
St. Ex. 2-K, Photo of pants with crystal substance.....	605
St. Ex. 2-L, Photo of pants with crystal substance.....	605
St. Ex. 2-M, Photo of table in bedroom.....	606
St. Ex. 2-N, Photo of table and picture frames	606
St. Ex. 2-O, Photo of table top with scale and meth pipe.....	607
St. Ex. 2-P, Photo of ashtray with meth pipe.....	607
St. Ex. 2-Q, Photo of razor blades.....	608

² The description for the exhibits listed herein were taken from the trial transcript's index of exhibits where possible.

St. Ex. 2-R, Photo of gas bill on refrigerator.....	608
St. Ex. 2-S, Photo of refrigerator in kitchen.....	609
St. Ex. 2-T, Photo of shelves with clothing.....	609
St. Ex. 2-U, Photo of tin foil with basket.....	610
St. Ex. 2-V, Photo of tin foil with basket.....	610
St. Ex. 2-W, Photo with homemade smoking device.....	611
St. Ex. 2-X, Photo of pipe with basket.....	611
St. Ex. 2-Y, Photo of tools with bowl.....	612
St. Ex. 2-Z, Photo of sandwich baggies in shed.....	612
St. Ex. 2-AA, Photo of sandwich of toolbox in shed.....	613
St. Ex. 2-BB, Photo of toolbox in shed.....	613
St. Ex. 13 – St. Ex. 26, Photos of cellphone screen displaying text messages.....	614 – 627
St. Ex. 27, Photo.....	628
St. Ex. 28 – St. Ex. 48.....	629 – 649
Certificate of Counsel.....	650

State of South Carolina.,) In the General Sessions
) Court of York
)
)
) Case No. 2017-GS-46-02573
) 2017-GS-46-02573 (A)
County of York.) 2017-GS-46-02575
2017-GS-46-02576

State of South Carolina.,)
)
Plaintiff.,)
)
-vs-)
) Transcript of Record
Jonathan Stanley Ostrowski.,)
)
Defendant.)

February 27, 28, 2018
March 1, 2018
York, South Carolina

B E F O R E:

The Honorable Brian Gibbons, judge, and a jury.

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Circuit Court Reporter
To The Honorable Daniel D. Hall
Sixteenth Judicial Circuit
Union and York Counties

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

Ganesha Lonergan Mr. Phillips P.

Daniel Burkhardt. . . . Mr. Phillips P.

Solicitor Hayes. . . P.

Investigator Leland Harrelson

Solicitor Hayes. . . P.

. . . P.

. . . P.

. . . P.

Mr. Phillips P.

. . . . P.

. . . . P.

Opening Statements . . . Solicitor Hayes. . . P.

. . . Mr. Phillips P.

Lieutenant Johnny Neal . Solicitor Hayes. . . P.

Mr. Phillips P.

Jeff Deason Solicitor Hayes. . . P.

Mr. Phillips P.

Agent Jason Satterwhite

Solicitor Hayes. . . P.

. . . P.

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

Agent Jason Satterwhite

Mr. Phillips P.

. P.

. P.

Investigator John Rainier

Solicitor Hayes. . . P.

Mr. Phillips P.

Investigator Robert Jenkins

Solicitor Hayes. . . P.

Investigator Chris Rowe

Solicitor Hayes. . . P.

. P.

Mr. Phillips P.

. P.

Honorable Doug Sexton

Solicitor Hayes. . . P.

Mr. Phillips P.

Jimmy Stiles

Solicitor Hayes. . . P.

Mr. Phillips P.

Dee Ann Johnson

Solicitor Hayes. . . P.

Mr. Phillips P.

Teresa Scoggins

Solicitor Hayes. . . P.

Mr. Phillips P.

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Investigator Ryan King	Solicitor Hayes. . .	P.
	Mr. Phillips	P.
Investigator Ray Barnwell		
	Solicitor Hayes. . .	P.
		P.
	Mr. Phillips	P.
		P.
Curtis Cousins	Solicitor Hayes. . .	P.
	Mr. Phillips	P.
George Henry Weeks	Solicitor Hayes. . .	P.
		P.
	Mr. Phillips	P.
		P.
Alexander Peters	Mr. Phillips	P.
	Solicitor Hayes. . .	P.
Jonathan Ostrowski	Mr. Phillips	P.
		P.
		P.
	Solicitor Hayes. . .	P.
Closing Statements . . .	Mr. Phillips	P.
	Solicitor Hayes. . .	P.

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Charge to the Jury		P.
Verdict.		P.
Polling of the Jury.		P.
Sentence of the Court.		P.
Court Reporter's Certificate Page.		P.
Clerk of Court Random Strike Sheet		P.

1
2
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E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Ct.1	Def's Motion for Supplemental and Proposed Voir Dire	P.10	P.21
Ct.2	Second Motion to Compel Disc	P.10	P.21
Ct.3	DEA Report of Investigation.	P.10	P.21
Ct.4	YC DEU General Sessions Case File Summary	P.10	P.21
Ct.5	Search Warrant and Affidavit	P.10	P.21
Ct.6	Bail Proceeding Form (1-28-17)		P.11
Ct.7	Investigator Leland Harrelson Miranda Card - Copy		P.136
Ct.8	Jury note @ 01:19 p.m.		P.522
Ct.9	Jury note @ 01:45 p.m.		P.522
Ct.10	Jury note @ 01:55 p.m.		P.523
Ct.11	Jury note @ 02:10 p.m.		P.524
Ct.12	Arrest Record		P.531
St.1	Photo/Carport @ 162 Bailey Ave		P.191
St.2-A	Photos on table in kitchen	P.191	P.193
St.2-B	Photo/Marijuana bowl	P.191	P.193
St.2-C	Photo/Clothes&purses in closet	P.191	P.193
St.2-D	Photo/clothing & purses in closet (Same as St. 2-C)	P.191	P.193

I-N-D-E-X

E-X-H-I-B-I-T-S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3				
4	St.2-E	Photo/Plate w. razor blades. .	P.191	P.193
5	St.2-F	Photo/razor blades	P.191	P.193
6	St.2-G	Photo/Pistol & ammo.	P.191	P.193
7	St.2-H	Photo/shelf in bedroom of		
8		residence.	P.191	P.193
9	St.2-I	Photo/Brown pants		
10		(Substance found.)	P.191	P.193
11	St.2-J	Photo/Size 38 Columbia		
12		work pants	P.191	P.193
13	St.2-K	Photo/pants w. crystal		
14		Substance.	P.191	P.193
15	St.2-L	Photo/pants w. crystal		
16		substance.	P.191	P.193
17	St.2-M	Photo/table in bedroom	P.191	P.193
18	St.2-N	Photo.	P.191	P.193
19	St.2-O	Photo/table top w. scale		
20		and meth pipe	P.191	P.193
21	St.2-P	Photo/ashtray w. meth pipe . .	P.191	P.193
22	St.2-Q	Photo/razor blades	P.191	P.193
23	St.2-R	Photo/frig. in kitchen	P.191	P.193
24	St.2-S	Photo/frig. in kitchen	P.191	P.193
25	St.2-T	Photo/shelves w. clothing. . .	P.191	P.193

I-N-D-E-X

E-X-H-I-B-I-T-S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3				
4	St.2-U	Photo/tin foil in basket	P.191 .	P.193
5	St.2-V	Photo/basket/same as St.2-U. .	P.191 .	P.193
6	St.2-W	Photo/homemade device to		
7		smoke meth	P.191 .	P.193
8	St.2-X	Photo/basket	P.191 .	P.193
9	St.2-Y	Photo/tools w. marij. bowl . .	P.191 .	P.193
10	St.2-Z	Photo/sandwich baggies in shed.	P.191 .	P.193
11	St.2-AA	Photo/toolbox w. digital scale.	P.191 .	P.193
12	St.2-BB	Photo/toolbox w. meth pipe . .	P.191 .	P.193
13	St.3	Methamphetamine		P.360
14	St.4	Glass pipe w. marijuana.		P.246
15	St.5	Packaging material		P.250
16	St.6	Digital scale.		P.249
17	St.7	Glass pipe		P.251
18	St.8	Digital scale and box of		
19		sandwich baggies		P.247
20	St.9	1 box .32 caliber ammo		P.331
21	St.10	.32 handgun.		P.332
22	St.11	Tin foil w. meth		P.362
23	St.12	Cell phone		P.293
24	St.13-26	Photos		P.384
25	St.27-48	1 photo/texts.		P.384

I-N-D-E-X

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
St.49	Bail Proceeding Form.		P.346
St.50	YCSO Forensic Lab Report.		P.364
St.51	Certified Copy Indictment 1993-GS-46-02518.		P.371

Court Reporter's Note: All Exhibits were filed with the
York County Clerk of Court's Office.

1 (COURT IN SESSION TUESDAY, FEBRUARY 27, 2018 IN THE
2 MATTER OF THE STATE OF SOUTH CAROLINA VERSUS JONATHAN
3 STANLEY OSTROWSKI AT 09:59 A.M.)

4 (WHEREUPON, COURT'S EXHIBIT NUMBERS 1 THROUGH 5
5 PREMARKED FOR IDENTIFICATION.)

6 THE COURT: All right. Let's go ahead and go on the
7 record. Solicitor, if you'll call the case.

8 SOLICITOR HAYES: Your Honor, we are here this morning
9 for the jury trial of *State versus Jonathan Stanley*
10 *Ostrowski*. The Indictment Numbers 's 2017-GS-46-0-2-5-7-3
11 trafficking methamphetamine 28 grams or more; 0-2-5-7-3(A)
12 possession of a weapon during the commission of a violent
13 crime; 0-2-5-7-5 possession of a handgun convicted by --
14 possession of a handgun by a person convicted of a crime of
15 violence; 0-2-5-7-6 possession of a handgun with the serial
16 number obliterated.

17 Your Honor, at this time I would request that the
18 bailiff's call in the hallway for Mr. Ostrowski because he
19 is not yet present in the courtroom.

20 THE COURT: All right. Will y'all do that?

21 (IN COMPLIANCE WITH COURT'S INSTRUCTIONS, BAILIFF
22 EXITS COURTROOM AND REENTERS.)

23 THE BAILIFF: There was no answer.

24 SOLICITOR HAYES: Your Honor, the Bailiff indicates
25 that Mr. Ostrowski -- Mr. Ostrowski did not answer when

1 called three times in the hallway. The State moves that
2 this trial be conducted in the Defendant's absence. The
3 State takes the position that this case is right for a
4 trial in absentia. I have for your Honor as a Court's
5 Exhibit, should that please the Court, a copy of the
6 Defendant's bond paperwork executed on January 28, 2017
7 where it was explained to the defendant that if he failed
8 to attend his trial date the trial would proceed in his
9 absence and he did sign below that line.

10 And then as far as the Defendant's notice of his court
11 date, your Honor, the Defendant was present yesterday for
12 the line share of the day and did participate in jury
13 qualifications. I think that there is just absolutely no
14 way the Defendant is not aware that today is his trial
15 date, so, your Honor, I would like the bond paperwork be
16 made a Court's Exhibit.

17 THE COURT: All right.

18 SOLICITOR HAYES: We would ask that your Honor find
19 the Defendant had notice and we would ask that your Honor
20 conduct this trial in his absence.

21 THE COURT: Is that a Court Exhibit?

22 MADAM COURT REPORTER: Yes, sir.

23 (WHEREUPON, COURT'S EXHIBIT NUMBER 6, IDENTIFIED AND
24 MARKED, RECEIVED INTO THE RECORD.)

25 SOLICITOR HAYES: Your Honor, for the record that's

1 Court Exhibit 6, the Defendant's bond paperwork.

2 THE COURT: Okay. All right. Thank you.

3 Yes, sir, let me hear from the Defense on the trial in
4 absentia motion on behalf of the State?

5 MR. PHILLIPS: Yes, your Honor. The Defense would
6 object pursuant to the *Fifth and Fourteenth Amendments* to
7 the *United State's Constitution* and *Article I, Section 3* of
8 the *South Carolina Constitution*.

9 Fundamental fairness -- We would also include the
10 *Sixth Amendment* to the *United State's Constitution* and
11 *Article I, Section 14* of the *South Carolina Constitution*.

12 Fundamental fairness and the right to assist in his
13 defense and due process and proper notice, although the
14 Defendant was present yesterday during jury qualification,
15 the Defense would make an objection to that motion, would
16 object to that motion on the basis that he was not -- he
17 did not appear before the Court and was not at that point
18 -- the case was not called and at this part I certainly and
19 in due candor to the Court and as an officer of the court
20 can't say that he wasn't here yesterday.

21 He was here yesterday. He did sit through jury
22 qualification.

23 THE COURT: When were you put on notice that this case
24 would be called for trial as his attorney?

25 MR. PHILLIPS: I would have to look back at my email

1 but at least a week or two ago. I mean within the
2 statutory amount of time. Definitely it was well within
3 the past seven or ten days as required by statute.

4 THE COURT: All right. And I understand there are
5 some pretrial issues as well.

6 MR. PHILLIPS: That's correct, your Honor.

7 THE COURT: Let me -- Anything in reply to Mr.
8 Phillip's argument, Solicitor?

9 SOLICITOR HAYES: Your Honor, just for the -- just in
10 response to Mr. Phillip's Constitutional arguments. I
11 would direct the Court to *State versus Wrapp* 421 S.C. 531
12 is our newest case from our Court of Appeals on the
13 requirements for a trial in absentia which we all know
14 would be notice of the trial date and notice of the proceed
15 in his absence.

16 Your Honor, we would rely on that authority as giving
17 you the authority to try this case in his absence.

18 Thank you, your Honor.

19 THE COURT: Anything in reply to that, Mr. Phillips?

20 MR. PHILLIPS: I would have to reserve the right to do
21 further research. I have raised this issue before on
22 appeal and would just like to reserve my objection.
23 Certainly affirm the objection that I've made but reserve
24 the right to add additional argument on behalf of the
25 Defense.

1 THE COURT: All right. Here's what I'm gonna do.

2 I'm gonna take the trial in absentia issue under
3 advisement while we deal with pretrial legal issues.

4 I mean, you know, the fundamental issue for a TIA
5 decision is whether or not a defendant can be present to
6 assist in his defense. And of course that's for
7 evidentiary, or factual matters, not legal matters. That's
8 the reason why we have -- That's the reason why he has a
9 lawyer, so I'm gonna go ahead and go forward with the legal
10 matters while I decide what I'm gonna do. That way when it
11 gets down to the point of when we actually bring a jury
12 panel in to go through jury selection, before we do that,
13 I'll have a decision on the TIA stuff, okay. So let's go
14 ahead and hear argument then on any pretrial motions.

15 Yes, sir.

16 SOLICITOR HAYES: Just one house keeping matter, your
17 Honor. The jury panel is here.

18 THE COURT: Yes, sir.

19 SOLICITOR HAYES: Would you like us to ask the Clerk
20 to have them excused until maybe after lunch just so
21 they're not wondering what's going on, or would you like us
22 to keep them around?

23 THE COURT: Well, they just need to stay around
24 because I don't know how long we gonna be here for pretrial
25 motions. You know they're already here, just -- I gothca.

1 Just let 'em have -- I intend on making a decision
2 here on the trial in absentia issue as well as all the
3 pretrial issues within the next hour or hour and a half,
4 okay. So I don't want to send them anywhere else so leave
5 'em here.

6 All right. Any pretrial issues from the State that I
7 need to be aware of?

8 SOLICITOR HAYES: Your Honor, the State does have some
9 form pretrial motions that we submit in every case which I
10 will hand up to your Honor. May I approach, your Honor?

11 THE COURT: Yes, sir.

12 (DOCUMENTS RECEIVED UP BY THE COURT.)

13 SOLICITOR HAYES: Your Honor, the first would be that
14 we ask the Defense to certify they have complied with
15 reciprocal Rule 5 as far as any evidence they intend to
16 offer in this trial.

17 MR. PHILLIPS: We have, your Honor.

18 THE COURT: All right. They have.

19 SOLICITOR HAYES: Your Honor, we do make a standard
20 request that the Defense be enjoined from referencing any
21 possible penalty of a particular charge in the presence of
22 the jury. Again that's a standard request. I just say
23 that --

24 THE COURT: You agree to that, right, Mr. Phillips?

25 MR. PHILLIPS: Its against the rules of law.

1 THE COURT: It is.

2 MR. PHILLIPS: I won't violate it.

3 THE COURT: But it still sometimes happens. I just
4 want to make sure you don't do it, and I'm not saying you
5 will, but sometimes it slips out.

6 MR. PHILLIPS: Absolutely.

7 THE COURT: Thank you. All right.

8 SOLICITOR HAYES: Your Honor, also we request the
9 Defense to refrain from eliciting self-serving hearsay,
10 another standard request that I don't fault Mr. Phillips
11 for.

12 THE COURT: If that happens I will deal with it during
13 the course of the trial.

14 SOLICITOR HAYES: Your Honor, for the record I do
15 think we need to have a *Denno* hearing. This defendant did
16 provide a statement to law enforcement and so at the
17 appropriate time the State would make the required proffer
18 through our case agent who took the statement.

19 We can do that at any time, your Honor.

20 THE COURT: Is that one of the defense pretrial
21 motions anyway?

22 MR. PHILLIPS: Sorry, your Honor, still looking for
23 that case law. I apologize. What was the motion please?

24 THE COURT: *Jackson versus Denno* issue.

25 MR. PHILLIPS: That would be one of the issues I

1 wanted to raise to your Honor with his not being here. It
2 would be the issue during that hearing where I have to make
3 the judgment call, the strategic decision about, and of
4 course his decision, whether to testify during that
5 hearing. If he's not here that will becomes ---

6 THE COURT: Okay.

7 MR. PHILLIPS: --- an issue.

8 THE COURT: We'll hold that in abeyance just for a
9 moment then. Anything further from the State pretrial?

10 SOLICITOR HAYES: Your Honor, this is not a motion per
11 se but the State does have a significant amount of exhibits
12 in this case, and at some point, either now or on a break,
13 we would like to show those to Mr. Phillips so that he has
14 a chance to let us know which ones he's gonna object to
15 streamline the trial, because there are so many it would
16 not be something we want to be dealing with tomorrow
17 afternoon. We'd like to go ahead and deal with it.

18 THE COURT: Okay. We'll do that when we take a break.

19 SOLICITOR HAYES: Yes, sir.

20 THE COURT: All right, so nothing further from the
21 State from a pretrial perspective except proffer pursuant
22 to a *Denno* hearing which I need to decide the TIA stuff
23 first.

24 SOLICITOR HAYES: That's correct, your Honor.

25 THE COURT: Got it. All right, now what legal

1 matters, Mr. Phillips, do you have that you wish for me to
2 address?

3 MR. PHILLIPS: Yes, your Honor. One of the issues,
4 one witness issue for a motion that I will have this
5 morning, Ms. Tanesha Lonergan, a City of Rock Hill
6 Magistrate Judge, has been subpoenaed. When I believe --
7 When I spoke to her earlier this morning that we were gonna
8 pick the jury and then do pretrial, she said she was gonna
9 leave and come back, so, there might be a little bit of
10 time issue as far as when she comes back for me to call her
11 to testify for that motion. But that is a matter that will
12 be addressed a little bit farther down the road, and she
13 should be back by then, but I wanted to bring it to your
14 Honor's attention that when I thought we were gonna pick
15 the jury first, you know, I said she could leave and come
16 back and she said it would only be a hour.

17 THE COURT: Okay. What else?

18 MR. PHILLIPS: We can go ahead and get started, your
19 Honor.

20 THE COURT: All right. I'm ready.

21 MR. PHILLIPS: The first, the first motion the Defense
22 moves to sequester the witnesses.

23 THE COURT: All right. Is there gonna be any
24 objection to that motion other than the lead investigator?

25 SOLICITOR HAYES: No, your Honor, we don't have an

1 objection. We would make a reciprocal request of any
2 defense witnesses because I have been provided a witness
3 list from the Defense.

4 THE COURT: Any problem with that?

5 MR. PHILLIPS: No, there would be no issue with that,
6 your Honor..

7 THE COURT: Okay. So we'll deal with that whenever we
8 start the trial.

9 SOLICITOR HAYES: Yes, your Honor, the sequester does
10 not extend to pretrial.

11 THE COURT: I'm sorry.

12 MR. PHILLIPS: My motion for sequestration of
13 witnesses wouldn't -- would be for pretrial at this point.

14 THE COURT: Okay. Yeah, it would.

15 SOLICITOR HAYES: Okay. If I may confer with my
16 witnesses, your Honor?

17 THE COURT: Absolutely.

18 (PAUSE.)

19 THE COURT: Yes, sir.

20 MR. PHILLIPS: The Defendant moves for the Court to
21 compel disclosure of specifically requested evidence
22 pursuant to the *Fifth, Sixth, and Fourteenth Amendments* to
23 the *United State's Constitution* and *Article I, Sections 3*
24 and *14 of the South Carolina Constitution* as well as *Rule 5*
25 of the *South Carolina Rules of Criminal Procedures*.

1 This requested evidence is necessary to ensure the
2 Defendant's right to a fair trial. Specifically his right
3 to confrontation of witnesses, compulsory process,
4 meaningful opportunity to present a complete defense, and
5 effective assistance of counsel.

6 Your Honor, I have provided you with a copy, as well
7 as the State, of this second Motion to Compel. It has been
8 remarked as Court's Exhibit 2.

9 THE COURT: I got it.

10 MR. PHILLIPS: This second motion to compel contains
11 all of the relevant request. Not to confuse your Honor
12 what we filed at this point was Standard Motion For
13 Discovery, a Supplemental Motion for Discovery and then to
14 keep it in chronological order it was a Motion To Compel
15 and then a Second Supplemental Motion for Discovery. And
16 then now this one on the eve of trial the Second Motion to
17 Compel Discovery.

18 You can divide these requests that's contained in this
19 motion, your Honor, into four parts. The first one being
20 the DEA and the York County Sheriff's Department DEU
21 investigation records.

22 The second, the electronically stored information
23 related to the above investigation.

24 The third, the identify of the confidential
25 informants.

1 And the forth being the -- being any agreements,
2 deals or contracts between any of the witnesses and law
3 enforcement and or the Solicitor's office.

4 I have also premarked the DEA Redacted Report of
5 Investigation as Court's Exhibit Number 3. And the York
6 County Multi-Jurisdictional Drug Enforcement Unit General
7 Sessions Case File Summary as Court's Exhibit Number 4.

8 And the Search Warrant in this case as well as the
9 Magistrate Court's Log as Court's Exhibit Number 5.

10 THE COURT: Okay.

11 (WHEREUPON, COURT'S EXHIBITS ONE THROUGH FIVE
12 PREVIOUSLY PREMARKED, IDENTIFIED AND RECEIVED INTO
13 EVIDENCE.)

14 MR. PHILLIPS: At this time the Defendant would
15 request an evidentiary hearing on this matter as to the
16 discovery. If your Honor doesn't feel at this point an
17 evidentiary hearing is required, we can certainly hear from
18 the State on this request, I can go into further detail on
19 the law that's contained in the written motion in Court's
20 Exhibit Number 2. It's at your Honor's discretion.

21 THE COURT: All right. Let me look at Court Exhibit
22 -- Let me look at the Court Exhibits. Get those.

23 MR. PHILLIPS: And Court's Exhibit Number 2 is a copy
24 of the Second Motion to Compel that I provided to the
25 Court.

1 (COURT'S EXHIBITS RECEIVED UP BY THE COURT.)

2 THE COURT: Thank you. All right, just -- You want to
3 make any argument now as to Number 1, the DEA York County
4 Sheriff's DEU Investigation records? I mean I got your
5 written motion and it's made a part of the record of the
6 trial, but do you want to argue anything specifically, or
7 maybe direct me to anything specifically in your written
8 thing you want to emphasize?

9 MR. PHILLIPS: Yes, your Honor, we can walk through
10 them kind of individually then.

11 THE COURT: All right.

12 MR. PHILLIPS: I think that will be more efficient.

13 For the DEA and York County Sheriff's Department
14 Investigation records, the request was for all evidence
15 including but not limited to the documents, images, and
16 video recordings related to the phone number 803-372-
17 3-0-6-5 and address 1-6-2 Bailey Avenue, Rock Hill, South
18 Carolina. Specifically by the Drug Enforcement
19 Administration Special Agent Jason Satterwhite and the York
20 County Sheriff's Department DEU agent.

21 And so the reason I've marked those Court's Exhibit is
22 because the DEA Investigation Report is redacted and
23 certainly there would be a full case file that's related to
24 that report. And then the Case Summary is the easiest way
25 to show the work that the DEU Unit had performed in the

1 case and would have additional investigation, possibly, or
2 an investigation file related to this on-going
3 investigation that went for many months. Specifically the
4 unredacted copy of the DEA Report of Investigation
5 including but not limited to the tag number for the Blue
6 Chevrolet truck that's noted in the report and the South
7 Carolina Department of Motor Vehicles listed owner for the
8 1996 Chevrolet, so there is a person specifically
9 identified but redacted, the identity is redacted but the
10 person is identified in the report. It's just not
11 disclosed to the Defense.

12 And there is a vehicle with a tag number that's
13 identified in that report, but again, its not disclosed to
14 the Defense because it's redacted.

15 THE COURT: That's identified as a white male with a
16 beard.

17 MR. PHILLIPS: That's correct, your Honor. This case
18 will not be a straight mere presence type of defense
19 because the Defendant was not present at the home during
20 the execution of the search warrant, so the Defense is a
21 third party guilt defense, your Honor. With that being
22 said, we have a man who was present at that house during
23 this investigation whose identity has not been disclosed to
24 the defense.

25 Furthermore, there was, I believe, some discussion

1 about possible surveillance cameras that have been set up
2 during this investigation and there are no video recordings
3 that have been provided to the Defense of these
4 surveillance cameras during this investigation or, you
5 know, several month investigation, or any notes related to
6 that investigation from either the DEA or the DEU Unit.

7 Specifically also requesting any written statements or
8 notes of verbal statements provided to witnesses by law
9 enforcement, the Solicitor's office, which includes the
10 confident -- any confidential informant statements, and or,
11 the codefendant Alexandra Peters.

12 There was -- Ms. Peters was interrogated by the DEA
13 and the DEU Unit as well as the confidential informants had
14 direct involvement with these investigators in their
15 investigation of this address, of this number, and of Ms.
16 Peters which ultimately⁸ led to the execution of the search
17 warrant.

18 Specifically -- I mean that's -- If we want to go
19 piece by piece I think that would be best because I'm gonna
20 kind of just go on over everything and I think it might be
21 easier if we take it piece by piece. So for this one ---

22 THE COURT: Okay.

23 MR. PHILLIPS: --- section certainly that would be
24 everything encompassed with the DEA Reportive Investigation
25 and the DEU Unit's investigation involvement.

1 THE COURT: All right. Well let me hear from the
2 State then in response to Mr. Phillips argument, this
3 Motoin to Compel.

4 SOLICITOR HAYES: Thank you, your Honor. I think --
5 The State objects because the State takes the position that
6 none of this is material or relevant to this particular
7 case. And if your Honor will allow I'm just gonna provide
8 a brief factual summary ---

9 THE COURT: Sure.

10 SOLICITOR HAYES: --- of how we got to where we are.

11 This case is straight forward. This case is a search
12 warrant execution of Mr. Ostrowski's house. Now it is true
13 that law enforcement was surveilling Mr. Ostrowski as Mr.
14 Phillips notes and that law enforcement had been looking at
15 his house for a while. But at the end of the day, they
16 executed a search warrant on his house based on in part the
17 statement of somebody who had just left that house and told
18 them there was contraband in the house.

19 So what Mr. Phillips is referencing is law enforcement
20 surveillance that took place weeks, months, prior to the
21 search warrant execution that is interesting but doesn't
22 amount to anything because no charges were made.

23 So what I direct your Honor to is -- I think it's -- I
24 can't remember the Court's Exhibit number off the top
25 head - but the DEA Incident Report that he referenc

Alex
Phillips
with much

1 THE COURT: That's Exhibit Number 3.

2 SOLICITOR HAYES: Court's 3. On December 28, 2016 the
3 DEA did some drive-by surveillance and took down a license
4 plate and saw somebody there. That was a month before the
5 search warrant was executed.

6 THE COURT: When was the search warrant executed?

7 SOLICITOR HAYES: January 25th, 2017.

8 THE COURT: Okay.

9 SOLICITOR HAYES: So what Mr. Phillips is referencing
10 is information -- and this is just a for instance that
11 would apply to all of Mr. Phillips' request. What he's
12 referencing is something that happened a month prior at the
13 residence that law enforcement took a note of and put in
14 this incident report. But at the end of the day there's
15 nothing about December 28th, 2016 that has anything to do
16 with the search warrant that was executed on January 25th,
17 2017.

18 THE COURT: And the reason for the redaction is?

19 SOLICITOR HAYES: Your Honor, the DEA is my
20 understanding requires redactions at the top and bottom of
21 the page based on their requirements for what goes out of
22 their agency for their confidential file numbers and
23 indexing numbers. The reason the license plate and the
24 name of the person is because I will represent to the Court
25 that person is not a confidential informant in this case.

1 I didn't want their name involved in this case. I
2 didn't want somebody on the other side thinking that this
3 person had anything to do with this case. That person was
4 present when law enforcement drove by that day and they
5 took a note of it.

6 We're not calling that person as a witness. We're not
7 telling the jury about that person in any way. I just
8 didn't want that person brought into this case for no
9 reason, so that's the basis of the redaction on the DEA. So
10 part of the redactions are the DEA required it.

11 When they gave it to me they made me swear to them
12 that I would redact their confidential information and then
13 not wanting to rope people into this that aren't really
14 involved in it, or that are involved in it.

15 THE COURT: Okay. Yes, sir, in reply to that briefly.

16 MR. PHILLIPS: Thank you, your Honor. Specifically
17 when the State references that this information has nothing
18 to do with this case, the affiant's supporting affidavit
19 for the search warrant contains information all about this
20 investigation, so the whole support of probable cause to
21 conduct the search is the very thing that the State just
22 argued is not relevant to this case. I do have a motion
23 later to address that issue.

24 So where the State has conceded that its not relevant
25 to today they could concede to limit the testimony that

Handwritten:
Alex
Not being
called in
any way

1 none of that investigation and none of the involving facts
2 and circumstances are relevant or admissible at this trial
3 you can't, you know, have your cake and eat it too.

4 So if it is relevant, then certainly that third party
5 we have the right to present a meaningful defense. And the
6 case laws outlined in the Court's Exhibit that by me not
7 having, or the Defense not having that third party's
8 identity in proving dominion and control under a
9 constructive possession case, I could, and certainly have a
10 duty to conduct a reasonable investigation of this case to
11 provide effective assistance of counsel and doing that
12 would be to track down a possible material witness, and to
13 find whether that person was the person who had dominion
14 and control over that residence.

15 The defendant in this case was not present in the home
16 during the execution of the search warrant and we have an
17 identity that has not been disclosed.

18 THE COURT: Okay. All right move on to your next
19 point. That would be number?

20 MR. PHILLIPS: Two.

21 THE COURT: Two. The electronically stored
22 information related to the investigation.

23 MR. PHILLIPS: Yes, your Honor. And I know this is a
24 unique request. It's only been done I believe a few times
25 in the courts -- in a criminal court. It's a very standard

1 request in civil litigation cases, and it's unique to
2 criminal cases, but with this identity not being disclosed,
3 and with this investigation being ongoing for several
4 months, and involving at least the codefendant in this
5 case, and possibly we know for a fact three confidential
6 informants, two that were involved with the codefendant's
7 arrest warrants and then one that provided the number, the
8 803-372-3065 number, so at least those three confidential
9 informants as well as this unknown individual that the
10 State has not disclosed.

11 This request for electronically stored information is
12 essentially without belaboring the Court the definition
13 section provides what encompasses electronically stored
14 information, so it's the information that would concern any
15 interview statements or notes taken by either the DEA or
16 the DEU Unit, or the Solicitor's office that's related to
17 this investigation.

18 The codefendant Alexandra Peters and the confidential
19 informants, or any other material witness in it, its
20 including but not limited to emails, text, or any other
21 type of word processing documents that would be not subject
22 to work product material. I have provided in the motion
23 the section under *Pennsylvania v. Richie* that if the State
24 is claiming work product and privileged information that
25 they must submit it to the Court for an in-camera review

h. by [unclear]
[unclear] [unclear] [unclear]
[unclear] [unclear] [unclear]

① Alex
Mr. [unclear]
Mr. [unclear]
②
③

1 pursuant to that United State's Supreme Court case.

2 That this information could contain - Because it's
3 impossible to know what's unknown, this information could
4 contain not only impeachment evidence but exculpatory
5 evidence and that has not been provided to the Defense.
6 And I understand it is a rare request and somewhat could be
7 considered burdensome, but I think it's necessary in
8 presenting a complete defense and a fundamental unfairness
9 to the Defendant in defending a case where, again, he was
10 not present at the time of the execution of the search
11 warrant and one where the State's going to try to prove
12 constructive possession through circumstantial evidence.

13 THE COURT: All right. What's the State's response to
14 this?

15 SOLICITOR HAYES: Your Honor, in just looking at
16 Section 2 as a whole, I think you could summarize it best
17 by just reading the first line of Item D. A listing or
18 inventory of every computer including make, model,
19 location, serial number, that the State's law enforcement
20 officials had access to during the communication with,
21 interrogation and or interview of defendant Jonathan
22 Ostrowski and so on. That is an actual request for the
23 serial numbers of law enforcement's computer equipment.

24 Your Honor, there was a murder trial in the other
25 courtroom that pled yesterday where the Defense didn't ask

1 for the serial numbers of law enforcement's computers.

2 Your Honor, this is the definition of a fishing
3 expedition. Mr. Phillips will have the benefit of cross-
4 examining all of the State's witnesses in this case. All
5 of these officers and agents will be here and can answer
6 questions about anything and everything that they did;
7 anything and everything that they have. I actually
8 understand that Mr. Phillips has served a subpoena on one
9 of my officers. I mean this -- these tools are available
10 to Mr. Phillips but the law and the rules don't give him a
11 pretrial fishing expedition to allow him to cross-examine
12 my officers before the jury even comes in.

13 All of this is appropriate inquiry into a cross-
14 examination. It's not appropriate for pretrial discovery.
15 Again, your Honor, I think the real flavor of this entire
16 document is incorporated in Section II, letter D, asking
17 for the serial numbers of police laptops.

18 THE COURT: All right. Thank you.

19 SOLICITOR HAYES: Thank you, your Honor.

20 THE COURT: Brief -- brief reply.

21 MR. PHILLIPS: Yes, your Honor. This request has been
22 granted before in Richland County in a murder case where
23 Dick Harpootlean was the defense attorney. Using what was
24 ultimately used as a consent order by the Fifth Circuit
25 Solicitor's Office, this motion has been done before in a

1 murder case. The thought from the State about being a
2 fishing expedition in discovery that could be done on cross
3 is incredibly problematic.

4 The State's position is that the Defense is supposed
5 to fish during cross-examination to try to uncover things
6 that the Defense does not know. That is the sole purpose
7 of the discovery request to know the impeachment evidence
8 and know what questions to ask on cross-examination which
9 would effectively deny the Defendant's *Sixth Amendment* --
10 *Sixth and Fourteenth Amendment* rights as well as *Article I*,
11 *Section 14* of the *South Carolina Constitution*, so this has
12 been done in a murder case.

13 It was ultimately a consent order by the prosecuting
14 agency in the Fifth Circuit. And to present a complete
15 defense and a fundamental fairness I can't shoot in the
16 dark on cross-examination questions. Even as an officer of
17 the Court I'm technically not allowed to do that. That's
18 the whole purpose of the discovery request.

19 THE COURT: All right. Move on to Number 3.

20 The Identity of the Confidential Informant. What did
21 you want to say on that?

22 SOLICITOR HAYES: Your Honor, I would just also - I
23 know we will get into this when we fight about the search
24 warrant - but I think it also applies at the discovery
25 phase and so this would apply to everything that Mr.

1 Phillips has argued and I'm sure will argue.

2 In a search warrant case where there is no
3 supplemental oral testimony presented to the issuing
4 magistrate, the inquiry before the Court as far as pretrial
5 goes in looking at a search warrant, is the face of the
6 search warrant. And so all of this talking about what
7 happened prior to the search warrant or asking for
8 information about what happened prior to the search warrant
9 being issued is really not even gonna be before the Court
10 when the Court considers the search warrant itself.

11 MR. PHILLIPS: Sorry, your Honor.

12 THE COURT: You're arguing relevance?

13 SOLICITOR HAYES: Yes, your Honor.

14 MR. PHILLIPS: I just noticed that the Magistrate
15 stepped in and we have the sequestration. I was gonna ask
16 her to step outside.

17 THE COURT: Okay. That will be fine.

18 (ATTORNEY PHILLIPS INSTRUCTS MAGISTRATE TO EXIT
19 COURTROOM.)

20 THE COURT: Thank you. Thank y'all.

21 All right. So the State's arguing relevance?

22 SOLICITOR HAYES: Yes, your Honor.

23 THE COURT: Okay. All right. Got it, I'm with you.

24 All right. I hadn't made a ruling on that. I'm with
25 you means I understand what you're arguing.

1 Okay. The next one.

2 MR. PHILLIPS: Onto Number 3, Revealing The Identity
3 Of The Confidential Informants. As your Honor knows the
4 leading case on the informant's privilege is *Roviaro v.*
5 *United States*, essentially adopted by *State v. Diamond*
6 that's listed in the Motion to Compel, the Court's Exhibit
7 Number 2.

8 The *Roviaro* Court says where the disclosure of an
9 informer's identity or the contents of the communication is
10 relevant and helpful to the defense of the accused or
11 essential to a fair determination of the cause the
12 privilege must give way. In these situations the trial
13 court may require disclosure and if the government
14 withholds the information dismiss the action.

15 Rule 5 is -- Well essentially, your Honor, *Roviaro*
16 specifically found that the informer's privilege is limited
17 by due process. Our Rule 5 is the State's mechanism for
18 complying with due process.

19 In this case we have at least three confidential
20 informants. One who provides the phone number that the
21 State believes is connected to Jonathan Ostrowski. And
22 then the other two who are connected to the drug
23 distribution with the codefendant Alexandra Peters.

24 Specifically in this case without having disclosure of
25 this information and being able to conduct a reasonable

1 investigation into these witnesses certainly could provide
2 a basis to attack any discussions revolving around that
3 prior investigation. Kind of taking a step back and going
4 to something that the State presented earlier, if we're
5 gonna look at this in a vacuum and agree that the testimony
6 would be limited solely to the trafficking charge, the
7 execution of the warrant on January 25th, then the defense
8 has no issue with that.

9 But, what I anticipate will happen through testimony
10 is that there to be a lot of testimony or at least to
11 attempt a lot of testimony on the State's behalf to present
12 evidence of this investigation, and everything that's
13 connected to it, which is again problematic because it also
14 served in the affidavit supporting of a search warrant that
15 -- that information was contained in the affidavit which
16 ultimately led to a probable cause determination.

17 And if the State's position is that it's not relevant
18 as far as disclosing a person's identity, or certain pieces
19 of discoverable evidence, then it wouldn't be proper to
20 have been held in that search warrant affidavit. It's the
21 catch 22 of counter balancing arguments.

22 Certainly the public interest in this case, I've made
23 this argument plenty of times that there's no informer
24 privilege or no witness privilege for a sole eyewitness in
25 a murder case. I think the bar is set very low in my

1 opinion on this privilege. If you have a sole witness in
2 a murder case there's nothing set in place to protect their
3 identity.

4 People who actively participate in criminal
5 investigations assume the risk that their identity can be
6 disclosed in court, and without having their identity
7 disclosed it prevents the Defense from conducting a
8 reasonable investigation and certainly presenting possibly
9 a meaningful defense.

10 THE COURT: Okay. Coming back to you, Solicitor.

11 SOLICITOR HAYES: Your Honor, the State strongly
12 opposes this request because under the well established
13 case law these people are mere tipsters at best if they had
14 anything to do with Mr. Ostrowski at all.

15 Regarding the person who gave law enforcement Mr.
16 Ostrowski's cell phone number, that's exactly it. This
17 person gave them Mr. Ostrowski's cell phone number as a
18 tip. The very definition of a mere tipster according to
19 *State versus Burney* 294 S.C. 61 and 254 S.C. 87, that would
20 be *State versus Humphries*. Then I'm gonna hand those up to
21 your Honor on this point.

22 This is a search warrant execution. It's interesting
23 that law enforcement had Mr. Ostrowski's phone number. It
24 allowed them to take some investigative steps to locate Mr.
25 Ostrowski when the arrest warrants had been issued. But as

1 far as this person giving law enforcement Mr. Ostrowski's
2 cell phone number, it doesn't really factor into the
3 evidence in the case about what was found in the house and
4 what Mr. Ostrowski's on trial for. This is just a person
5 on the street who had information, he gave it to law
6 enforcement.

7 And then as far as the confidential informant, or
8 informants referenced by Mr. Phillips, with respect to the
9 codefendant, I would like to provide a little context for
10 your Honor on that because those are completely separate
11 cases for which Mr. Ostrowski is not charged. Specifically
12 law enforcement made a separate distribution charge on
13 codefendant Alexandra Peters in -- the incident date was in
14 September of 2016. They used a confidential informant or
15 confidential informants to purchase alprazolam from
16 Alexandra Peters and she is charged with that offense and
17 has yet to go to trial.

18 But Mr. Ostrowski is not charged with that offense.
19 That offense didn't even take place at Mr. Ostrowski's
20 house. That took place in Fort Mill.

21 THE COURT: She just had active warrants on her?

22 SOLICITOR HAYES: Yes, sir.

23 THE COURT: That hadn't been served?

24 SOLICITOR HAYES: That's it.

25 THE COURT: From four or five months previous to the

1 actual search warrant being implemented?

2 SOLICITOR HAYES: Yes, sir.

3 THE COURT: All right. I'm reading the affidavit for
4 the search warrant right now, just to follow along with
5 your argument.

6 SOLICITOR HAYES: Yes, sir. And so I will hand up and
7 then I'll sit down, but I'll hand up *State versus*
8 *Humphries*, 354 S.C. 87 and *State versus Burney* 294, S.C. 61
9 as to the mere tipster doctrine. So it's the State's
10 position that these people are at most mere tipsters if
11 they even have anything to do at all.

12 THE COURT: Okay.

13 SOLICITOR HAYES: Thank you, your Honor.

14 THE COURT: All right, coming back to your for a brief
15 reply. Remember I'm gonna read all this. Go ahead.

16 MR. PHILLIPS: A brief reply.

17 THE COURT: All right. Thank you. All right, Number
18 4, Agreements, Deals, and or Contracts between any of the
19 witnesses and law enforcement.

20 MR. PHILLIPS: The standard request, your Honor, for
21 any agreements, plans, arrangements, offers, implied
22 discussions, discussions in general, grants of immunity, or
23 any type of favorable discussions as to the outcome of a
24 State's witnesses case as far as working with law
25 enforcement and, or, the Solicitor's office, or discussions

1 to provide material assistance with law enforcement and or
2 the Solicitor's office.

3 There doesn't necessarily have to be an agreement in
4 place. There doesn't necessarily have to be any deals
5 made; whether there's even any discussions regarding that,
6 we are asking for disclosure of that of any witnesses
7 contained in this case that would relate to the
8 investigation.

9 And it goes back again to where the State is
10 continuing to argue that the investigations are not
11 relevant, and that's fine, and the Defense ultimately agree
12 that we can limit the scope of this trial solely to the
13 execution of the search warrant that all the testimony
14 related to the outside investigation is not relevant and
15 should not be admissible. The Defense would certainly
16 agree with that.

17 THE COURT: Okay. Coming back to you.

18 SOLICITOR HAYES: Your Honor, codefendant Alexandra
19 Peters is very emphatically not gonna testify for the
20 State. So as far as -- I mean she can testify for the
21 defense for all I know but she's not working with us.

22 THE COURT: All right. So she's not listed as a
23 State's witness?

24 SOLICITOR HAYES: No, sir.

25 THE COURT: All right, so there are no deals, or

1 contracts between any witnesses that the State intends to
2 offer?

3 SOLICITOR HAYES: May I approach on that point, your
4 Honor?

5 THE COURT: Sure.

6 (BENCH CONFERENCE HELD OFF THE RECORD AT 10:45 A.M..)

7 THE COURT: All right. Is that it for the Defense's
8 motion pursuant to the Second Motion To Compel?

9 I believe it is.

10 MR. PHILLIPS: Just the one case I would like to cite,
11 your Honor, and please bear with me.

12 THE COURT: Yeah.

13 MR. PHILLIPS: Is of course one your Honor's very
14 familiar with, the *Cosby Whitley*, in finding due process
15 requires disclosure of any evidence that provides grounds
16 for the Defense to attack the reliability, thoroughness and
17 good faith of the police investigation to impeach the
18 credibility of the State's witnesses, or to bolster the
19 Defense's case against prosecutorial attacks.

20 I think when looking at fundamental fairness and the
21 opportunity to present a complete defense, as a whole,
22 again standing on our Second Motion To Compel, Court's
23 Exhibit Number 2, these are -- All of our relevant request
24 are contained in that motion and I know your Honor's
25 reviewing it, so, yes, we would hold on that motion.

1 THE COURT: All right. What are the other -- Any
2 other pretrial issue -- Well I'll tell you what. Let's do
3 this. Let's take a brief recess at this moment, I'm gonna
4 go back and get my thoughts together, I'll come out and
5 announce my decision on the trial in absentia issue, as
6 well as my decisions on the Second Motion To Compel. So
7 what's left other than the *Denno* which of course I took
8 under advisement waiting for the Defendant to get here.

9 And what else? The Search Warrant?

10 MR. PHILLIPS: The search warrant: We will have some
11 pretty quick Confrontation Clause 404(B) possibly dealing
12 with if your Honor wants to do it pretrial we'll just wait
13 until a witness is called. The State's gonna call the law
14 enforcement officer to --

15 THE COURT: Yeah, we'll wait for that, but I need to
16 make my decision on the TIA first just for the purposes of
17 the record.

18 MR. PHILLIPS: So the search warrant is the only other
19 big motion that ---

20 THE COURT: Okay.

21 MR. PHILLIPS: --- would have witness testimony. Of
22 course we put the *Denno* hearing in abeyance since he's not
23 --

24 THE COURT: All right, gotha. All right, let's take a
25 brief recess then. I'll be back out hopefully in about ten

1 or fifteen minutes and let you know my decision on the
2 matters pending, okay.

3 MR. PHILLIPS: Thank you, your Honor.

4 SOLICITOR HAYES: Thank you, your Honor.

5 (COURT IN RECESS AT 10:48 A.M..)

6 (COURT BACK IN SESSION AT 11:00 A.M.)

7 THE COURT: All right, we're back on the record.

8 All right, first its my understanding I was advised
9 while I was looking through everything that the Defendant
10 is apparently on his way and that's good. However, I'm not
11 gonna delay these proceedings any further. I've considered
12 both arguments of the Defense and the State and I am gonna
13 allow the State to proceed in the Defendant's absence with
14 this trial. When and if he gets here he'll be able to
15 participate, but I'm not gonna delay anything because we
16 need to get things moving on, okay.

17 All right, as -- So what that means is after I make my
18 decision, which I'm fixing to on the Defense's Motion To
19 Compel that we just heard arguments on, that -- we're gonna
20 bring the jury panel up here, so, Madam Clerk, go ahead and
21 tell them to be getting a panel together to come up here.

22 We're gonna have two -- Well, I probably need forty, I
23 guess, come up here.

24 All right, I'm gonna go ahead and pick a jury and then
25 we'll hear the remaining pretrial issues prior to the jury

1 coming back this afternoon.

2 All right, as to the motion, yes, sir.

3 MR. PHILLIPS: And just for the record, we would renew
4 our objection.

5 THE COURT: Absolutely. You are certainly protected
6 in the record. All right, on Defense's Second Motion To
7 Compel as to Item No. 1, the Court denies the Defense
8 motion to compel on that issue finding the information
9 sought to be disclosed is irrelevant.

10 All right, as to Item No. 2 the electronically stored
11 information, likewise I'm denying that motion as well.

12 No. 3, revealing the identity of the confidential
13 informants. I've reviewed the applicable case law and
14 considered arguments of both the State and the Defense, I
15 respectfully deny the Defense motion on that.

16 And lastly the State has assured the Court that there
17 are no deals with any witnesses who may be testifying for
18 the State; therefore, since there are none the Court
19 respectfully denies that motion.

20 Mr. Phillips, you and your client are certainly
21 protected on the record in regards to the Court's rulings,
22 okay.

23 All right, so at this point in time let's go ahead and
24 proceed with getting a jury panel up here and we'll select
25 a jury. Now let's talk about jury strikes because I know

1 that's an issue. What he's charged with under the statute
2 I believe is gonna be five and five.

3 Mr. Phillips, you wish to be heard on that?

4 MR. PHILLIPS: No, your Honor, I'm in agreement with
5 it.

6 THE COURT: Okay. So five strikes for the State, five
7 for the Defense. While they're coming up here let's go
8 ahead and deal with possible voir dire questions.

9 First of all does the Defense object to any of the
10 State's proposed voir dire?

11 MR. PHILLIPS: None, your Honor.

12 THE COURT: Okay. Now, the Defense voir dire is
13 contained in his Motion for Supplemental and Proposed Voir
14 Dire. I'm dealing just now with court directed voir dire.

15 Are there any objections from the State in regards to
16 the Defendant's requested Court voir dire?

17 SOLICITOR HAYES: Your Honor, we would object to --

18 THE COURT: Tell me what page and line.

19 SOLICITOR HAYES: Page 6 of 8.

20 THE COURT: Okay.

21 SOLICITOR HAYES: Numbers 5, 6, 7, 8, 10 and 11.

22 Your Honor, I think a lot of those are incorporated
23 into the jury charges that you will give as far as
24 following the law as you give it. Your standard questions
25 as to can they follow the law even if they disagree with

1 it, your standard questions about over all fairness and
2 impartiality towards everyone and so those would be the
3 objections I'd lodge on numbers 5, 6, 7, 8, 10 and 11.

4 THE COURT: All right. That's the only objection?

5 SOLICITOR HAYES: Yes, sir.

6 THE COURT: The rest of 'em are fine?

7 SOLICITOR HAYES: No objection.

8 THE COURT: Gotcha. All right, Mr. Phillips, briefly.

9 MR. PHILLIPS: Thank you, your Honor. This is marked
10 as Court's Exhibit No. 1.

11 THE COURT: Right.

12 MR. PHILLIPS: You have been provided a copy to your
13 Honor and the State.

14 THE COURT: I'm gonna ask 10 and 11 so you won on that
15 one. Congratulations. So let's talk about 5, 6, 7 and 8.

16 MR. PHILLIPS: For 5, 6, 7 and 8, I understand the
17 State's position that its somewhat encompassed into the
18 standard charges; however, these are more specific to
19 elicit known and unknown biases of the potential jurors.
20 Specifically the discussion of marijuana will be part of
21 this case. If someone has a strong opposition to marijuana
22 certainly if that evidence will be presented in this trial
23 I think that is something that is relevant to be known by
24 the defense and the prosecution.

25 And certainly -- And that's number 5. For Number 6,

1 as far as drug laws this is a drug case; it is a
2 trafficking case. It is the highest type of severity that
3 we have for drug law.

4 THE COURT: All right, let me stop you there.

5 All right. I disagree with you on Number 5. I'm not
6 gonna ask that. I am gonna ask 6, 7, 8, 10 and 11.

7 MR. PHILLIPS: Thank you, your Honor.

8 THE COURT: Okay. Now let me hear brief argument then
9 as to -- You want to be allowed to question potential
10 jurors, correct?

11 MR. PHILLIPS: That's correct.

12 THE COURT: Just for the record tell me why.

13 MR. PHILLIPS: Yes, your Honor. Essentially in making
14 the argument, the purpose of supplemental attorney
15 conducted voir dire is to expose known and unknown biases
16 or prejudices of perspective jurors against the Defendant.

17 And, the nature of the criminal charge alleged by the
18 State. It's not just the Defendant himself as being an
19 accused of a crime but also the nature of the charge, the
20 trafficking. And certainly the circumstances that revolve
21 around it obviously are not a comment on the facts per se
22 but again in providing the kind of two over arching in
23 Court's Exhibit Number 1, the headings that Supplemental
24 Voir Dire is necessary in the interest of justice to paint
25 an impartial jury through the intelligent exercise of

1 peremptory challenges by counsel and to have an informed
2 consideration by the Court of any challenges for cause
3 because our state is one that only does the judicial
4 conducted voir dire.

5 Having this extra layer like many other states have it
6 just further serves the purpose of trying to have a more,
7 you know, fair system and allowing the defense to select an
8 impartial jury. I go through case law from the United
9 State's Supreme Court and around the country in the motion
10 kind of indicating why, how voir dire plays a vital role in
11 this process and why supplemental attorney conducted voir
12 dire would aid in that process.

13 Certainly it would aid the parties in complying with
14 the requirements of Batson because having this extra
15 information would allow us not to do so many facial kind of
16 gut reaction. You know in South Carolina with the limited
17 voir dire that we have when having to -- when you have that
18 limited information it certainly constrains counsel on
19 Batson motions either making or defending through attorney
20 conducted voir dire. Both parties, prosecution and
21 defense, will be well informed or more informed about the
22 perspective jurors and be able to, again, select a more
23 fair and impartial jury.

24 THE COURT: All right. Hang on a second.

25 Make sure those doors are closed. Will y'all make

1 sure the doors are closed in the back?

2 MR. PHILLIPS: And just for, again, although it's in
3 Court's Exhibit No. 1, the Defendant's argument for this is
4 under the *Fifth, Sixth, and Fourteenth Amendments* to the
5 *United States Constitution* and *Article I, Sections 3 and 14*
6 of the *South Carolina Constitution*. Thank you.

7 THE COURT: All right. Thank you, Mr. Phillips.

8 And you are protected in the record. I'm gonna
9 respectfully deny that motion. That's a great argument for
10 the legislature to consider for the statutory frame work of
11 that and for frankly our Supreme Court to consider in
12 promegating rules of court.

13 However, this Court's gonna deny same, and if that's
14 an issue on appeal in the event there is a conviction,
15 certainly you can bring that up.

16 MR. PHILLIPS: Thank you, your Honor.

17 THE COURT: Okay. Now as far as the voir dire
18 questions that you referred to on page 5 of 8 of your
19 motion or your exhibit, those questions you want me to ask
20 as part of the Court's voir dire, or you just not gonna ask
21 those questions?

22 MR. PHILLIPS: Since your Honor struck questions 5 but
23 allowed 6 through 11, and then of course, you know, the
24 total amount of questions that we have on pages 5 through
25 8, just if your Honor would incorporate in your standard

1 questions.

2 THE COURT: Okay.

3 MR. PHILLIPS: Since we're not having attorney
4 conducted voir dire it has to be through your Honor.

5 THE COURT: Gotcha. All right, anything else with
6 voir dire from anybody?

7 SOLICITOR HAYES: Nothing from the State, your Honor.

8 MR. PHILLIPS: Nothing regarding voir dire. I do have
9 one kind of look back that I need to do that I just
10 noticed, your Honor.

11 THE COURT: Yes, sir.

12 MR. PHILLIPS: In denying the Second Motion to Compel
13 Discovery, there was one issue. Your Honor, did cover all
14 the main request but there was one issue that I did raise
15 regarding work product and privileged evidence. Under
16 *Pennsylvania v. Richie* 480 U.S. 39, we would need a ruling
17 on that as well as far as having any of the information,
18 the redacted information contained which the State would
19 say is either work product or privileged, being placed in
20 camera for the Court's review.

21 We just need a ruling on that, your Honor.

22 THE COURT: All right.

23 SOLICITOR HAYES: Your Honor, we lodge our same
24 arguments that we did in response to the rest of Mr.
25 Phillips request and we ask that your Honor deny it.

1 THE COURT: All right. That motion is denied.
2 All right. Thank you. We're gonna bring in --
3 Let's go off the record.

4 (OFF THE RECORD AT 11:14 A.M.)

5 (BACK ON THE RECORD AT 11:15 A.M.)

6 THE COURT: Everybody ready? Let's bring 'em in.

7 (JURY ENTERS COURTROOM AT 11:16 A.M.)

8 THE COURT: All right. Good morning, ladies and
9 gentlemen, how is everybody? Thank y'all for being here.
10 I know you don't have a choice but I appreciate you being
11 here and I'm sure the judge told you -- Judge Hocker told
12 you yesterday there's no greater civic responsibility that
13 we as United State's citizens have as to being in and
14 serving on a jury, okay. So thank you for fulfilling that
15 role.

16 I'm sorry we didn't get you up here any earlier. I
17 promise you we hadn't been sitting up here twitting our
18 thumbs. We been working to try to streamline things for
19 y'all so it won't be as inconvenient for you and I promise
20 you that's what we been doing, okay. So we're finally
21 ready to proceed with the trial.

22 Let me briefly introduce myself to you and then we'll
23 get started with the trial. I'm Bryan Gibbons, I'm a
24 Circuit Judge from down in Chester. Its always a pleasure
25 for me to come and hold court up here in York. York is not

1 part of my judicial circuit. My judicial circuit is
2 Chester, Fairfield and Lancaster Counties, so primarily I'm
3 usually in those areas if not somewhere else in the state,
4 so it's not very often I get up here but I always enjoy my
5 time in York and I'm glad to be here.

6 We're about ready to proceed with a trial and
7 Solicitor, you may go ahead and call the case.

8 SOLICITOR HAYES: Your Honor, this is a jury trial in
9 the matter of *State versus Jonathan Stanley Ostrowski*.
10 That is Indictment No. 2017-GS-46-0-2-5-7-3 trafficking
11 methamphetamine. 2-5-7-3-(A) possession of a weapon during
12 the commission of a violent crime. 2-5-7-5 possession of a
13 handgun by a person convicted of a crime of violence.

14 And 2-5-7-6 possession of a handgun with the serial
15 number obliterated.

16 THE COURT: All right. Thank you. Ladies and
17 gentlemen, as you just heard we're about to begin the trial
18 of the case of the *State of South Carolina versus Jonathan*
19 *Stanley Ostrowski* who has been charged with those crimes
20 just enunciated by the Solicitor.

21 Before we actually start the trial I need to swear you
22 in as a jury panel so if all of you will please stand, if
23 you're able to, raise your right hand.

24 (WHEREUPON, JURY PANEL BEING
25 CALLED AND DULY SWORN AT 11:19 A.M.)

1 THE COURT: Thank you. You can be seated. The jury
2 panel is sworn.

3 We're going through a process right now, ladies and
4 gentlemen, called voir dire. That's where the Court's
5 gonna ask you certain questions so the lawyers on both
6 sides can determine whether or not you're gonna be seated
7 on the trial jury, okay. So, before we go through those
8 questions I'm gonna have the lawyers introduce themselves
9 to you, then I'm gonna give you some names of some possible
10 witnesses who are gonna be involved in this case and then
11 I'll ask you some questions about that as we go forward.

12 So, at this point in time I'm gonna have the State, if
13 you'll introduce yourself and your lawyers at your table.

14 SOLICITOR HAYES: I'm Aaron Hayes, I'm an assistant
15 solicitor here in York County.

16 SOLICITOR HAMILTON: I'm Marina Hamilton Assistant
17 Solicitor here in York County.

18 THE COURT: All right. Thank you.

19 Now the Defense.

20 MR. PHILLIPS: My name is Dayne Phillips, I'm
21 primarily based out of Lexington, Columbia, South Carolina.

22 MR. VANSYCKLE: My name is Judah Van Syckle, I'm based
23 out of Lexington, South Carolina.

24 THE COURT: All right. So the first question I have
25 for the jury panel, ladies and gentlemen, if any of these

1 questions apply to you just stand and the first thing I'll
2 have -- question I'll have for you is what's your jury
3 number and then we'll go from there.

4 All right, first of all, is any member of the jury
5 panel every been represented by any of the lawyers involved
6 in this case? Or does any member of the jury panel have
7 any close, personal, or social relationship with any of
8 these lawyers; if so, please stand?

9 All right. No response.

10 The next question -- Well, before I get to that next
11 question I'm gonna give you some names of potential
12 witnesses. Now just because I say the names of these
13 people doesn't mean they're definitely gonna testify. It
14 just means that they may testify in this case if it comes
15 up. And in no particular order here are some names, and
16 I'm not gonna list fifteen at a time, I'm gonna do it in
17 blocks of three or five or so, so you can know who they
18 are.

19 And if any of these witnesses are present, if they
20 could please stand and face the jury panel.

21 All right, Investigator Leland Harrelson with the York
22 County Drug Enforcement Unit. Agent Jason Satterwhite with
23 the DEA. Investigator Ryan King with York County Drug
24 Enforcement Unit. Lieutenant Johnny Neal with the Chester
25 County Drug Enforcement Unit. And Investigator Ray Atwell

1 with the York County Drug Enforcement Unit.

2 All right, does any member of the jury panel have any
3 -- related by blood or marriage, or have any close personal
4 or social relationship with any of those names I just said;
5 if so, please stand?

6 (NO RESPONSE.)

7 THE COURT: All right. Now the Defendant in this case
8 is Jonathan Stanley Ostrowski. Does any member of the jury
9 panel have any close personal or social relationship with
10 the Defendant, or is anybody related by blood or marriage
11 with the Defendant in this case; if so, please stand?

12 All right. No response.

13 Here's some other names. Investigator Robert Jenkins
14 with the York County Drug Enforcement Unit. Investigator
15 Chris Rowe, Investigator Daniel Burkhardt, Investigator John
16 Rainier. Same question: Does anybody have any close
17 personal or social relationship, or related by blood or
18 marriage, to any of those potential witnesses; if so,
19 please stand?

20 No response.

21 Tanesha Lonergan, Alexandra Peters, Doug Sexton, York
22 County Magistrate; Jimmy Stiles. Same question. Anybody
23 recognize those names?

24 All right, no response.

25 Dee Ann Johnson, Investigator Ray Barnwell, Captain

1 Cheryl Guzman. Does anybody recognize those names?

2 (NO RESPONSE.)

3 THE COURT: All right. The next question: Have you
4 -- Has any member of the jury panel, or a member of your
5 immediate family, ever been arrested for a drug related
6 offense; if so, please stand?

7 Okay. All right. Yes, ma'am, right there standing
8 right there. What's your juror number?

9 (BLACK FEMALE STANDING)

10 A. 2-2-4.

11 THE COURT: Speak up for me, I'm sorry.

12 A. 2-2-4.

13 THE COURT: Y'all's microphones don't work. My
14 microphone doesn't even work. I'm just loud by nature,
15 okay. Just try to speak up as loud as you can.

16 All right. Yes, ma'am, and can you tell us the
17 circumstances of that; how long ago it was and where it
18 happened.

19 JUROR 224: It was in York. It was my husband. It was
20 in 2006.

21 THE COURT: All right. Would that affect your ability
22 to be fair and impartial?

23 JUROR 224: No, it wouldn't.

24 THE COURT: Thank you, ma'am, you can be seated.

25 All right, yes, ma'am.

1 (WHITE FEMALE STANDING.)

2 A. 2-0-6.

3 THE COURT: All right.

4 JUROR 206: And both my parents have had drug related
5 problems.

6 THE COURT: Do you know how long ago this was?

7 JUROR 206: Like in the past five years.

8 THE COURT: All right. And you live here in York or
9 Rock Hill or where?

10 JUROR 206: I live in Rock Hill.

11 THE COURT: Okay. Would that affect your ability to
12 be fair and impartial?

13 JUROR 206: No.

14 THE COURT: Thank you, ma'am.

15 Yes, ma'am.

16 ((WHITE FEMALE STANDING.))

17 A. I'm Juror 121 and my stepson was arrested for drugs
18 several years ago.

19 THE COURT: All right. Was that here in York County?

20 JUROR 121: No, it was in North Carolina.

21 THE COURT: Would that affect your ability to be fair
22 and impartial?

23 JUROR 121: No, sir.

24 THE COURT: Thank you. Let me see the lawyers up here
25 real quick.

1 (BENCH CONFERENCE HAD OFF THE RECORD OUT OF THE
2 HEARING OF THE JURY AT 11:26 A.M.)

3 THE COURT: Sorry about that. We had some
4 administrative things come up. All right. Next question:
5 Have you or any member of your immediate family ever been
6 prosecuted by the York County Solicitor's Office; if so,
7 please stand?

8 No response.

9 All right. Yes, ma'am.

10 (BLACK FEMALE STANDING.)

11 A. Are you saying like went to prison?

12 THE COURT: Yes, ma'am.

13 A. Yes, my husband.

14 THE COURT: Okay. And what's your juror number again,
15 ma'am?

16 A. 2-2-4.

17 THE COURT: Would that affect your ability to be a
18 fair and impartial juror?

19 JUROR 224: No it wouldn't.

20 THE COURT: Thank you. Yes, ma'am, juror numbers.

21 (WHITE FEMALE STANDING.)

22 A. 238.

23 THE COURT: Yes, ma'am.

24 JUROR 238: I had a nephew that was arrested for DUI
25 and served some time doing at the prison farm here.

1 THE COURT: All right.. Would that affect your ability
2 to be fair and impartial?

3 JUROR 238: No, sir, it won't.

4 THE COURT: Thank you, ma'am.

5 All right. The next question: Have any members of
6 the jury panel, a family member, or a close personal -- or
7 a close personal friend ever been a victim of a drug
8 related crime; if so, please stand?

9 All right. No response.

10 Next question: Have any -- you, a family member or a
11 close personal friend ever been affected --

12 MR. VANSYCKLE: Your Honor.

13 THE COURT: Yes.

14 MR. VANSYCKLE: They're not letting Mr. --

15 THE COURT: Oh, Mr. Ostrowski, come on in.

16 (DEFENDANT JONATHAN OSTROWSKI ENTERS COURTROOM.)

17 THE COURT: Construction and traffic issues I
18 understand. All right.

19 All right, next question. Have you or a family
20 member, or a close friend, ever been affected by drugs or
21 by someone abusing drugs; if so, please stand?

22 All right, what's your juror number, ma'am?

23 (WHITE FEMALE STANDS.)

24 A. 2-0-6.

25 THE COURT: 2-0-6. All right, and what's your reply

1 to that?

2 JUROR 206: Just my parents and --

3 THE COURT: Gotha. Would that affect your ability to
4 be fair and impartial?

5 JUROR 206: No, sir.

6 THE COURT: Thank you, ma'am.

7 All right, the next question. Have you, a family
8 member, or a close friend, ever had discussions with anyone
9 from the York County Sheriff's Department, Drug Enforcement
10 Administration, the Attorney General's Office, or the
11 Solicitor's Office about drug related crimes; if so, please
12 stand?

13 No response.

14 Does any member of the jury panel believe the drug
15 laws are too lenient and that there should be stricter
16 proceedings; if so, please stand?

17 No response.

18 Does any member of the jury panel believe that just
19 because somebody's arrested by police or law enforcement
20 that they're probably guilty? If you believe that please
21 stand.

22 Thank you. No response.

23 Would any member of the jury panel believe a police
24 officer's testimony over another witnesses' testimony
25 simply because the person is a police officer; if so,

1 please stand?

2 No response.

3 Is there any member of the jury panel who is so
4 morally opposed to drugs, and or drug use, that you could
5 not render a fair and impartial decision in this matter; if
6 so, please stand?

7 No response.

8 Has any member of the jury panel ever commented on a
9 news article on the internet or social media such as
10 Facebook and Twitter or Instagram that related to a
11 person's arrest, alleged drug crimes, or criminal trial; if
12 so, please stand?

13 No response.

14 The next question: Is any member of the jury panel
15 ever commented on or liked a law enforcement agency's
16 social media site? For example, a sheriff's department
17 Facebook page and or a Twitter account or something of the
18 sort; if so, please stand?

19 All right. Yes, sir, juror number.

20 (WHITE MALE STANDS.)

21 A. 95.

22 THE COURT: All right. And how does this apply to
23 you?

24 JUROR 95: Placed on social media.

25 THE COURT: All right. You clicked a like button on

1 things?

2 JUROR 95: Yes, sir.

3 THE COURT: You just can't remember what exactly it
4 was?

5 JUROR 95: No.

6 THE COURT: All right. Would that affect your ability
7 to be fair and impartial?

8 JUROR 95: No, sir.

9 THE COURT: Thank you. All right. Oh, yes, ma'am.

10 (WHITE FEMALE STANDS.)

11 A. 68.

12 THE COURT: Okay.

13 JUROR 68: When the police officer got shot I know the
14 girl and then the service on the police officer that got
15 shot I liked that on Facebook.

16 THE COURT: All right. Thank you. Would that affect
17 your ability to be fair and impartial in this trial?

18 JUROR 68: No, sir.

19 THE COURT: Thank you. All right, the next question:

20 Have you or a family member or a close friend ever
21 been an employee of a federal, state, county, or municipal
22 law enforcement agency or a police department? For
23 example, SLED, Highway Patrol, Sheriff's Department,
24 military police, anything like that? That's you, a family
25 member, or a close friend.

1 All right, yes, ma'am, juror number.

2 (WHITE FEMALE STANDS.)

3 A. 8.

4 THE COURT: How does this apply to you?

5 JUROR 8: My sister works here.

6 THE COURT: She currently works for?

7 JUROR 8: The CDV area up here.

8 THE COURT: Okay.

9 JUROR 8: And Martha Parish works here too and I know
10 her.

11 THE COURT: Okay. Would that affect your ability to
12 be fair and impartial?

13 JUROR 8: No.

14 THE COURT: Thank you. Yes, sir.

15 (WHITE MALE STANDS.)

16 A. Yes, Juror Number 189.

17 THE COURT: Yes, sir.

18 JUROR 189: I currently serve in the United States
19 Army Reserve.

20 THE COURT: All right. Would that affect your ability
21 to be fair and impartial?

22 JUROR 189: No, sir.

23 THE COURT: Thank you. Yes, ma'am.

24 (WHITE FEMALE STANDS.)

25 A. Juror Number 70. My brother-in-law is a retired

1 police officer in the state of Illinois.

2 THE COURT: Would that affect your ability to be fair
3 and impartial?

4 JUROR 70: No, sir.

5 THE COURT: Thank you. Yes, sir.

6 (WHITE MALE STANDS.)

7 A. 2-4-0. My brother was in the US Army, also works for
8 the Department of Homeland Security.

9 THE COURT: Would that affect your ability to be fair
10 and impartial?

11 JUROR 240: No, your Honor.

12 THE COURT: Thank you very much.

13 Yes, ma'am.

14 (WHITE FEMALE STANDS.)

15 A. Juror Number 27. My brother-in-law is a retired state
16 trooper in the state of Maryland. My father also is in the
17 reserves --

18 THE COURT: Would that affect your ability to be fair
19 and impartial?

20 JUROR 27: No, sir.

21 THE COURT: Thank you. Yes, sir.

22 (WHITE MALE STANDS.)

23 A. Juror Number 63. My son-in-law is a South Carolina
24 State Trooper.

25 THE COURT: Currently serving?

1 JUROR 63: Yes, sir.

2 THE COURT: All right. Would that affect your ability
3 to be fair and impartial?

4 JUROR 63: No.

5 THE COURT: Thank you. Yes, sir.

6 (WHITE MALE STANDS.)

7 A. 185, I have a brother-in-law who worked for the Clover
8 Police Department for seventeen years and now he works for
9 York Police Department and I have a daughter that dates a
10 police officer.

11 THE COURT: Would that affect your ability to be fair
12 and impartial?

13 JUROR 185: I think I might decide which all of these
14 --

15 THE COURT: All right. Thank you, sir. What's your
16 juror number again?

17 JUROR 185: 185.

18 THE COURT: 185. Thank you, sir.

19 All right. Have you, a family member, or close friend
20 ever been an employee of a prosecutor's office or a defense
21 lawyer's office; if so, please stand?

22 All right. Yes, ma'am. Juror number.

23 (WHITE FEMALE STANDS.)

24 A. 8.

25 THE COURT: And how does this apply to you?

1 JUROR 8: My sister.

2 THE COURT: Gotcha.

3 JUROR 8: Yes.

4 THE COURT: All right. Then would that affect your
5 ability to be fair and impartial?

6 JUROR 8: No, sir.

7 THE COURT: All right. Thank you.

8 Has any member of the jury panel or a family member or
9 a close personal friend ever applied for a job in law
10 enforcement, or at the county jail, or any prison, or at
11 the courthouse, or at the Solicitor's office; if so, please
12 stand?

13 (WHITE FEMALE STANDS.)

14 THE COURT: Same response, Number 8?

15 JUROR 8: Yes, sir.

16 THE COURT: Thank you. You can be seated.

17 Is any member of the jury panel, your family member or
18 close personal friend ever volunteered your services to any
19 law enforcement agency, or any social justice
20 organizations; if so, please stand?

21 (WHITE MALE STANDS.)

22 THE COURT: All right. Yes, sir, juror number?

23 A. 124.

24 THE COURT: How does this apply to you?

25 JUROR 124: I own a business and we sponsor the Rock

1 Hill Police Lodge Ball and help with the boys camp.

2 THE COURT: Yes, sir. Would that affect your ability
3 to be fair and impartial?

4 JUROR 124: No, sir.

5 THE COURT: Thank you. Yes, ma'am.

6 (WHITE FEMALE STANDS.)

7 A. Number 68. I support the police officers as far --

8 THE COURT: All right. And you kind of think that
9 would affect your ability to be fair and impartial?

10 JUROR 68: No.

11 THE COURT: Okay. That's my next question. Has any
12 member of the jury panel a contributor to, in other words
13 by way of money, any organization, or support any
14 organization which promotes law enforcement such as the
15 Trooper's Association or Fraternal Order of Police, or
16 promotes victim's rights such as Mother's Against Drunk
17 Driving or Student's Against Drunk Driving; if so, please
18 stand?

19 All right. Yes, ma'am, juror number.

20 ((WHITE FEMALE STANDS.))

21 A. 88.

22 THE COURT: All right.

23 JUROR 88: And I support the one who was shot by a
24 donation.

25 THE COURT: Okay. Would that affect your ability to

1 be fair and impartial?

2 JUROR 88: No, sir.

3 THE COURT: All right. Thank you.

4 Yes, sir.

5 (WHITE MALE STANDS.)

6 A. Again through our business Michael Dody and the
7 K9 officer that was shot is a son-in-law of one of my
8 employees so we've done stuff with that through SADD, WRHI,
9 all of that, do a lot of stuff with it.

10 THE COURT: Thank you. What's your juror number again,
11 sir?

12 A. 224.

13 THE COURT: Would that affect your ability to be a
14 fair and impartial juror in this case?

15 JUROR 224: No, sir.

16 THE COURT: Thank you very much.

17 Has any member of the jury panel, a family member, or
18 a close friend ever been a member of any organization,
19 either religious or non-religious, that opposes the
20 consumption of alcohol or illegal drugs; if so, please
21 stand?

22 All right. Yes, sir, in the back, juror number?

23 (WHITE MALE STANDS.)

24 A. 55.

25 THE COURT: All right. 65?

1 JUROR 55: 55.

2 THE COURT: 55. How does this apply to you?

3 JUROR 55: I'm Mormon and I have religious beliefs so
4 don't support --

5 THE COURT: All right. Would that affect your ability
6 to be a fair and impartial juror in this case?

7 JUROR 55: No, sir.

8 THE COURT: Thank you, sir.

9 Has any member of the jury panel ever served on a
10 trial jury in a criminal case; if so, please stand?

11 All right. Yes, ma'am, juror number?

12 (BLACK FEMALE STANDS.)

13 A. 1-4-3.

14 THE COURT: Do you remember what kind of case it was?

15 JUROR 143: Sexual abuse of a child.

16 THE COURT: Was it up here in this --

17 JUROR 143: No, it was in another state.

18 THE COURT: All right. And what was the verdict?

19 JUROR 143: He was guilty.

20 THE COURT: All right. Would that affect your ability
21 to be a fair and impartial juror in this trial?

22 JUROR 143: No, your Honor.

23 THE COURT: Thank you, ma'am.

24 Yes, sir.

25 (WHITE MALE STANDS.)

1 A. Juror 233. We were paneled and set for a sexual abuse
2 trial but it was a mistrial.

3 THE COURT: All right. Would that affect your ability
4 to be fair and impartial in this case?

5 JUROR 233: No, sir.

6 THE COURT: Thank you. Has any member of the jury
7 panel --

8 MADAM COURT REPORTER: Judge.

9 THE COURT: Oh, I'm sorry. Yes, ma'am.

10 (BLACK FEMALE STANDS.)

11 A. I sserved on a jury, the verdict was guilty and it
12 was about a traffic accident.

13 THE COURT: All right. What's your juror number
14 again, ma'am, I'm sorry.

15 A. 2-2-4.

16 THE COURT: All right. Would that affect your ability
17 to be fair and impartial in this case?

18 JUROR 224: No it wouldn't.

19 THE COURT: Thank you. All right, is anybody -- Have
20 you or a family member or a close friend ever appeared as a
21 witness in a criminal trial; if so, please stand?

22 (WHITE FEMALE STANDS.)

23 THE COURT: All right. Yes, ma'am juror number?

24 A. Juror 70. My brother-in-law is a police officer. He
25 was in -- a witness for many many trials throughout his

1 career.

2 THE COURT: Would that affect your ability to be fair
3 and impartial?

4 Juror 70: No, sir.

5 THE COURT: Thank you. All right, any further voir
6 dire from the State?

7 SOLICITOR HAYES: Your Honor, may I approach?

8 THE COURT: Yes, sir.

9 (BENCH CONFERENCE HAD OFF THE RECORD OUT OF THE
10 HEARING OF THE JURY AT 11:41 A.M.)

11 THE COURT: All right. The lawyers, ladies and
12 gentlemen, have told me about potentially two other names
13 as potential witnesses, so the same question again. If you
14 recognize the name as being related to or have a close
15 personal, or social relationship, please stand. That's
16 Teresa Scoggins or Jeff Deason. Anybody recognize those
17 names?

18 (NO RESPONSE.)

19 THE COURT: All right, so any further voir dire from
20 the State?

21 SOLICITOR HAYES: Nothing from the State.

22 THE COURT: Any further from the Defense?

23 MR. PHILLIPS: Nothing further, your Honor.

24 THE COURT: All right. Thank you. We will now
25 proceed, ladies and gentlemen, with selecting a jury.

1 Now what's gonna happen, ladies and gentlemen, is the
2 Clerk of Court has generated a randomly collated list by
3 way of a computer program. I still remember the old day --

4 Yes, sir.

5 MR. PHILLIPS: Your Honor, something had just came to
6 my attention, may we approach?

7 THE COURT: Yes, sir.

8 THE COURT: I remember the days when we used to do it
9 by way of a hand-cranked system with little tubes where
10 your names were put into the little tubes and we would take
11 them out like ping pong balls.

12 (BENCH CONFERENCE HELD OFF THE RECORD OUT OF THE
13 HEARING OF THE JURY AT 11:42 A.M.)

14 THE COURT: Before we do that another possible
15 witness, Heather Westerfield. Does anybody recognize that
16 name?

17 All right. No response.

18 Anyway, but now it's done by way of a computer program
19 so your names have been randomly selected, and what will
20 happen is the Clerk of Court will run through the selection
21 process and the State -- she'll ask the State first, if the
22 State seeks to have you seated on the jury, and then the
23 Defense gets to go, okay.

24 Now each side gets five -- the word for it is strikes,
25 okay, so don't be offended. That's just a word for it,

1 okay. And I say this, you know, in every county I hold
2 court in, and I sincerely mean it, you can just stand right
3 where you are when you're name's called, okay, and then I'm
4 not gonna make you walk up here and turn around and face it
5 the way we used to do it, because if you're not selected
6 you got to take that walk of shame all the way back.

7 But, I'm serious when I tell you don't be -- don't
8 take it personally if you're not selected to be on the
9 jury, okay. Lawyers all across the country in every
10 courthouse in our great United States have many reasons why
11 he or she may not want you on a particular jury, okay. So
12 don't be offended if you're not selected, okay.

13 The State gets five strikes, the Defense gets five
14 strikes, okay. There's gonna be twelve people on the jury
15 and two alternates, so you can kind of figure out your odds
16 right now while you're looking around. There's thirty-five
17 of you out there, okay. So what's gonna happen, when your
18 name's called just please stand, and you'll receive
19 instructions about whether or not you're gonna be on a
20 jury, okay.

21 Madam Clerk.

22 MADAM CLERK: Number 55, Ryan Downard.

23 (WHITE MALE STANDS.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR HAYES: Please present Mr. Downard.

1 MADAM CLERK: Defense?

2 MR. PHILLIPS: Please seat Mr. Downard.

3 MADAM CLERK: Please come forward and have a seat in
4 the jury box. Number 8, Melissa Arrants.

5 (WHITE FEMALE STANDS.)

6 MADAM CLERK: What say you for the State?

7 SOLICITOR HAYES: Please present Ms. Arrants.

8 MADAM CLERK: Defense?

9 MR. PHILLIPS: Please strike for cause.

10 MADAM CLERK: You've been excused from this case.

11 THE COURT: Y'all come up.

12 (BENCH CONFERENCE HAD OFF THE RECORD OUT OF THE
13 HEARING OF THE JURY AT 11:47 A.M.)

14 THE COURT: Ms. Arrants, is it's Arrants or Arrance?

15 JUROR EIGHT: Arrants.

16 THE COURT: All right. You're excused from the trial
17 of this case. Thank you.

18 MADAM CLERK: Number 185, Ricky Rose.

19 (WHITE MALE STANDS.)

20 THE COURT: Mr. Rose, you're excused from the trial of
21 this case. Thank you, sir, you can be seated.

22 MADAM CLERK: Number 68, Ginger Freeman.

23 (WHITE FEMALE STANDS.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR HAYES: Please present Ms. Freeman.

1 MADAM CLERK: Defense?

2 MR. PHILLIPS: Please excuse Ms. Freeman.

3 MADAM CLERK: You've been excused from this case.

4 Number 88, Jennifer Helms.

5 (WHITE FEMALE STANDS.)

6 MADAM CLERK: What say you for the State?

7 SOLICITOR HAYES: Please present Ms. Helms.

8 MADAM CLERK: Defense?

9 MR. PHILLIPS: Please excuse Ms. Helms.

10 MADAM CLERK: You've been excused from this case.

11 Number 189, Hussein Sadek.

12 (WHITE MALE STANDS.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR HAYES: Please present Mr. Sadek.

15 MADAM CLERK: Defense?

16 MR. PHILLIPS: Please seat Mr. Sadek.

17 MADAM CLERK: Please come forward and have a seat in
18 the jury box. Number 23, Mark Brown.

19 (BLACK MALE STANDS.)

20 MR. PHILLIPS: I apologize, number, Madam Clerk?

21 MADAM CLERK: 23.

22 MR. PHILLIPS: Thank you.

23 MADAM CLERK: What say you for the State?

24 SOLICITOR HAYES: Please present Mr. Brown.

25 MADAM CLERK: Defense?

1 MR. PHILLIPS: Please seat Mr. Brown.

2 MADAM CLERK: Please come forward and have a seat in
3 the jury box. Number 124, Johnny Lucas.

4 (WHITE MALE STANDS.)

5 MADAM CLERK: What say you for the State?

6 SOLICITOR HAYES: Please present Mr. Lucas.

7 MADAM CLERK: Defense?

8 MR. PHILLIPS: Your Honor, may we approach?

9 THE COURT: Yeah.

10 (BENCH CONFERENCE HAD OFF THE RECORD OUT OF THE
11 HEARING OF THE JURY AT 11:51 A.M.)

12 MR.. PHILLIPS: And at the appropriate time we'll place
13 it on the record but would move to strike Mr. Lucas.

14 MADAM CLERK: You've been excused from this case.
15 Number 57, Froilan Esporo.

16 (ASIAN MALE STANDS.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR HAYES: Number, Madam Clerk?

19 MADAM CLERK: 57.

20 SOLICITOR HAYES: Please present Mr. Esporo.

21 MADAM CLERK: Defense?

22 MR. PHILLIPS: Please seat Mr. Esporo.

23 MADAM CLERK: Please come forward and have a seat in
24 the jury box. Number 65, Scott Flowe.

25 (WHITE MALE STANDS.)

1 MADAM CLERK: What say you for the State?

2 SOLICITOR HAYES: Please excuse Mr. Flowe from this
3 particular case.

4 MADAM CLERK: You've been excused from this case.
5 Number 202, Yashica Smarr.

6 (BLACK FEMALE STANDS.)

7 MADAM CLERK: What say you for the State?

8 MR. PHILLIPS: The number again, Madam Clerk?

9 MADAM CLERK: 2-0-2.

10 MR. PHILLIPS: Thank you.

11 SOLICITOR HAYES: Please present Ms. Smarr.

12 MADAM CLERK: Defense?

13 MR. PHILLIPS: Please seat Ms. Smarr.

14 MADAM CLERK: Please come forward and have a seat in
15 the jury box. Number 113, Miguel Juarez.

16 (HISPANIC MALE STANDS.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR HAYES: Please present Mr. Juarez.

19 MADAM CLERK: Defense?

20 MR. PHILLIPS: Please seat Mr. Juarez.

21 MADAM CLERK: Please come forward and have a seat in
22 the jury box. Number 210, Jasmine Spencer.

23 (BLACK FEMALE STANDS.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR HAYES: Please present Ms. Spencer.

1 MADAM CLERK: Defense?

2 MR. PHILLIPS: Please seat Ms. Spencer.

3 MADAM CLERK: Please come forward and have a seat in
4 the jury box. Number 70. Noreen Gaubatz.

5 (WHITE FEMALE STANDS.)

6 MADAM CLERK: What say you for the State?

7 SOLICITOR HAYES: Please present Ms. Gaubatz.

8 MADAM CLERK: Defense?

9 MR. PHILLIPS: Please excuse Ms. Gaubatz.

10 MADAM CLERK: You've been excused from this case.
11 Number 4, Roderick Allan.

12 (WHITE MALE STANDS.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR HAYES: Please present Mr. Allan.

15 MADAM CLERK: Defense?

16 MR. PHILLIPS: Please seat Mr. Allan.

17 MADAM CLERK: Please come forward and have a seat in
18 the jury box. Number 205, Laura Smith.

19 (WHITE FEMALE STANDS.)

20 MADAM CLERK: What say you for the State?

21 SOLICITOR HAYES: Please present Ms. Smith.

22 MADAM CLERK: Defense?

23 MR. PHILLIPS: Please excuse Ms. Smith.

24 MADAM CLERK: You've been excused from this case.
25 Number 151, Nancy Mobley.

1 (WHITE FEMALE STANDS.)

2 MADAM CLERK: What say you for the State?

3 SOLICITOR HAYES: Please present Ms. Mobley.

4 MADAM CLERK: Defense?

5 MR. PHILLIPS: Please seat Ms. Mobley.

6 MADAM CLERK: Please have a seat in the jury box.

7 Number 125, Jeremiah Luithle.

8 (WHITE MALE STANDS.)

9 MADAM CLERK: What say you for the State?

10 SOLICITOR HAYES: Please excuse Mr. Luithle from this
11 particular case.

12 MADAM CLERK: You've been excused from this case.

13 Number 233, William Westover.

14 (WHITE MALE STANDS.)

15 MADAM CLERK: What say you for the State?

16 SOLICITOR HAYES: Please present Mr. Westover.

17 MADAM CLERK: Defense?

18 MR. PHILLIPS: Please seat Mr. Westover.

19 MADAM CLERK: Please come forward and have a seat in
20 the jury box. Number 91, Christopher Hill.

21 (WHITE MALE STANDS.)

22 MADAM CLERK: What say you for the State?

23 SOLICITOR HAYES: Please present Mr. Hill.

24 MADAM CLERK: Defense?

25 MR. PHILLIPS: May we approach, your Honor?

1 THE COURT: Yes, sir.

2 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
3 THE JURY AT 12:01 P.M.)

4 MR. PHILLIPS: Please seat Mr. Hill.

5 MADAM CLERK: Please come forward and have a seat in
6 the jury box. Number 226, Shelaila Villamor.

7 (ASIAN FEMALE STANDS.)

8 SOLICITOR HAYES: Madam Clerk, what was the number?

9 MADAM CLERK: 226. What say you for the State?

10 SOLICITOR HAYES: Please present Ms. Villamor.

11 MADAM CLERK: Defense?

12 MR. PHILLIPS: Please seat Ms. Villamor.'

13 MADAM CLERK: Please come forward and have a seat in
14 the jury box.

15 THE COURT: One and two on alternates.

16 MADAM CLERK: Number 160, Matthew Nicholson.

17 (WHITE MALE STANDS.)

18 MADAM CLERK: What say you for the State?

19 SOLICITOR HAYES: Please excuse Mr. Nicholson from
20 this particular case.

21 MADAM CLERK: You've been excused from this case.
22 Number 212, Michael Stair.

23 (WHITE MALE STANDS.)

24 MADAM CLERK: What say you for the State?

25 SOLICITOR HAYES: Please present Mr. Stair.

1 MADAM CLERK: Defense?

2 MR. PHILLIPS: Please excuse Mr. Stair.

3 MADAM CLERK: You've been excused from this case.

4 Number 238, Tina Williams.

5 (WHITE FEMALE STANDS.)

6 MADAM CLERK: What say you for the State?

7 SOLICITOR HAYES: Please present Ms. Williams.

8 MADAM CLERK: Defense?

9 MR. PHILLIPS: Please excuse Ms. Williams.

10 MADAM CLERK: You've been excused from this case.

11 Number ;143, Colleen McQueen.

12 (BLACK FEMALE STANDS.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR HAYES: Please present Ms. McQueen.

15 MADAM CLERK: Defense?

16 MR. PHILLIPS: Please seat Ms. McQueen.

17 MADAM CLERK: Please come forward and have a seat in
18 the jury box. Number 184, Barbara Rose.

19 (WHITE FEMALE STANDS.)

20 MADAM CLERK: What say you for the State?

21 SOLICITOR HAYES: Please present Ms. Rose.

22 MADAM CLERK: Defense?

23 MR. PHILLIPS: Please seat Ms. Rose.

24 MADAM CLERK: Please come forward and have a seat in
25 the jury box.

1 THE COURT: All right, are there any matters of law
2 regarding jury selection not already discussed?

3 MR. PHILLIPS: We did have two matters that we
4 approached ---

5 THE COURT: We already discussed.

6 MR. PHILLIPS: --- and we'll put it on the record at
7 the appropriate time.

8 THE COURT: Right.

9 MR. PHILLIPS: Thank you, your Honor.

10 THE COURT: All right. Any other ones that aren't -
11 haven't been discussed?

12 SOLICITOR HAYES: Nothing from the State, your Honor.

13 THE COURT: Anything that already hadn't been
14 discussed?

15 MR. PHILLIPS: No, your Honor.

16 THE COURT: All right. Thank you.

17 Madam Clerk, if you'll swear in the trial jury real
18 quick.

19 MADAM CLERK: Please stand and raise your right hand.

20 (WHEREUPON, PETIT JURY DULY
21 SWORN AT 12:08 P.M..)

22 THE COURT: All right. Thank you.

23 Ladies and gentlemen of the trial jury, y'all can just
24 keep standing because I'm gonna send you out of here. We
25 have some more pretrial matters to deal with. Actually, I

1 tell you what, y'all head on back to your jury room. The
2 bailiff's gonna show you where that is. You don't know
3 anything about this case so don't talk about the case.

4 Certainly you can get acquainted with each other, and
5 I'll give you instructions about any lunch recess or when
6 we need you back here this afternoon in a moment, so just
7 head on back there.

8 (PETIT JURY EXITS COURTROOM AT 12:09 P.M.)

9 THE COURT: The remaining members of the jury panel,
10 y'all head on back to your jury assembly room and you'll
11 receive instructions about what you're supposed to do then,
12 okay.

13 All right, y'all actually, y'all can leave. Y'all
14 just call tonight after 7:00 pm on that number and they'll
15 tell you about what you're supposed to do tomorrow, okay.

16 (JURY DISMISSED AT 12:09 P.M.)

17 THE COURT: All right. There were several matters
18 during the jury selection process that I told you I'd allow
19 y'all to put on the record, and Solicitor, what are they?

20 SOLICITOR HAYES: Well, your Honor, ---

21 THE COURT: Yours.

22 SOLICITOR HAYES: --- a matter just popped up, it just
23 came to my attention, it concerns Juror Number 184. And I
24 just noticed this, and I apologize for that, but it appears
25 she has a drug related conviction on her record and I don't

1 recall that she answered that question in voir dire.

2 THE COURT: What did I ask? Oh, she ever been
3 prosecuted. Did y'all prosecute?

4 SOLICITOR HAYES: It's showing as a conviction so I'm
5 not sure where she -- I'm not sure where that originated
6 from but it's showing as a conviction on the record.

7 THE COURT: Okay. Well, I mean, the question I ask
8 was -- and she's an alternate, Alternate Number 2. The
9 question that I ask was, have you, or a member of your
10 immediate family, ever been prosecuted by the York County
11 Solicitor's Office, you know, so maybe it didn't apply to
12 her.

13 SOLICITOR HAYES: We --

14 THE COURT: Go ahead, I'm listening.

15 SOLICITOR HAYES: We are showing what's from another
16 state but --

17 THE COURT: Did she disclose that during jury
18 qualification?

19 SOLICITOR HAYES: Not to my knowledge.

20 THE COURT: And it wasn't anything that was -- that
21 would prevent her from being qualified?

22 SOLICITOR HAYES: Not to my knowledge, your Honor.

23 THE COURT: Okay. What's your position on that?

24 MR. PHILLIPS: Through jury qualifications its any
25 charge that carries over one year, it doesn't have to be a

1 conviction, she didn't respond to that I don't believe. I
2 think that's correct. I don't have it in my notes that she
3 responded. She didn't respond to the judicial conducted
4 voir dire, based on that she's been selected.

5 THE COURT: All right, she's seated, you know she's
6 not gonna be allowed -- I can't or at this point in time I
7 don't know what's gonna happen with the alternates if, you
8 know, it's very rare that two jurors actually would be
9 disqualified during the term of a trial, so, if that
10 happens I'll let you, you know, make arguments again for
11 the record, but at this point in time I don't intend on
12 striking her, so, she's on.

13 All right, Mr. Phillips, you had some issues?

14 MR. PHILLIPS: Yes, your Honor, thank you.

15 One moment. Juror No. 124, Johnny Lucas, when we
16 approached I had moved to strike for cause. He is the
17 president of his company Hospitality Heating and Air
18 Conditioning. During his select -- during voir dire he
19 answered that he is a sponsor of the police ball, so he
20 would have personal connections with law enforcement
21 officers, specifically high ranking law enforcement
22 officers locally, and based on that I believed it was
23 appropriate despite his response that he could be fair and
24 impartial, that he would be someone that would - Again,
25 unknown prejudice. As far as I don't believe that he would

1 be one that he would intentionally and try to mislead the
2 Court, but one that with that personal connection one that
3 would be implicit as to, again, just unknowingly favoritism
4 and bias and would move to -- we move to strike for cause
5 for 124, Johnny Lucas, and your Honor denied it.

6 THE COURT: Okay. And the State's position on that
7 that y'all told me up here?

8 SOLICITOR HAYES: Yes, your Honor, it's the State's
9 position that he said he could be fair and impartial. Many
10 people donate to many different causes but doesn't
11 disqualify them from jury service. So we, the State's
12 position is that was appropriately a normal strike for the
13 Defense and not a for cause strike by the Court.

14 THE COURT: And that was the basis of the Court's
15 decision. Certainly I understand why you would want to
16 strike 'em, and I think that was a good peremptory strike
17 for the Defense to use. The reason I didn't strike him for
18 cause was because, number one, he said he could be fair and
19 impartial. And number two, he didn't respond to any of the
20 other voir dire questions concerning if he knew any of
21 those -- the officers and agencies who are gonna be
22 testifying in the trial of this case.

23 MR. PHILLIPS: Yes, your Honor.

24 THE COURT: All right. So that requests is denied.

25 And what's the next one?

1 MR. PHILLIPS: The next one is Juror No. 91, your
2 Honor. This is Christopher Hill. He indicated through
3 jury qualifications that he is a security officer at
4 Carrowinds. I made the argument at the bench that he is a
5 pseudo law enforcement officer, possibly had connections
6 with law enforcement officer or the officers that have to
7 deal with matters, criminal matters at Carrowinds, but
8 certainly he is enforcing the rules of Carrowinds and could
9 be considered a pseudoer, implied law enforcement officer
10 in the sense that he does enforce the rule.

11 THE COURT: All right.

12 SOLICITOR HAYES: Your Honor, with all due respect to
13 Mr. Phillips, it just appears that a Carrowind's security
14 guard was selected when he didn't have any peremptory
15 strikes left. He said he could be fair and impartial.
16 Being a security guard is not a disqualifying factor.

17 Your Honor, it's the State's position he's an
18 appropriate juror.

19 THE COURT: I agree. Request denied.

20 MR. PHILLIPS: And I'm not offended.

21 THE COURT: Oh, I know. All right. And the State had
22 a problem with me striking for cause Juror No. 8 or Juror -
23 Yeah, Juror No.8 I believe? Did y'all want to be heard on
24 that?

25 SOLICITOR HAYES: We do not, your Honor.

1 THE COURT: Okay. Thank you. Anything else
2 concerning the jury?

3 SOLICITOR HAYES: Nothing from the State.

4 MR. PHILLIPS: Nothing from the Defense.

5 THE COURT: All right. Let's talk about schedule wise
6 because here it is, we're -- it's almost 12:15 and I want
7 to talk to them a little bit because they want to come up
8 here and bang the gavel before they leave.

9 MR. PHILLIPS: Absolutely.

10 THE COURT: The highlight of the morning.

11 But before we do that, scheduling.

12 SOLICITOR HAYES: The State did have an additional
13 motion for the record. In light of Mr. Ostrowski being
14 late for court this morning, we would ask that your Honor
15 issue a verbal order that his bond has been satisfied and
16 that he is to remain in the Detention Center until this
17 trial is over due to being late this morning.

18 But then also we would make this motion anyway because
19 of the nature of this offense and the penalties involved if
20 there is a conviction.

21 THE COURT: All right.

22 MR. PHILLIPS: Certainly, your Honor, we understand
23 your concern. Being prompt to court is a paramount issue
24 that's always before the court since he is the one that's
25 on trial that he is the accused. Certainly at this point

1 we are just providing -- essentially asking for the court's
2 leniency in the fact that he did show up. He was here
3 yesterday on time. He set through jury qualification.
4 Once -- He called me once he realized the situation. Being
5 candid, you know, he's given me authority to tell the court
6 being candid he over slept. He is deeply remorseful. And
7 when he called it was a very frantic phone call. You could
8 hear he was in the car and he came straight here.

9 With that being said, your Honor, we certainly would
10 respectfully ask that your Honor deny the State's motion,
11 allow him the opportunity to be with his family and to, at
12 least for the next few days, he still has that cloak of
13 innocence and presumed innocent, and allow him to be on
14 bond and to assist in his defense without having to be
15 incarcerated.

16 I know that's a strong ask given him being late and
17 the nature of the charge, but at this point it's kind of
18 we're begging, your Honor, that your Honor allow him to
19 stay on bond for the rest of the trial.

20 THE COURT: All right. I'm gonna -- I hear you but,
21 you know, I had to issue a bench warrant for him this
22 morning, and, you know I'm glad he did voluntarily show up,
23 okay, but at this point in time I'm not inclined to allow
24 that to happen. I may revisit that. We'll see where it
25 goes. But at least for right now he's gonna be in custody

1 until anything else happens. All right.

2 So, what we're gonna do, it's already at the point
3 where we're gonna take a break for lunch right now. I want
4 y'all ready to roll at 1:30, okay.

5 How much more pretrial time do you think it's gonna
6 take?

7 MR. PHILLIPS: So we have the big issues, the search
8 warrant, then we'll have *Denno* and then we have kind of the
9 similar matters of confrontation and 404(B) exclusion of
10 evidence.

11 THE COURT: Hour?

12 MR. PHILLIPS: It might be a little bit more than that
13 because there's testimony.

14 THE COURT: Do you want me to tell 'em 3 o'clock?

15 The jury.

16 SOLICITOR HAYES: That's fine by the State, your
17 Honor. Yeah, most of these motions we will be responding
18 to the Defense.

19 THE COURT: Sure.

20 SOLICITOR HAYES: So I'm not really driving the train
21 as far as how long it's gonna take on my end.

22 THE COURT: I just want everybody to --

23 SOLICITOR HAYES: The State has no objection. We'll
24 be here at 1:30 ready to go and be ready for the jury at
25 3:00 if that's what your Honor wants us to do.

1 THE COURT: Let's do that, okay. So we're gonna be
2 down for lunch right now and then we'll reconvene at 1:30
3 for more legal arguments. The jury will come back at 3:00
4 p.m.

5 Let them know to come back at 3:00 p.m, and not to
6 talk about the case. All right. We are down for lunch and
7 he will go back into custody.

8 MR. PHILLIPS: Thank you, your Honor.

9 THE COURT: All right.

10 (COURT IN LUNCH RECESS AT 12:20 P.M.)

11 (COURT BACK IN SESSION AT 01:42 P.M.)

12 THE COURT: All right, back on the record in the
13 Owstrowski matter. I'm sorry, I thought he was already
14 out.

15 (DEFENDANT JONATHAN OSTROWSKI REENTERS COURTROOM AT
16 01:44 P.M.)

17 THE COURT: All right, back on the record. And,
18 gentlemen, I believe we have some other pretrial issues.

19 Mr. Phillips.

20 MR. PHILLIPS: Thank you, your Honor. The Defendant
21 moves to suppress evidence seized by law enforcement under
22 the *Fourth and Fourteenth Amendments* of the *United States*
23 *Constitution and Article I, Section 10* of the *South*
24 *Carolina Constitution*.

25 Specifically the Defendant challenged the validity of

TANESHA LONERGAN: DIRECT EXAMINATION BY MR. PHILLIPS -91-
PRETRIAL

1 the search warrant and request an evidentiary hearing for a
2 determination on the following two issues.

3 First, whether the probable cause allegations
4 contained in the affidavit were deliberately misleading
5 pursuant to *Franks v. Delaware*, 438 U.S. 154, it's 1978.

6 And, second, whether the search warrant was overly
7 broad in its authorization to the search.

8 Specifically going to the *Franks* hearing I'd like to
9 elicit testimony.

10 THE COURT: All right.

11 MR. PHILLIPS: At this time the State would call
12 Tanesha Lonergan the City of Rock Hill Municipal Court
13 Judge.

14 THE COURT: All right. Is she here?

15 MR. PHILLIPS: She is.

16 MADAM CLERK: There you go, ma'am. Please raise your
17 right hand.

18 ((WHEREUPON, TANESHA LONERGAN,
19 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:))

20 MADAM CLERK: Thank you.

21 DIRECT EXAMINATION - PRETRIAL

22 JUDGE TANESHA LONERGAN BY MR. PHILLIPS:

23 Q. Good afternoon, Ms. Lonergan.

24 A. Good afternoon.

25 Q. If you could please state your full name, occupation.

TANESHA LONERGAN: DIRECT EXAMINATION BY MR. PHILLIPS -92-
PRETRIAL

1 A. My name is Ganesha Michelle Lonergan. I do work for
2 the City of Rock Hill. I am a bond judge.

3 Q. And in this case going specifically you reviewed the
4 search warrant for the Defendant Jonathan Ostrowski?

5 A. I did.

6 Q. And the address related to that investigation?

7 A. Yes.

8 MR. PHILLIPS: May I approach, your Honor?

9 THE COURT: Yes, sir.

10 MR. PHILLIPS: Court's 5.

11 THE COURT: Okay.

12 MR. PHILLIPS: Thank you, your Honor.

13 SOLICITOR HAYES: Your Honor, may I review Court's 5
14 before he hands it to the witness?

15 THE COURT: Yes.

16 SOLICITOR HAYES: Thank you.

17 (SOLICITOR HAYES REVIEWING COURT'S EXHIBIT NO.5)

18 SOLICITOR HAYES: Thank you, sir.

19 MR. PHILLIPS: May I approach the witness, your Honor?

20 THE COURT: Yes, sir.

21 BY MR. PHILLIPS:

22 Q. Ms Lonergan, I'm handing you a copy of the search
23 warrant and the log book that you signed in this case just
24 for you to have it for any -- you need it to refresh your
25 recollection on any of the questions that I have.

1 A. Okay.

2 Q. As to the log book entry for this search warrant, is
3 there a time placed in that log for the issuance of this
4 search warrant?

5 A. The issuance, no time.

6 Q. And based on your memory do you know what time that
7 search warrant would have been issued?

8 A. I cannot recall the exact time. And based on my
9 memory I believe it was the morning, some time during the
10 morning, but as far as the exact time I cannot recall.

11 Q. And that's because there's no time listed on the log
12 book?

13 A. Right.

14 Q. And do you remember which agent provided the sworn
15 testimony to you?

16 A. That would be Officer Burkhart.

17 Q. And did he provide you with supplemental oral
18 testimony or just the affidavit?

19 A. He did. He provided me, as far as I can recall, with
20 supplemental testimony as far as the affidavit.

21 Q. So, to parse it out, did he provide oral testimony
22 or just the affidavit? I apologize if that's confusing.

23 A. Well what I would have the officers to do is I will
24 have them to give me oral testimony as well as, you know,
25 reading the affidavit here.

1 Q. So it's possible that he provided oral testimony in
2 this case?

3 A. Okay, I'm trying to recall. No oral testimony but
4 just, you know, just ---

5 Q. So just what --

6 A. --- the affidavit here.

7 Q. So just the affidavit, that's all?

8 A. Just the affidavit.

9 Q. The only information that was presented to you was
10 just the affidavit?

11 A. Right. And he was orally telling me what the
12 affidavit say.

13 Q. So no additional information that --

14 A. No additional information.

15 Q. Okay. Sorry about that.

16 A. No additional information.

17 Q. So no additional oral testimony?

18 A. Right.

19 Q. Just what was contained verbatim, again, this search
20 warrant affidavit?

21 A. Yes.

22 Q. Thank you. Your basis for probable cause of that
23 search warrant affidavit it was based on that -- all the
24 facts that are presented in that affidavit; is that right?

25 A. That is correct.

TANESHA LONERGAN: DIRECT EXAMINATION BY MR. PHILLIPS -95-
PRETRIAL

1 Q. It wouldn't just be on one isolated thing. It would
2 be based on everything that was written?

3 A. Everything that was written.

4 Q. And in coming to your conclusion of probable cause,
5 the evidence of drug investigation and drug distribution
6 that was presented in there, that was part of your
7 determination for probable cause?

8 A. Yes, absolutely.

9 MR. PHILLIPS: No further questions, your Honor.

10 THE COURT: Solicitor.

11 SOLICITOR HAYES: We have no questions for Judge
12 Lonerган, your Honor.

13 THE COURT: All right. Thank you, ma'am, you may step
14 down. You can just leave the exhibit there, I appreciate
15 it.

16 (WITNESS LEAVES WITNESS STAND.)

17 MR. PHILLIPS: Thank you, Judge.

18 THE COURT: Thank you, ma'am.

19 MR. PHILLIPS: The Defense would call Investigator
20 Burkhardt to the witness stand.

21 (WHEREUPON, DANIEL BURKHART, BEING
22 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

23 DIRECT EXAMINATION - PRETRIAL

24 INVESTIGATOR DANIEL BURKHART BY MR. PHILLIPS:

25 Q. Good afternoon, Investigator Burkhardt.

1 A. How you doing, sir?

2 Q. I'm doing well. How are you?

3 A. Excellent.

4 Q. You were the affiant on the Search Warrant Affidavit
5 in this case?

6 A. Yes, sir, I was.

7 Q. And --

8 MR. PHILLIPS: May I approach, your Honor?

9 THE COURT: Yes, sir.

10 MR. PHILLIPS: Madam Clerk, if we could provide
11 Investigator Burkhardt with Court's Exhibit No. 5?

12 Thank you.

13 Q. Could you take a moment to review that Search Warrant
14 Affidavit?

15 A. Yes, sir.

16 (WITNESS COMPLYING.)

17 Q. Does that appear to be the Search Warrant Affidavit
18 that you presented and supplied to Magistrate or Municipal
19 Court Judge Lonergan?

20 A. Yes, sir, it does.

21 Q. So all the facts contained in that affidavit regarding
22 the -- I mean did you make the determination as the affiant
23 to add the facts regarding the investigation into
24 Owstrowski and the residence prior to that day? Who made
25 the determination to include that in the affidavit?

1 A. I typed up this affidavit.

2 Q. And so you included that information knowing that at
3 that point Ms. Peters had arrest warrants; is that right?

4 A. That is correct.

5 Q. And that she was followed and essentially arrested
6 based on having those arrest warrants?

7 A. Correct.

8 Q. And that she had drugs in her possession at that time?

9 A. Correct.

10 Q. And that she was taken to the police station and
11 interrogated?

12 A. Correct.

13 Q. And that she provided a statement to law enforcement?

14 A. Correct.

15 Q. And from there you typed up your affidavit and
16 presented it to the magistrate?

17 A. Applied for the search warrant, yes, sir.

18 Q. And in reviewing that affidavit you included that
19 there was an on-going investigation into Jonathan
20 Owstrowski in reference to a narcotics violation; is that
21 right?

22 A. Yes, sir.

23 Q. And that you, of course, knew as we just discussed
24 that Peters had an active distribution warrants and that
25 she had been residing on and off again at that residence?

1 A. That was my understanding yes, sir.

2 Q. Did you know at that time that she had also resided
3 at another residence? I mean it says off and on. Did you
4 know?

5 A. I was aware of a secondary residence that she did have
6 and was kind of going back and forth between the two.

7 Q. And were you aware that that secondary residence is
8 the place where the controlled buys were done for which she
9 had the active warrant on?

10 A. No. I was not aware of that, no.

11 Q. Okay. And you observed or law enforcement observed
12 Peters exit the residence that morning?

13 A. Yes.

14 Q. And after that traffic stop, as we said, there was
15 found in possession and she made a statement to law
16 enforcement?

17 A. Yes.

18 Q. You knew at that time that the Defendant was not
19 present during this traffic stop or any of the illegal
20 activity at that point, that arrest, that he was --

21 A. Mr. Owstrowski was not present during Ms. Peters
22 arrest.

23 Q. And you knew at that time that there was no evidence
24 of drug distribution as to that day and the -- you know
25 essentially the execution of those arrest warrants, of or

1 serving those arrest warrants that there is no evidence of
2 drug distribution during the service of those arrest
3 warrants; is that right?

4 A. Evidence of drug distribution by who, sir?

5 Q. Ms. Peters. I'm apologize.

6 A. Well, no, we did have evidence that Ms. Peters was
7 distributing drugs.

8 Q. So not her prior warrants, that day when you served
9 the warrants and she has drugs in her possession, there's
10 no evidence that there was an active distribution at that
11 residence, or --

12 A. Yes. Yes, correct. When we arrested her I did not
13 have any evidence showing that the two pills that she
14 possessed at that time were in the process of being sold.

15 She just possessed those.

16 Q. Thank you.

17 A. Yes, sir.

18 Q. And there was no evidence that there was any type
19 of drug distribution from that residence?

20 A. Not -- Not at that current time, no, sir.

21 MR. PHILLIPS: Just a moment, your Honor.

22 THE COURT: Okay.

23 MR. PHILLIPS: No further questions, your Honor.

24 THE COURT: Solicitor.

25 SOLICITOR HAYES: The Court's indulgence, your Honor,

1 I'm sorry.

2 THE COURT: All right.

3 CROSS-EXAMINATION - PRETRIAL

4 INVESTIGATOR DANIEL BURKHART BY SOLICITOR HAYES:

5 Q. Investigator Burkhart.

6 A. Yes, sir.

7 Q. Could you please read your affidavit into the record?

8 A. Yes, absolutely. "Affidavit of Search Warrant

9 Attachment I. 162 Bailey Avenue, Rock Hill, York County,

10 South Carolina, Jonathan Owstrowski, white male, 5-15-72"

11 that's for his date of birth" Defiant D. Burkhart who is a

12 certified law enforcement officer assigned to the York

13 County Multi-Jurisdictional Drug Enforcement Unit, YCMDEU,

14 and has several years experience to include narcotics

15 investigations, states the following facts to support

16 probable cause to search the person and premise listed

17 within.

18 Officers of the YCMDEU and the U.S. Drug Enforcement

19 Administration had been conducting an on-going

20 investigation into Jonathan Ostrowski in reference to a

21 narcotic's violations and on Wednesday, January 25th, 2017

22 officers of the YCMDEU conducted surveillance on 162 Bailey

23 Avenue, Rock Hill, County of York, South Carolina.

24 Officers knew that Alexandria Peters who also has had

25 active distribution of alprazolam warrants for her resides

1 at the residence with Ostrowski.

2 Furthermore Peters' vehicle, a 2000 Honda Accord,
3 South Carolina license plate number L-Y-D-1-9-5 was parked
4 within the curtailage of the residence. Officers also knew
5 from over six months of continual on-going surveillance of
6 162 Bailey Avenue, Rock Hill, York County, South Carolina
7 that Alexandria Peters and Jonathan Ostrowski reside at the
8 residence.

9 Peters has been residing at the residence off and on
10 but mostly at 162 Bailey Avenue, Rock Hill, South Carolina
11 within the past five months. Officers continued constant
12 surveillance of the residence, a vehicle, and Peters who
13 officers observed exit the residence and get into the 2000
14 Honda Accord.

15 Peters then drove away from the residence and was
16 surveilled by officers. Officers took Peters into custody
17 shortly after leaving the residence for the active
18 distribution warrants. And officers had prior knowledge
19 that Peters' driver's license were also suspended.

20 Peters was stopped a short distance from the residence
21 and the officers had Peters under constant surveillance
22 from the time leaving the residence until the stop.

23 During Peters -- Peters arrest officer seized four
24 doze units of alprazolam and one dose unit of clonazepam
25 from within Peters purse. Peters was found to be in

1 possession of several other medications in properly labeled
2 prescription bottles.

3 Peters hadn't been advised of her *Miranda* rights and
4 admitted that there was some marijuana inside the
5 residence. Based on the affiant's training and experience
6 in narcotics investigations it is believed that the drug --
7 that drug dealers keep contraband, proceeds of drug
8 transactions, and records of drug transactions that may
9 include written records, photographs, video tapes, audio
10 tapes, computer hard drives and disc and cellular phones
11 within the secure locations of their residents, out
12 buildings, and vehicles owned or operated by the
13 residents."

14 And then it has the date, this date 25th of January
15 2017, the Judge's signature and my signature.

16 Q. Is that all that you presented to the magistrate on
17 January 25th, 2017?

18 A. It is.

19 Q. Did you present any supplemental oral testimony?

20 A. I did not.

21 Q. Did the magistrate sign and issue the search warrant?

22 A. She did.

23 Q. Did your agency subsequently execute that search
24 warrant at 1632 Bailey Avenue?

25 A. We did.

1 Q. And I understand that this is the entire reason
2 we're having a trial, but based on your presence at the
3 search warrant execution, were illegal drugs recovered from
4 162 Bailey Avenue?

5 A. Yes, there were.

6 Q. And just based on your training and experience, what
7 type of drugs were located?

8 A. Just over one ounce of methamphetamine and some
9 prescription pills.

10 SOLICITOR HAYES: The Court's indulgence, your Honor.

11 THE COURT: Okay.

12 BY SOLICITOR HAYES:

13 Q. Was there any residue of what you know to be
14 marijuana in the house?

15 A. Yes, there was what I believe Ms. Peters described
16 to us as being a glass bowl of marijuana. We did find that
17 in the house.

18 SOLICITOR HAYES: Your Honor, I have no further
19 questions for Investigator Burkhardt.

20 THE COURT: Okay. Redirect?

21 MR. PHILLIPS: No redirect, your Honor.

22 Well, actually just to make sure I got it out.

23 REDIRECT EXAMINATION - PRETRIAL

24 INVESTIGATOR BURKHART BY MR. PHILLIPS:

25 Q. In the description of property sought in the warrant

1 ---

2 MR. PHILLIPS: Sorry, your Honor.

3 Q. --- you wrote that there, was any of the property used
4 in the use, sale, and or distribution of alprazolam. I
5 always say this incorrectly - clonozoplam and marijuana?

6 A. Yes, sir.

7 Q. And at that time there was no evidence of a sale or
8 distribution involved with that residence or Jonathan
9 Ostrowski?

10 A. Not with the current drugs that had been received --
11 that we got on that day, yes, sir.

12 Q. During the service of that warrant?

13 A. Yes, sir.

14 MR. PHILLIPS: No further questions.

15 THE COURT: Anything else?

16 SOLICITOR HAYES: Nothing further.

17 THE COURT: Thank you, sir, you can step down.

18 Just leave the exhibit there, please.

19 (WITNESS LEAVES WITNESS STAND.)

20 THE COURT: All right.

21 MR. PHILLIPS: Thank you, your Honor. Going
22 specifically to as an over view --

23 THE COURT: All right, any further evidence?

24 MR. PHILLIPS: I apologize, your Honor. Nothing
25 further as far as evidence - -

1 THE COURT: Let's proceed with argument, yes, sir.

2 MR. PHILLIPS: Thank you, your Honor.

3 Again, going directly to the description of property
4 sought in the search warrant affidavit, the affiant put
5 used in the sale or used in the use, sale, and or
6 distribution of alprazolam, colozopam, and marijuana.

7 When you look at the circumstances that were before
8 what would be considered probable cause I would kind of
9 argue two things. And I'm gonna try to parse this out a
10 little bit, that isolated for the probable cause
11 determination would be Ms. Peters' statement that there was
12 marijuana in the home, if you isolate that statement.

13 Everything beyond that is talking about -- and when
14 you look at the reasons for affiant's belief, an non-going
15 investigation into Jonathan Ostrowski in reference to
16 narcotics violations, Investigator Burkhart testified that
17 there is no evidence at that time, they served the warrants
18 of the narcotics distribution or related to Jonathan
19 Ostrowski or that address.

20 He knew that Ms. Peters had active distribution
21 warrants but they were separate and distinct. They were
22 just serving those warrants by arresting her. With that
23 being said, again, I believe that the probable cause
24 determination is only isolated into that possibly the
25 statement about marijuana was in the residence.

1 Where you have the omissions and what I would say is
2 misleading facts is by adding that there is an on-going
3 distribution or ref -- on-going investigation and reference
4 to narcotics activity that was not relevant and should not
5 have been presented to the magistrate judge.

6 There is no evidence of the defendant being present
7 yet he is mentioned in that warrant, specifically listed in
8 that warrant. Law enforcement, not Detective Burkhardt, he
9 testified he didn't know, but law enforcement, the reason
10 they had those warrants and certainly he put in the warrant
11 that she resides off and on but she -- if you look at the
12 DEU Case Summary that's marked as a Court's Exhibit, that
13 the prior arrest warrants were issued because she lived at
14 a different address and that's where there were the
15 controlled buys. So, we have that as well that occurred on
16 September 15th, 2016 with Ms. Peters.

17 Again, there is no evidence of drug distribution. And
18 affiant provides that narcotic's dealers keep contraband,
19 records, and proceeds of drug transactions. What they find
20 on her is possession amounts for the alprazolam and the
21 marijuana. In the -- Again they're looking for the sale
22 and distribution of alprazolam, clonazepam and marijuana
23 when there is no evidence evolving around that.

24 The two cases that I would kind of go directly to and
25 point your Honor is *State v. Winborne* which is 273 S.C. 62.

1 It's a 1979 case. And essentially our Supreme Court held
2 that for a search warrant affidavit to show probable cause
3 it must state facts so closely related in time of the
4 issuance of the warrant that a probable cause finding can
5 be justified.

6 And so having all these facts that do not have a Nexus
7 to the search warrant, and they are not so closely related
8 in time as far as this on-going investigation, a part of
9 our discovery motion that we had previously when your Honor
10 denied it, you did indicate that that investigation the
11 reason it wasn't -- the investigator's file for the DEA
12 report as well as the DEU investigation file -- the reason
13 it wasn't -- had to be disclosed because it wasn't
14 relevant. Yet, that information is contained in the search
15 warrant. And it's not closely related in time as *Winborne*
16 provides.

17 Also, your Honor, *State v. Gentile*, let me make sure I
18 give you the cite for that, that's 373 S.C. 506. It's a
19 Court of Appeals case, 2007. It's a case where the Court
20 of Appeals found that the facts were insufficient to
21 support the magistrate's probable cause finding where there
22 were anonymous tips of high volume traffic, a citizen
23 complaint regarding the smell of marijuana near the
24 residence, and the arrest of someone who as they watched
25 people go in and out in short amounts of time from this

1 residence. The law enforcement arrest one of the visitor's
2 who came in and left the residence, watched the person exit
3 the residence, and the person has marijuana. Ultimately
4 the *Gentile* Court found that there was no independent
5 verification by the narcotics officers regarding the tip
6 and that essentially they followed and arrested a third
7 party who had not been searched prior to the arrival at the
8 residence.

9 So, to try to wrap this up, our burden to have it
10 shift to the State is a preponderance of the evidence in
11 the *Franks*. When we're looking at whether it would be
12 misleading, again, at this point you have -- some way who
13 has -- law enforcement knows has arrest warrants, they
14 serve those warrants. She has **possession** amounts of those
15 drugs. There is no evidence of distribution, sale, and
16 there is no evidence related to that address specifically
17 to the sale or distribution of narcotic activity. And
18 there is no evidence of Jonathan Ostrowski with
19 distribution activity that would be relevant to that search
20 warrant because --

21 THE COURT: Well stop there. Didn't the arrest
22 warrant say they arrested the lady -- What's her last name?

23 MR. PHILLIPS: Ms. Peters.

24 THE COURT: They arrested Ms. Peters after she left
25 162 Bailey Street which they had been surveilling for the

1 past six months, and they constantly followed her and that
2 she had those amounts of drugs on her?

3 MR. PHILLIPS: So, yes, sir.

4 THE COURT: How do you get -- You know let's forget
5 the part -- I understand where you're going with the
6 monitoring stuff for the past six months. Just the fact
7 that she was at a residence, left the residence, had the
8 drugs on her, that doesn't give rise to probable cause to
9 go search the residence?

10 MR. PHILLIPS: And that's where I cited that *State v.*
11 *Gentile* case.

12 THE COURT: Okay.

13 MR. PHILLIPS: They -- The officers are in an on-going
14 investigation, and they watch multiple individuals go in
15 and out of the house, they're pretty sure something is
16 going on at that point. They - One of the visitors go in,
17 comes out, they pull them over, they find drugs and
18 ultimately the Court of Appeals found that there -- that
19 wasn't enough to support the probable cause finding because
20 there wasn't an independent verification of the narcotic's
21 officers regarding the tips. Essentially you had this
22 third party that they didn't search before going in that
23 residence. So who's to say that the drugs that were found
24 on Ms. Peters she didn't have when she went into the
25 residence and when she left. And that case is one that I

1 would say is directly on point, *State v. Gentile*, that's
2 that 373 S.C. 506.

3 And then going to *Stete v. Winborne* --

4 THE COURT: But in *State versus Gentile* was it that
5 person's -- was it that person's residence or was it
6 somebody else's residence?

7 MR. PHILLIPS: Third party residence. It's not their
8 residence.

9 THE COURT: Okay. Well then that's distinguishable
10 from the present case. The case that I'm dealing with now
11 wasn't it established that she lived at this residence?

12 MR. PHILLIPS: Well, what they have --

13 THE COURT: Just for the purpose of argument.

14 MR. PHILLIPS: Well, so, and certainly you could argue
15 that at some point she was staying there through their
16 investigation. The arrest warrants -- I mean even the Case
17 Summary says that she lives at a different address and that
18 even in the Search Warrant Affidavit it says that's its off
19 and on as far as when she stays there. As far as whether
20 she's considered a visitor, the same as *Gentile*, because
21 it's listed in the Case Summary that she lives at the Bolen
22 address on Bolen Drive, or I can look it up real quick for
23 your Honor. But that's where the control buys in September
24 happened. Its a separate address. It even states in the
25 Search Warrant affidavit that she lives there off and on

1 based on their belief that she lives there on and off.

2 I mean obviously it's their belief of what they're
3 watching through this investigation. And when you look at
4 *State v. Winborne* it says that you got to have probable
5 cause within the facts so closely related in time that when
6 you add in this investigation when there is no essentially
7 -- Let me make sure I articulate this properly -- that the
8 arrest warrants for Ms. Peters were not related to the
9 Defendant or the address that was contained in the search
10 warrant.

11 And that the traffic stop and the drugs found on Ms.
12 Peters after she, you know, and we could say arguably left
13 the residence - That's based on the testimony that we have
14 from the officer - is insufficient to provide probable
15 cause by itself based on *Gentile*. So, all the -- And there
16 is no evidence that the Defendant was on the premises.
17 Certainly he wasn't there when the warrant was executed.

18 So having all this information contained in the
19 warrant regarding an on-going drug narcotics investigation,
20 all of the evidence saying about the sale and distribution
21 of alprazolam, clozopam and marijuana, when there is no
22 evidence of that in the service of this warrant is
23 misleading. The probable cause you heard from Municipal
24 Court Judge Lonergan that she used all of that information
25 in making her determination, as the law requires, is that

1 she has to essentially take all the facts as a whole and
2 make that practical common sense determination.

3 And when she reads that there is sell and
4 distribution, an on-going distribution, and that they had
5 been looking at this address and that there is activity of
6 drug distribution when there is no nexus between the
7 service of those arrest warrants for Ms. Peters that's
8 related to the Defendant, or the address, or distribution
9 on that day, and that's where the *Winborne* comes in where
10 you got to have that it must state facts so closely related
11 in time. Essentially it's the staleness argument that
12 you've added these facts that are not closely related in
13 time, they're not related at all.

14 I mean your Honor ruled that in the discovery motion
15 and to deny the discovery motion that that investigation
16 was not relevant. And because that information was not
17 discoverable, because it was not relevant, it certainly
18 shouldn't have supplied probable cause for the issuance of
19 this warrant.

20 THE COURT: All right. I gotcha. I follow you.

21 All right. Let me hear from the State.

22 SOLICITOR HAYES: Your Honor, what I would like to do
23 first is I would like to hand up my authority, because we
24 have a lot, and then I'd like to make argument after
25 passing that up.

1 THE COURT: Okay.

2 (DOCUMENTS RECEIVED UP BY THE COURT.)

3 SOLICITOR HAYES: Your Honor, there should be two
4 copies of each case. One for you and one for your clerk.

5 THE COURT: Thank you. All right.

6 SOLICITOR HAYES: Your Honor, the first thing I would
7 like to say is this is not a *Franks* situation.

8 I will direct your Honor to *State versus Trapp* which I
9 have handed up, specifically Head note 22.

10 THE COURT: All right.

11 SOLICITOR HAYES: And this is a little bit of a Horne
12 Book Law but this is -- kind of laser's us in in a *Franks*
13 situation, and this is *State versus Trapp*, 420 S.C. 217.

14 "A search warrant may be issued only upon a finding of
15 probable cause. Search warrants may be issued only upon
16 affidavits sworn to before the magistrate establishing the
17 grounds for the warrant. A warrant is supported by
18 probable cause if, given the totality of the circumstances
19 set forth in the affidavit, there is a fair probability
20 that contraband, or evidence of a crime, will be found in a
21 particular place."

22 And then skipping down a paragraph our Supreme Court
23 puts *Franks'* issues in a separate category that I would
24 argue are not present here. In a *Franks* situation to
25 mandate an evidentiary hearing, the challengers' attack

1 must be more than conclusory and must be supported by more
2 than a desire to cross-examine. There must be allegations
3 of deliberate falsehood or of reckless disregard for the
4 truth, and those allegations must be accompanied by an
5 offer of proof; and if these requirements are met, and if,
6 when material that is subject of the alleged falsity or
7 recklessness disregard is set -- reckless disregard is set
8 to one side, there remains sufficient content in the
9 warrant to support a finding of probable cause, no hearing
10 is required.

11 So, your Honor, a *Franks* situation is a very narrow
12 procedure that is not present in this case. I would ask
13 your Honor to disregard that and according to the *Trapp*
14 case not even grant - Excuse me, the *Trapp* case, not even
15 grant a *Franks* analysis because its simply not necessary.
16 I would ask your Honor to just review this as a normal
17 search warrant.

18 But then we all know the rules for normal search
19 warrants, but for the record I will cite to 17-13-140, any
20 magistrate or recorder or city judge having the powers of
21 magistrates, or any judge of any court of record in this
22 State having jurisdiction over the area where property is
23 sought is located, may issue a search warrant to search for
24 and seize, stolen or embezzled property, property, the
25 possession of which is unlawful; property which is being

1 used or has been used in the commission of a criminal
2 offense, or is possessed with the intent to be used as the
3 means for committing a criminal offense or is concealed to
4 prevent a criminal offense from being discovered; property
5 constituting evidence of a crime or tending to show that a
6 particular person committed a criminal offense; or (5) any
7 narcotic drugs. Barbiturates, amphetamines or other drugs
8 restricted to sale, possession, or use on prescription
9 only, which are manufactured, possessed, controlled, sold,
10 prescribed, administered and so forth.

11 That's our general search warrant authority for places
12 where criminal evidence may be located, property itself
13 which is a crime like drugs, and so on.

14 There are some other cases I would like to direct
15 your attention to which are actually on point with the
16 facts of this case. In *State versus Scott* --

17 THE COURT: All right. Hang on. Which one is that?

18 I got it.

19 SOLICITOR HAYES: In *State versus Scott* this was
20 a residential search warrant based on a vehicle stop. And
21 the affidavit in that case is at Headnote 1. And the
22 affidavit in that case, very similar to this affidavit,
23 affiant states that on September 30th, 1988 investigators
24 with the Greenville County Special Operations Unit were in a
25 position of surveillance on the above described residence.

1 Clifton David Scott whom investigators were holding
2 an arrest warrant for distribution of cocaine was
3 observed leaving the residence, subsequent stop of the
4 suspect revealed him to be in possession of in excess of 20
5 grams of white powder substance which field tested positive
6 as cocaine.. Investigators had visual contact with Scott
7 -- with the Scott subject from the time he left his
8 residence until the time of the stop.

9 And then the Court ruled in the next paragraph,
10 the magistrate, we think, made a practical, common
11 sense decision that a fair probability existed that
12 additional evidence regarding Scott's drug activities
13 could be found in Scott's home.

14 And then it goes on to cite the United States, or a
15 9th Circuit case, it says "In the case of drug dealers,
16 evidence is likely to be found where dealers live."

17 Your Honor, with a few exceptions this case is on
18 all fours with *State versus Scott* and it's just eerily
19 similar, and we would ask that your Honor issue a finding
20 that this is essentially the *Scott* case.

21 Some other cases I would like your Honor -- to direct
22 your Honor's attention to, *State versus Keith* which is
23 356 S.C. 219. Again, this is a situation where a house
24 was searched in part because of a vehicle stop. Officers
25 conducted surveillance across the street from the

1 defendant's home. Officers saw a vehicle pull away from
2 the Defendant's home, the vehicle was stopped having an
3 expired tag, and the driver consented to a search of the
4 car and they found marijuana in the car; got a search
5 warrant for the house.

6 The affidavit in that case was actually prepared
7 by our York County Drug Enforcement Unit. "The affiant,
8 a sworn police officer with several years narcotics
9 investigations, has received information that a Billy
10 Jason Keith is using and selling marijuana at and from
11 his residence at 2401 Ebinport Road, Rock Hill. This
12 information was received within the past 72 hours from DEA
13 Agent. Also, in the past 72 hours other officers with the
14 DEU received information from two sources of Keith
15 using and selling drugs from inside his residence.
16 Officers have personal knowledge of Keith and his residence
17 on Ebinport Road. Furthermore, on this date, officers
18 of the DEU conducted surveillance of the residence
19 have observed Keith leave the residence and approached
20 Keith after leaving and lawfully recovered marijuana
21 from his car -- from his 200 Nissan."

22 In that case they actually narrowed down their view
23 of the affidavit and said that "We find the portion of
24 the affidavit relating to the investigative surveillance,
25 stop, and seizure of illegal drugs from Keith's car

1 standing alone sets forth sufficient information to
2 support a probable cause finding in this case."

3 So they even pared that affidavit down and said we
4 don't need a bunch of it even though it was in there.

5 THE COURT: And I know you're gonna address this
6 when it comes back, it kind of goes to the point of
7 the question that I ask you about, so when you reply I
8 want you to tell me how this case is different from the
9 *Keith* case. Keep on going.

10 SOLICITOR HAYES: And, your Honor, lastly for the
11 record, I think I said it but I would like to say it again,
12 and this comes from *State versus Kinloch* 410 S.C. 612,
13 Headnote 3, 4 and 5.

14 "In reviewing a magistrate's probable cause
15 determination . . . circuit judges must determine whether
16 the issuing magistrate had a substantial basis upon
17 which to include that probable cause existed."

18 And then if you skip down to the end of the paragraph it
19 says the well known rule, "If no supplemental testimony is
20 taken, a magistrate's probable cause determination is
21 limited to the four corners of the search warrant affidavit."

22 So when you take the *Scott* case and you take the
23 *Keith* case, and you analogize how similar they are to
24 the facts of this incident case, and you look at the
25 affidavit that we used in this case, your Honor, they're

1 substantially the same. This type of affidavit has been
2 upheld before and we ask that your Honor uphold it now.

3 THE COURT: All right. Thank you, Solicitor.

4 Mr. Phillips.

5 SOLICITOR HAYES: One more thing, your Honor. I'm
6 sorry.

7 THE COURT: Oh, yes, sir. You handed up *Sullivan*.
8 What did you want to say about *Sullivan*?

9 SOLICITOR HAYES: Your Honor, that's the Horne book
10 principle that affidavit -- search warrant affidavits
11 can be based on hearsay testimony.

12 THE COURT: Okay.

13 SOLICITOR HAYES: I don't believe Mr. Phillips
14 raised that as an issue. But you do have the hearsay
15 in this case of what Ms. Peters told officers as a
16 reason for the search warrant.

17 When your Honor looks at this affidavit we would
18 ask you to find it similar to *Scott* and *Keith*. And it's
19 just simply officers stopped somebody coming out of a
20 house, they have reliable information that that person
21 would know what's in the house, that person tells 'em
22 there's contraband in the house; they get a search
23 warrant from the magistrate. The magistrate reviewed
24 this affidavit. The magistrate found probable cause
25 based on the facts stated therein.

1 Ms. Peters told the officers there were illegal
2 drugs in the house and that should be more than enough
3 for the officers to get a search warrant and we ask that
4 -- And for the record, your Honor, we have the return
5 as Court's Exhibit 5 as to what was found in the house.

6 THE COURT: Don't want to steal your thunder, Mr.
7 Phillips, but I'm sure you're gonna argue to me that
8 well Scott, that was Scott's house and in this case this
9 wasn't her house.

10 MR. PHILLIPS: Right. And there is no evidence
11 that she owns the residence. There is no evidence
12 that Mr. Ostrowski owns this, the residence. To get this
13 evidentiary hearing for Franks the accused has the burden
14 of proving the allegations of reckless disregard as far
15 as misleading is by a preponderance of the evidence.

16 In this case, going to that fair probability
17 standard, that's where we've argued *Gentile* which would
18 be kind of the direct argument on the Defense in response
19 to the State's cases that they presented is that *Gentile*
20 would be on point versus those cases is that she is not
21 necessarily a resident simply because they labeled her
22 one.

23 With that being said, the reckless disregard is where
24 that misleading evidence is again that there is no --
25 there's no nexus with it so the arrest warrant's for

1 Ms. Peters were not related to an investi -- a distribution
2 investigation of Jonathan Ostrowski who is listed in that
3 warrant. It's not related to the address that's contained
4 in the warrant. And again, you're isolating the fact
5 that, or excuse me, that there is this isolation of the
6 magistrate or the municipal court judge made a
7 determination based on all of this evidence.

8 Had that been taken away, that's the misleading
9 part that would have caused her possibly not to make
10 a conclusional probable cause. The problem that we'll
11 never know at this point cause it's already happened.
12 The traffic stop and drugs found on Ms. Peters after
13 she left the residence, at least based on that affidavit
14 we're going off, the information that's contained in the
15 affidavit, is insufficient to provide the probable cause.

16 And again, there's no evidence regarding the
17 defendant or distribution with the residence. And that
18 when you look at these cases and you look at the
19 affidavits, again most of it is all going to the closely
20 related in time. I think that as I was looking at the *Keith*
21 case it talks about information was received within
22 the past 72 hours. That fits in with my *State v.*
23 *Winborne* argument that that is not stale. It's within
24 the 72 hours. It's facts so closely related in time of
25 the issuance of the warrants that probable cause could

1 be justified.

2 This on-going investigation that has no relevance
3 which your Honor's already ruled upon in the discovery
4 motion was months long that had been started many
5 months before. Certainly that information would be not
6 relevant as your Honor ruled but also stale. That's
7 different

8 In *Keith* that information was received within the
9 past 72 hours from the DEA agent. That's what's listed
10 at Headnote 3 of the affidavit as it list, so the
11 information was closely related in time so that's also
12 distinguishable.

13 THE COURT: All right.

14 MR. PHILLIPS: With that being said, your Honor,
15 again it's preponderance of the evidence to get to that
16 next step. And again, essentially you're looking for --
17 once you meet that, Defense would say that we've met the
18 threshold of preponderance in evidence and we go to the
19 next step of if there is a deliberate reckless disregard
20 that has been established the Court must exclude that
21 false material and then consider the rest as far as where
22 we're at. And I think at this point looking at what's
23 been presented the judge would not have based on having
24 the evidence of used in the sale or distribution of
25 alprazolam, clonozapam and marijuana essentially addressing

1 the address, Jonathan Ostrowsky vehicles, and outbuildings
2 when none of this is related to the sale or distribution
3 that it just doesn't rise to the level of probable
4 cause because of *Gentile*.

5 So if you take everything as isolated as it is,
6 you take everything out, and you have just that
7 marijuana statement, I'm trying to go full circle here
8 from when I started - you isolated it, you've taken out
9 all the distribution stuff, all the old investigation
10 and you isolate the marijuana, we're back to *State v.*
11 *Gentile* where she was the visitor who is coming and
12 going, where there was an on-going investigation, they did
13 not have an independent verification from her, she wasn't
14 searched prior to going in there, she easily could have
15 had the drugs on her prior to going in there, she had
16 her on distribution warrants where there is no
17 evidence that connects that address, or the defendant,
18 yet both of those are included in the warrant. Based on
19 that we would say that's misleading and that we've met the
20 threshold of preponderance of the evidence and that once
21 all of that is taken out and you isolate just the
22 marijuana statement, that *State v. Gentile* applies and that
23 the evidence over all should be suppressed; that the
24 warrant is invalid.

25 And if you go to that next step under *Leon* -- *State*

1 *v. Robinson* 415 S.C. 600 is a 2016 case that I argued
2 at the South Carolina Supreme Court where they have a
3 *Franks* violation where they find that it was in bad
4 faith; that clearly this information essentially in *Leon*
5 the United States Supreme Court held that suppression
6 remains the appropriate remedy when a reviewing judge
7 is intentionally misled by the information in an
8 affidavit that the affiant knew would be false, or would
9 have known false, or in reckless disregard for the truth.

10 So you have to -- since this is a pure omission we're
11 looking at misleading testimony where it's the opposite
12 of omission it's addition. It's adding irrelevant
13 information and because of that clearly he knew that none
14 of that when -- he just testified that none of that
15 information was present.

16 And I think now that we have your Honor's ruling on
17 the discovery motion that it's not relevant. I just think
18 if we go kind of from step one now to step three that
19 the evidence should be suppressed under the *Fourth* --
20 the *Fourteenth Amendment* to the *United States*
21 *Constitution and Article I Section 10*. Clearly, you know,
22 although it's not a knock and talk case none of that is
23 relevant. The one thing we do have under *Article I*
24 *Section 10* as far as unreasonable invasion of privacy,
25 of course I guess we're not even that far, so I won't waste

1 any time on that.

2 THE COURT: Thank you. Anything in brief reply to
3 his reply?

4 SOLICITOR HAYES: Your Honor, I think what you have
5 in front of you is the *Keith* case and the *Scott* case.

6 That's what this case is. You look at the four
7 corners of the affidavit, officers knew who lived there.
8 They knew that Alexandra Peters was one of those people
9 They arrested her lawfully shortly after she left the
10 house. They ask her what's in the house. She told 'em
11 there's marijuana in the house.

12 She also has drug distribution warrants on her
13 which in the *Scott* case is reasonable for officers to
14 get a search warrant for the house of a drug dealer
15 when they arrest a drug dealer.

16 So, your Honor, if you look at the face of this
17 affidavit, what was presented to the magistrate, you
18 have the *Scott* case and the *Keith* case, and you have
19 someone who knows what's in the house because they
20 reside at the house telling officers there's illegal
21 stuff in the house, and we ask that your Honor find that
22 this search warrant is fine and not suppress the --

23 THE COURT: All right. Here's what I'm gonna do.

24 I don't need to hear anything else. I've heard
25 everything I need to hear. I'm gonna go back and I'm

1 gonna look at the case law y'all submitted as well as
2 look at -- I need Exhibit 4, Madam Court Reporter, so
3 I can look at it, the affidavit as well.

4 Mr. Phillips, one last thing on that so I can go
5 do this.

6 MR. PHILLIPS: Thank you, your Honor. I apologize.

7 The one last thing is that when you look at *Scott*
8 we're not -- it doesn't include that *Franks* analysis.

9 THE COURT: Okay. All right.

10 MR. PHILLIPS: Thank you, your Honor.

11 THE COURT: Y'all give me a moment and we'll take a
12 brief recess while I review this. The one other matter
13 of law I need to take up would be the *Denno*?

14 SOLICITOR HAYES: Yes, your Honor.

15 THE COURT: Okay. All right, y'all give me a moment.
16 We're in recess.

17 MR. PHILLIPS: Thank you, your Honor.

18 SOLICITOR HAYES: Thank you, your Honor.

19 (COURT IN RECESS AT 02:35 P.M..)

20 (COURT BACK IN SESSION AT 02:47 P.M.)

21 (DEFENDANT JONATHAN OSTROWSKI REENTERS COURTROOM AT
22 02:48 P.M.)

23 THE COURT: All right, based upon the testimony and
24 evidence presented and arguments of counsel I make the
25 following rulings on Defendant's Motion to Suppress.

1 First of all I find the *Gentile* distinguishable, if
2 my my memory serves correctly in reviewing that case,
3 *Gentile* was a third party and not a resident.

4 In fact the *Gentile* decision it is an '08 decision,
5 it actually cites both *Keith* and *Scott* as that being the
6 distinguishing factor, because in both *Keith* and *Scott* the
7 -- Mr. Keith and Mr. Scott, of which the Court of Appeals
8 upheld, that search -- those search warrants were actually
9 residents of the premises which were searched, and so, the
10 key determining factor for this Court in looking at the
11 four corners of the document and considering the totality
12 of the circumstances, was that the search warrant was
13 proper and therefore I deny the Defendant's Motion to
14 Suppress. Okay. Next issue.

15 MR. PHILLIPS: Thank you, your Honor.

16 And specifically with that, that also that with that
17 ruling essentially that the Court has found that Ms. Peters
18 as a resident, that would be encompassed in the Defense's
19 argument that she was not --

20 THE COURT: Absolutely.

21 MR. PHILLIPS: The next issue is whether the Search
22 Warrant was overly broad in it's authorization of the
23 search. Essentially the Search Warrant included the
24 evidence of drug distribution and again, as we've argued
25 that at nauseam about it not being a nexus established

1 between Peters' alleged statement that marijuana was in the
2 residence and the drug distribution at the residence, the
3 Search Warrant included any vehicles and outbuildings on
4 the property. Ms. Peters' alleged statement regarding
5 the marijuana, and still keeping with our argument as
6 isolated the way it was presented, was that there was
7 marijuana in the home; the glass pipe and the small amount,
8 so we would argue that the search of the outbuilding and
9 any vehicles, that any evidence pursuant to that would --
10 should be suppressed, that it was overly broad in including
11 that because it didn't include -- I mean the probable cause
12 statement that we believe should -- is isolated alone
13 would not have included outbuildings and vehicles.

14 THE COURT: All right. I gotcha.

15 SOLICITOR HAYES: Your Honor, for the record I will
16 note that -- you know under the law, homes under the Fourth
17 Amendment are viewed as a -- it's a curtilage type
18 concept with the items that are in and around the home
19 because people can have stuff in a shed, they can have it
20 in their garage, they can have it in their attic,
21 you know.

22 And when it comes to the breadth of the Search
23 Warrant its appropriate for anywhere that those items may
24 reasonably be found, and something like marijuana, or a
25 ledger, or something small could be stashed anywhere.

1 It could be stashed anywhere in the curtilledge, so
2 we would ask your Honor make a finding that the breadth of
3 the Search Warrant was just right for the type of
4 evidence being sought.

5 THE COURT: I agree with the State and deny the
6 Defense motion. All right, next point.

7 MR. PHILLIPS: Thank you, your Honor.

8 The Defendant respectfully moves to suppress all
9 statements made by the Defendant to any governing agent
10 or any evidence seized because of those statements
11 contained in the violation of the *Fourth, Fifth, Sixth*
12 and *Fourteenth Amendments* to the *United States*
13 *Constitution* and *Article I, Sections 3, 10 and 14* of
14 the *South Carolina Constitution*.

15 Essentially your due process, unlawful search and
16 seizure, right to counsel, and right against self
17 incrimination.

18 Specifically, your Honor, the Defendant hereby
19 request that the Court hold an in-camera evidentiary
20 hearing on the admissibility of any statements allegedly
21 made by the Defendant to any governing agent and or any
22 during a police investigation.

23 THE COURT: Let's do it. Solicitor, call your
24 witness.

25 SOLICITOR HAYES: Your Honor, the State calls

1 Investigator Leland Harrelson to the stand.

2 THE COURT: Sir.

3 (WHEREUPON, HUGH LELAND
4 HARRELSON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
5 AS FOLLOWS:)

6 DIRECT EXAMINATION - IN CAMERA

7 INVESTIGATOR LELAND HARRELSON BY SOLICITOR HAYES:

8 Q. Investigator Harrelson, could you tell us your full
9 name for the record please?

10 A. My name is Hugh Leland Harrelson, Junior.

11 Q. And what -- Who is your current employer?

12 A. I currently work for the City of Rock Hill.

13 Q. And to what Unit are you assigned?

14 A. I'm assigned to the York County Multi-Jurisdictional
15 Drug Enforcement Unit as an investigator.

16 Q. Are you aware of a trafficking methamphetamine and
17 accompanying gun charges against Mr. Jonathan Stanley
18 Ostrowski?

19 A. Yes, I am.

20 Q. Are you in fact the case agent for those charges?

21 A. Yes, I am.

22 Q. Did you and your Unit perform a search of Mr.
23 Ostrowski's house on January 25th, 2017?

24 A. We did.

25 Q. As a result of that search, what arrest warrants

1 did you procure on him?

2 A. A warrant for trafficking methamphetamine. A
3 warrant for a handgun. I can't remember. Can I look
4 at -- I got a copy of the warrant with me.

5 Q. Well, I can just short circuit a little bit. Would
6 that be a warrant for trafficking methamphetamine, a
7 warrant for possession of a weapon during the
8 commission of a violent crime?

9 A. Correct.

10 Q. A warrant for a pistol with serial number obliterated?

11 A. Correct.

12 Q. And a warrant for somebody who is a person
13 prohibited from having a firearm?

14 A. That is correct.

15 Q. After you secured those arrest warrants, did you
16 personally take Mr. Ostrowski into custody?

17 A. I did not.

18 Q. Who took him into custody?

19 A. The Chester Narcotic's Unit with the Chester County
20 Sheriff's Office.

21 Q. Okay. About how long did they take him into
22 custody after you'd gotten the arrest warrant?

23 A. Approximately two hours.

24 Q. Okay. And then after -- What did you do when you
25 learned that he was in custody in Chester?

- 1 A. I went to Chester to speak with him.
- 2 Q. Okay. And who was with you?
- 3 A. Investigator Atwell was with me.
- 4 Q. Was anybody else there with you?
- 5 A. No, sir.
- 6 Q. Did you get to speak to Mr. Ostrowski?
- 7 A. I did, yes.
- 8 Q. Where were you when you talked to him?
- 9 A. We were in a room at the Chester County Sheriff's
- 10 Office.
- 11 Q. And who all was in that room?
- 12 A. Mr. Ostrowski, myself, and Investigator Atwell.
- 13 Q. And that's it?
- 14 A. That's it.
- 15 Q. Did you read Mr. Ostrowski his *Miranda Rights*?
- 16 A. I did.
- 17 Q. Did -- And Mr. Ostrowski was under arrest obviously.
- 18 A. He was, yes.
- 19 Q. Did you begin asking him questions?
- 20 A. I did, yes.
- 21 Q. While you were asking him questions, did he ask for
- 22 anything like food or water?
- 23 A. He did not.
- 24 Q. Did he ask for a cigarette or did he ask for some
- 25 fresh air?

1 A. He did not.

2 Q. Did he ask if he could stand up and walk around or
3 anything like that?

4 A. He did not.

5 Q. Were you wearing a weapon?

6 A. I was, yes. Or, I do not believe I was. We were
7 in -- I think it was part of the jail so we had secured
8 our weapon in a locker before we actually went inside.

9 Q. So you were unarmed?

10 A. I was, yes.

11 Q. Okay. Where were you sitting versus where was
12 he sitting when y'all were talking?

13 A. Just at a table across from each other.

14 Q. Okay. Tell us what he -- Was he handcuffed at the
15 time?

16 A. He was not.

17 Q. Did he appear to be clear headed or did he appear
18 to be intoxicated?

19 A. He seemed to be clear headed.

20 Q. Do you think he was able to understand what you
21 were saying?

22 A. Yes.

23 Q. No language barrier or anything like that?

24 A. No, not at all.

25 Q. Do you think he understood the *Miranda Rights* when

1 you read 'em to him?

2 A. Yes.

3 Q. Did you ask him if he understood?

4 A. I did.

5 Q. And did he nod yes, or say yes, or?

6 A. I believe he stated yes.

7 Q. Did he immediately invoke them or did he talk to
8 you for a second?

9 A. He made one short statement and then decided not to
10 speak with me any more.

11 Q. Okay. When he did decide not to talk to you any
12 further how did he phrase it?

13 A. I cannot -- He stated that he wanted a lawyer.

14 Q. Okay. So in between the time you read him his
15 *Miranda Rights* and the time that he said he wanted a
16 lawyer, what did he tell you?

17 A. He stated there's some methamphetamine pipes inside
18 the house did belong to him.

19 Q. Okay. Did he admit or deny anything else in the
20 house?

21 A. He did not.

22 Q. So if you ask him if he had drugs in the house he
23 said yes or no?

24 A. Can I look at the Summary?

25 Q. Yes. Is there anything that would refresh your

1 recollection in this case?

2 A. Yes, sir.

3 Q. Would that be your Incident Report? Would that help
4 refresh your recollection?

5 A. It would, yes, sir.

6 SOLICITOR HAYES: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes, sir.

9 A. All right. Yeah, I ask Mr. Ostrowski if he had any
10 drugs in the residence and he stated no. Then he stated
11 that the methamphet pipes - methamphetamine pipes were
12 found in the residence did belong to him.

13 Q. Okay.

14 A. And then at that point he stated he wanted a
15 lawyer.

16 Q. Did you threaten Mr. Ostrowski in any way?

17 A. I did not.

18 Q. Did you strike him, or injure him, or withhold aid
19 from him if he was previously injured? Did you do
20 any of those things?

21 A. No, sir.

22 Q. So the only things he said to you was denying drugs
23 in the house and admitting meth pipes in the house?

24 A. That is correct.

25 Q. When he invoked his *Miranda Rights* what did you do at

1 that point?

2 A. I stopped talking to him and then we left.

3 Q. All right. Have you talked to him since?

4 A. I have not.

5 Q. Did you talk to him before that encounter?

6 A. I did not.

7 Q. So this is the entirety of the statements that
8 Jonathan Ostrowski provided in this case?

9 A. That is correct.

10 SOLICITOR HAYES: The Court's indulgence, your Honor.

11 THE COURT: Sure.

12 (PAUSE.)

13 BY SOLICITOR HAYES:

14 Q. Did you document reading *Miranda Rights* to Mr.
15 Ostrowski in any way?

16 A. I typically take a photograph of my *Miranda* card.

17 Q. All right. Investigator Harrelson, could you take
18 a look at this document? Is that your handwriting on
19 that document?

20 A. Yes, it is.

21 Q. Is that a copy of your *Miranda* card?

22 A. Yes, it is.

23 Q. And did you include that with your case folder?

24 A. I did.

25 SOLICITOR HAYES: Your Honor, at this time I would

1 move that in as Court's Exhibit 7.

2 MR. PHILLIPS: No objection.

3 THE COURT: All right, without objection introduced.

4 (WHEREUPON, COURT'S EXHIBIT NO. 7, IDENTIFIED AND
5 MARKED, RECEIVED INTO EVIDENCE.)

6 SOLICITOR HAYES: Your Honor, we have no further
7 questions for Investigator Harrelson on this issue.

8 THE COURT: Mr. Phillips.

9 MR. PHILLIPS: Thank you, your Honor. I'll be brief.

10 CROSS-EXAMINATION - IN CAMERA

11 INVESTIGATOR LELAND HARRESLON BY MR. PHILLIPS:

12 Q. So the only statements made to you during this
13 interrogation was an admission of meth pipe; ownership
14 of meth pipes in the house; is that right?

15 A. Yes, that's correct.

16 Q. And a denial of ownership of the drugs?

17 A. Yes.

18 Q. And this came after you read the *Miranda Rights*
19 *Form* that's marked as a Court's Exhibit?

20 A. That is correct.

21 Q. And after those two, the admission and the denial,
22 he invoked his right to counsel?

23 A. He did.

24 Q. Okay. And there were no further questions?

25 A. That is correct.

1 MR. PHILLIPS: No further questions, your Honor.

2 THE COURT: Thank you, sir, you may step down.

3 (WITNESS LEAVES WITNESS STAND.)

4 THE COURT: Anything further from the State on the
5 issue of the statements?

6 SOLICITOR HAYES: No further evidence just argument.

7 THE COURT: All right.

8 SOLICITOR HAYES: Your Honor, it's the State's
9 position that this was a freely voluntarily knowingly
10 made statement to law enforcement with the advice of
11 *Miranda* and without any threat, pressure or coercion, or
12 undue influence. We would ask that your Honor make that
13 preliminary finding so that the jury can hear it upon
14 appropriate proof and consider it in their discretion.

15 THE COURT: Did the Defense wish to offer any
16 witnesses on this issue?

17 MR. PHILLIPS: No, your Honor.

18 THE COURT: All right. Any argument?

19 MR. PHILLIPS: Just rest on present it to the jury.

20 THE COURT: All right. I do find the statements were
21 freely and voluntarily made. I will then allow that
22 statement to be presented to the jury. And of course I
23 will instruct the jury on what a statement is ---

24 MR. PHILLIPS: Yes, sir.

25 THE COURT: --- at the appropriate time.

1 All right, any other pretrial issues?

2 MR. PHILLIPS: Yes, your Honor, moving forward.

3 THE COURT: All right.

4 MR. PHILLIPS: The Defendant moves to prohibit
5 testimony that is based solely on -- and I guess this
6 will be encompassed with a -- also this is a *Sixth*
7 *Amendment* argument that will be encompassed with my
8 404(B) argument, but essentially moves to prohibit
9 testimony that's based solely on information from an
10 informant as inadmissible hearsay under the *Sixth and*
11 *Fourteenth Amendments* to the United States Constitution and
12 *Article I, Section 14* of the *South Carolina Constitution*
13 and of course Rules 801 and 802 for hearsay.

14 THE COURT: Let me stop you there. Is the State
15 relying on any testimony like that?

16 SOLICITOR HAYES: No, your Honor, we don't plan to
17 call any informants in this case.

18 MR. PHILLIPS: Well, then that's the issue, so then
19 the issue would be specifically allowing an officer's
20 testimony, or references of tips that implicates the
21 Defendant in illegal activity that's based on
22 information from informants, such as that they had
23 this knowledge of *narcotics activity*.

24 *Essentially in State v. Price*, that's 368 S.C. 494,
25 our Supreme Court held that an investigator who based

1 his testimony that the Defendant was an officer -- you
2 know, leader in a gang, solely from informants was
3 hearsay and was not admissible under any exception to the
4 rule, essentially finding the court said Richardson
5 testified that he solely based his testimony that
6 appellate was a supreme on statements from informants,
7 testimony was hearsay and the information was not
8 admissible under any exceptions.

9 So essentially it wouldn't be any discussion about
10 this underlying narcotics investigation from any tips.

11 THE COURT: All right. Well what's the State's
12 position on that?

13 SOLICITOR HAYES: I'm sorry, your Honor. Court's
14 indulgence.

15 THE COURT: Okay.

16 SOLICITOR HAYES: Your Honor, in all candor to the
17 Court, and this may be my fault, I don't really understand
18 where Mr. Phillips is going with this particular motion
19 because the State really doesn't have any particular
20 evidence like that. This is a search warrant execution.

21 The jury is gonna hear at nauseam about what was
22 found in the house by officers as opposed to --

23 THE COURT: I mean there's no CI's involved in this
24 case?

25 SOLICITOR HAYES: That would be the State's position

1 that ---

2 THE COURT: Okay.

3 SOLICITOR HAYES: --- there is background information
4 that law enforcement always has about what's going on in
5 the community, but this case is about a search warrant.

6 THE COURT: I mean there's not gonna be any
7 anonymous tip testimony ---

8 SOLICITOR HAYES: No, sir.

9 THE COURT: --- that there was drug activity going on in
10 this house?

11 SOLICITOR HAYES: No, sir.

12 THE COURT: The surveillance that was initiated at
13 this house was because -- and correct me if I'm wrong, I
14 don't want to put words in anybody's mouth -- was because
15 officers knew Ms. Peters from previous interaction and
16 I guess they were monitoring where she lived.

17 SOLICITOR HAYES: Your Honor, along those line, you
18 know, I don't mind telling the Court I instructed my
19 officers that we're gonna start this story in the early
20 morning hours of January 25th, 2017.

21 THE COURT: There you go.

22 MR. PHILLIPS: If that's where they're limiting the
23 scope and they put -- doesn't reference any prior
24 investigation then we are on the same page.

25 SOLICITOR HAYES: Your Honor, I will say of course

1 the State does intend to get into Mr. Ostrowski's cell
2 phone of which --

3 THE COURT: Which is a week before, the end of
4 December I believe.

5 SOLICITOR HAYES: No, they -- No, your Honor.

6 We intend to get into what is on the phone because
7 law enforcement was able to take possession of the phone
8 and analyze what's in the phone. So the State intends
9 to talk about Mr. Ostrowski's comments that he makes to
10 people on his cell phone --

11 THE COURT: From when to when? What time period?

12 SOLICITOR HAYES: This would be about a month before
13 the search warrant.

14 THE COURT: From January 3rd when it was served on
15 T-Mobile?

16 SOLICITOR HAYES: No, your Honor. That's actually --
17 That is the phone ping which is just --

18 THE COURT: Oh, okay.

19 SOLICITOR HAYES: That's just geo location which is
20 not really an issue in this case. Just a tool that law
21 enforcement had in it's arsenal but doesn't really --

22 THE COURT: I was looking at the wrong page.

23 SOLICITOR HAYES: We are talking about the text
24 messages that the defendant was sending out.

25 THE COURT: For what time period?

1 SOLICITOR HAYES: About a month before the search
2 warrant.

3 THE COURT: All right. So these are things that the
4 defense has in their possession through discovery?

5 MR. PHILLIPS: Yes, sir, they do.

6 THE COURT: Okay. All right.

7 SOLICITOR HAYES: But we're not gonna talk about
8 unless -- From the State's perspective this case starts
9 on January 25th, 2017.

10 THE COURT: All right.

11 SOLICITOR HAYES: Except for what is found on his
12 phone that predates but that is coming from the Defendant
13 and we argue that should come into evidence and we'll make
14 that argument at the appropriate time through the appropriate
15 witness.

16 THE COURT: Sounds pretty reasonable and fair to me.

17 Mr. Phillips, what do you say?

18 MR. PHILLIPS: We'll just move on to the next
19 motion. I think we --

20 THE COURT: All right. Yeah, it's really kind of
21 not timely right now because it's kind of advisory. I
22 mean, you know, you just heard the Solicitor say that
23 they're focusing on January 24th -- January 25th. They're
24 not going into tipsters and informants and stuff like that.

25 MR. PHILLIPS: Yes, your Honor.

1 THE COURT: And the only other thing they're going
2 into is your client's alleged text or phone activity.

3 All right, go ahead.

4 MR. PHILLIPS: Thank you, your Honor. The Defendant
5 moves to prohibit testimony of bad act evidence under
6 Rule 404(B) of the South Carolina Rules of Evidence, the
7 *Fifth and Fourteenth Amendments to the United States*
8 *Constitution*, and *Article I, Section 3 of the South Carolina*
9 *Constitution*.

10 Specifically, your Honor, allowing testimony of
11 alleged prior and subsequent drug investigations and
12 sales -- I know we just covered this -- that would
13 implicate the Defendant as inadmissible character evidence.

14 Specifically that the subsequent thing that I wanted
15 to address is he gets arrested by -- in Chester and there
16 are drugs that are present here in that and trying to make
17 sure we don't run into a mistrial type situation is why
18 I'm making sure we're --

19 THE COURT: All right. We're not gonna talk about the
20 drugs that were --

21 SOLICITOR HAYES: Your Honor, the State has a strong
22 argument that that should come in. This Defendant was
23 found in Chester with a gram of a crystal like substance in
24 his pocket mere hours after the search and arrest warrant had
25 been issued for his house back in Rock Hill.

1 We had case law on that point and we were intending
2 to go into but he was also caught with a substantial sum of
3 money as well as a cell phone so --

4 THE COURT: All right. We'll deal with that at the
5 appropriate time then.

6 SOLICITOR HAYES: Yes, sir.

7 THE COURT: I don't know what I'm gonna do on that.

8 I got to see how the evidence develops and I got to
9 hear testimony and see where we go.

10 SOLICITOR HAYES: Yes, your Honor, but the State does
11 have a substantial position on that.

12 THE COURT: Gotcha. We'll deal with that at the
13 appropriate time.

14 MR. PHILLIPS: And the only argument that I would
15 have would be that it could be one where we can't unring
16 the bell. Under State v. Gore 283 S.C. 118 when you have
17 these prior bad acts that are similar to what are in this
18 case it could be subsequent. And I have a case on point for
19 that.

20 But these bad act evidence that are similar to one for
21 which he's being tried, it says the danger of prejudice is
22 enhanced.

23 THE COURT: Right. I gotcha.

24 MR. PHILLIPS: And then you got the clear and
25 convincing evidence.

1 THE COURT: I understand that and. Now we gonna go
2 into that at the appropriate time. I mean who's your
3 witness that's gonna testify about when he was arrested?
4 What number witness is he or she?

5 SOLICITOR HAYES: Your Honor, that's a witness for
6 tomorrow morning. That would be the Chester DEU officer
7 that took Mr. Ostrowski into custody.

8 THE COURT: Okay. Good.

9 SOLICITOR HAYES: And he will be present.

10 THE COURT: And at that time then we'll will do an in-
11 camera hearing and hear what he's gonna have to say,
12 and then I'll make a decision as to whether or not I'm gonna
13 let him as the gate keeper testify about that.

14 MR. PHILLIPS: Perfect, your Honor. And in the same
15 vein the arguments for the 404(B) will go the same as
16 far as the text messages. And that evidence of prior
17 drug transactions would be inadmissible character
18 evidence when you're looking at the trafficking case.

19 The point of the case is whether the jury believes
20 there is enough circumstantial evidence that he's
21 in constructive possession.

22 THE COURT: Right.

23 MR. PHILLIPS: And, you know, intent to distribute
24 which is basically what these text messages will be
25 alleging is prejudicial.

1 THE COURT: Right.

2 MR. PHILLIPS: And I'm not trying to bleed our
3 arguments.

4 THE COURT: No, I'm with you. I mean, you know, and
5 I don't know where I's gonna be. I don't know. I'm
6 gonna deal with that at the appropriate time. I don't want
7 to tip my hand too much but, you know, I may let the cell
8 phone evidence in. I may not let the Chester evidence
9 in. I don't know. I'm gonna have to do that balancing
10 test. But I'm not gonna do it right now cause I want to
11 start the trial. What else?

12 MR. PHILLIPS: All right.

13 THE COURT: Anything else?

14 SOLICITOR HAYES: The State is ready for the jury,
15 your Honor.

16 THE COURT: All right. Anything else from the
17 defense?

18 MR. PHILLIPS: Just a moment, your Honor.

19 THE COURT: Okay.

20 MR. PHILLIPS: The only other thing I have would all
21 go directly to that and addressing it at the same time,
22 so if we could request a very short recess.

23 THE COURT: Yeah.

24 MR. PHILLIPS: In due candor.

25 THE COURT: Yeah, yeah. Everybody needs to take a

1 break. Let's take about a ten minute recess then we'll
2 start.

3 SOLICITOR HAYES: Yes, sir.

4 MR. PHILLIPS: Thank you, your Honor.

5 THE COURT: All right, we're down.

6 (COURT IN RECESS AT 03:11 P.M.)

7 (COURT BACK IN SESSION AT 03:24 PM.)

8 THE COURT: Thank you. You can be seated.

9 (DEFENDANT JONATHAN OSTROWSKI REENTERS COURTROOM
10 AT 03:27 P.M.)

11 THE COURT: All right, let's bring the jury in.

12 How many witnesses do you have for today, Solicitor?

13 SOLICITOR HAYES: Your Honor, our case agent is our
14 first witness and in candor to the Court probably the
15 longest witness.

16 THE COURT: Okay.

17 SOLICITOR HAYES: I don't anticipate being done with
18 our case agent today, so I imagine we'll just have to
19 break his testimony over night.

20 THE COURT: All right. That's all we got to do. You
21 know I got a meeting at 6 o'clock down in Winnsboro,
22 board meeting. I'm on the school board down there.

23 SOLICITOR HAYES: So you got to be out of here at
24 5:00?

25 THE COURT: Well, I'd like to be but I mean, you know,

1 --

2 SOLICITOR HAYES: It is no -- I appreciate your Honor
3 asking because it is not a problem for the State at all
4 if you need us to call no witnesses, or one witness, or
5 take all the witness and break over night that will not
6 cause any inconvenience for the State.

7 THE COURT: What do you want to do, Mr. Phillips?

8 MR. PHILLIPS: I'll leave it in your discretion.
9 Whatever works best for efficiency.

10 THE COURT: I mean I want to get as much done as we
11 can. It's already Tuesday of the week. You know I'm
12 swearing in Judge Matthews, new Family Court judge,
13 Thursday afternoon at 5 o'clock in Winnsboro, okay, which
14 means I'm gonna have to be out of here, you know, 3:30
15 on Thursday so that's my time constraints. I don't really
16 have any time constraints Friday and I don't have any
17 tomorrow so.

18 SOLICITOR HAYES: I think the State's case flows
19 along pretty quickly once we get rolling. We do have a
20 lot of witnesses and a lot of exhibits, but I don't think
21 anybody's on the stand for half a day or anything like
22 that.

23 THE COURT: Okay. Good. The bulk of everything is
24 gonna be tomorrow then, and if we need to run later
25 tomorrow we will.

1 SOLICITOR HAYES: Yes, sir.

2 THE COURT: Okay. But why don't let's -- you know
3 let's make it a full day. Hang on a second, I'm sorry.

4 (JURY ATTEMPTS TO ENTER COURTROOM.)

5 THE COURT: My bad. We're talking scheduling stuff
6 y'all and I'm trying to make it good for y'all.

7 That was my bad. I'm sorry, I thought the doors were
8 still closed. All right, so from a scheduling standpoint
9 let's run to about 5:00 today.

10 SOLICITOR HAYES: Yes, sir.

11 THE COURT: Okay. Then I'll just get to the meeting
12 when I get to the meeting. Okay. Sound good?

13 MR. PHILLIPS: Yes, your Honor.

14 THE COURT: All right. Beautiful. Now you can
15 bring 'em in. My bad.

16 Sorry about that. Y'all come on in.

17 (JURY ENTERS COURTROOM AT 03:27 P.M.)

18 THE COURT: All right, once again thank you very much,
19 ladies and gentlemen of the jury. My apologies for
20 stopping you right there. I was talking scheduling stuff
21 with the lawyers, just try to figure out what we're gonna
22 do the rest of the day so as not to make us go too long
23 today so, and we got that resolved so we can go ahead
24 and get started, okay.

25 Let me talk to you for a brief moment. Please give

1 me your undivided attention and then I'll hand it off to
2 the lawyers to make opening statements to you if they
3 wish too.

4 Before we begin the trial let me tell you that this
5 trial's gonna be very different, probably very different
6 from what you might expect. Many people don't have the
7 chance to attend actual court sessions much less
8 participate in them like you're doing right now. And of
9 course those people tend to think, maybe like you, that
10 what they see on TV, or in movies, or read in books, is
11 always the trials are. They tend to think that trials
12 are always full of riveting circumstances, intense
13 drama, all kinds of action.

14 You know while that may be true at times, this trial
15 is not for entertainment, ladies and gentlemen. It is
16 a fundamental part of our democracy to make sure that
17 an effort -- Excuse me, to make sure that justice is done
18 between the parties before the Court. In making sure that
19 justice is done can often times be a slow repetitive or
20 deliberate process, the opposite of what you might be
21 expecting, okay.

22 And this courtroom is a place of honor, dedicated
23 to the protection and preservation of citizen rights
24 through what many have called the greatest just sys --
25 greatest justice system ever created. The attorneys who

1 are appearing before you are advocates for the party's
2 they represent. The solicitor's represent the State of South
3 Carolina and the Defense lawyers represent the Defendant.

4 But first and foremost, ladies and gentlemen, they are
5 officers of this court sworn to uphold the integrity and
6 fairness of our judicial system and to help you reach a
7 verdict. You should expect them therefore to be
8 professional, competent and ethical in the representation of
9 their client's interest. But remember, you took an oath
10 earlier today to try this case and to reach a verdict so you
11 are also expected to act the same way. Again, I thank you
12 for your service to the State of South Carolina and to
13 York County.

14 Let me tell you a little bit how a trial proceeds so
15 you'll have a good idea about what's gonna be happening.
16 First the State's gonna make an opening statement to you
17 and that's where the State's lawyers, or the Solicitor,
18 gets up and gives you an outline about what he, or she,
19 believes the evidence will show. Now statements by
20 lawyers to you, whether ir be closing arguments or opening
21 statements, they're not evidence. It's simply that
22 lawyer's view of the evidence, okay. After the State does
23 an opening statement the Defense can make an opening
24 statement if they want to but they don't have to and I'll get
25 into that for reasons later.

1 Now, following opening statements you will then hear
2 - we will enter what's called the testimony and evidence
3 phase of the trial. That's where you will hear testimony
4 from various witnesses as well as receive any physical
5 exhibits which may be introduced into evidence. And
6 following the completion of the testimony and evidence
7 phase of the trial, that's when the lawyers once again get
8 to speak directly to you by way of what's called closing
9 statements, or closing arguments, okay. And that's when
10 the lawyers will try to persuade you as to what your view
11 of the facts should be.

12 After all that, that's when I will instruct you on
13 the law as it pertains to the issues which have arisen
14 in this case. After I've completed my instructions to you
15 that's then, ladies and gentlemen, the first time you'll
16 be able to begin discussing this case amongst yourselves
17 in your jury room, because you can't discuss it until you
18 hear everything, and until you know what the law is gonna
19 be that I'm gonna give it to you, okay.

20 Now, as you know this is a criminal case that's been
21 brought by the State of South Carolina. The State --

22 All right. The State has charged the Defendant
23 with trafficking methamphetamine; possession of a weapon
24 during the commission of a violent crime; possession of
25 a handgun with serial number obliterated and possession of

1 a weapon - I apologize, I thought I had - yeah, my law
2 clerk's got it. And possession of a handgun by a person
3 convicted of a crime of violence.

4 All right, so those are the charges against the
5 Defendant. And of course these charges are contained on
6 what's called Indictments. Now, ladies and gentlemen,
7 these indictments aren't evidence of anything. They can't
8 be considered by you as evidence to anything. They're
9 simply the written description of the criminal charges
10 made against a person and that's the way these cases come
11 to court and that's all they are, okay.

12 Now, the Defendant has pled not guilty to these
13 charges and is presumed innocent unless and until proven
14 guilty beyond a reasonable doubt. I will describe that
15 in much more detail at the conclusion of the case when I
16 speak with you again, but a reasonable doubt is the kind
17 of doubt that would cause a reasonable person to hesitate
18 to act. Now a defendant has the right not to testify
19 and never has to prove innocence or present any evidence.
20 The burden of proof is always upon the State of
21 South Carolina.

22 Now it's gonna be your duties, ladies and gentlemen, to
23 decide from the evidence what the facts are. You, and you
24 alone, are the judges of the facts. You will hear the
25 evidence, you will look at the - listen to the testimony,

1 you will see whatever physical evidence is presented, you
2 will decide what the facts are, and then when you start
3 deliberating you will apply those facts, as you find them
4 to be, to the law that I give you and that's how you reach
5 a verdict.

6 Now in doing so, ladies and gentlemen, you must
7 follow the law whether you agree with it or not. Please
8 don't take anything I may say or do during the trial as
9 indicating what you think I think of what the evidence
10 is because it doesn't matter what I think what the
11 evidence is. That's your job. You're the judge of the
12 facts, I'm the judge of the law.

13 Now just like rules which governs sports and other
14 activities, we have certain rules of court that determine
15 what can come into evidence, okay. And we have the
16 evidence rules. And these are issues of law that me as
17 the trial judge that I have to decide, okay. When a lawyer
18 asks a question, or offers something into evidence, and
19 the lawyer on the other side thinks that it's not permitted
20 by the rules, that lawyer may object. Y'all seen that on
21 TV or in the movies - objection, all right. If I over rule
22 the objection that means the question can be answered, or
23 the thing can come into evidence. If I sustain an
24 objection that means the question cannot be answered, or
25 the thing cannot come into evidence.

1 Now whenever I sustain an objection, or deny a motion
2 to admit something into evidence, you must ignore the
3 question, or the existence of the reported exhibit, and
4 must not guess or speculate what the answer would have
5 been, or the thing would have shown because, I would have
6 made a legal ruling. Now remember, you can only go by
7 the evidence received in this courtroom; not by extraneous
8 stuff, okay. And that's why we have this. Nobody's
9 trying to keep anything from you, okay. We just wanted -
10 The reason we have these evidence rules is to make sure
11 that you get the best evidence possible so you can reach
12 your verdict, okay.

13 Now, sometimes it may be necessary for me to
14 request that you leave the courtroom while I discuss with
15 the attorneys various legal issues which may arise. Now,
16 again if this occurs, don't speculate about what we're
17 talking about, or the reason you were ask to leave. This
18 is simply a procedure that all courts and all lawyers
19 use to resolve issues of law, okay.

20 From time to time just like we did during the jury
21 selection process, I'll have the lawyers come up here
22 rather than make y'all leave the courtroom. And again,
23 when we're doing this and we're whispering, we're not
24 trying to keep anything from you. We're just trying to
25 make sure that you get the best information possible, okay.

1 Now in deciding the facts of this case, ladies and
2 gentlemen, you may have to decide which witnesses to
3 believe and which witnesses, or evidence, not to believe.
4 You can believe everything a witness says, only part of
5 it, or none of it. That's your power as the finder's
6 of fact.

7 Now you're not gonna be allowed to take notes during
8 the trial, okay, so you're gonna have to pay close
9 attention to the way and what the witnesses testify to so
10 you'll be able to accurately discuss everything during
11 your deliberations. And at the end of the trial you're
12 gonna have to make your decision based on the evidence
13 presented, okay. You're not gonna have a written
14 transcript of the trial to consult, and it's very difficult
15 and time consuming for my court reporter over here to
16 read back or play back lengthy testimony, so please pay
17 close attention to everything as it's given so you can
18 accurately discuss everything whenever you begin to
19 deliberate.

20 Now, we're almost ready to start. And let's talk
21 about deliberations, and until I tell you to start
22 deliberating you cannot discuss this case with anyone
23 including yourselves, your fellow jurors. You can't -
24 You know when we break today you're gonna go home tonight,
25 okay. I'm not naive, I'm sure you're gonna tell your

1 significant other or your friends or family, yeah, I'm
2 sitting on a jury, okay, it's a criminal case and
3 that - That's all you need to go into, okay. I'm not
4 naive. You don't need to go on social media and talk
5 about what you're doing and advertise of that. And what's
6 worse than that is going and doing any independent
7 research on the issues which have arisen. You can't do
8 that, okay.

9 You're sole oath that you took, your duty is to make
10 your decision from the evidence presented in this
11 courtroom. Not out there, not on the internet, not in
12 the news media, not on TV, not on radio, but from this
13 courtroom, okay. So you can't do anything like that. If
14 you do you're violating your oath. And if anybody tries
15 to talk to you about what you're doing in this case and
16 persist in doing so, you please let me know or let the
17 bailiff's know and I assure you we'll take care of that,
18 okay.

19 Now it's important, ladies and gentlemen, that you
20 keep an open mind and not decide anything in this case
21 until all the evidence has been presented, the parties
22 have made closing arguments; until I have given you the
23 law. It is your solemn responsibility to determine the
24 guilt or innocence of the defendant, and your verdict must
25 be based solely on the evidence presented to you in this

1 trial, and on the law as I instruct you at the close of
2 the trial. Once again, thank you very much for your
3 attention. I'll ask you to give the same attention to the
4 lawyers as they present opening statements to you.

5 Solicitor.

6 OPENING STATEMENT BY SOLICITOR HAYES:

7 SOLICITOR HAYES: Thank you, your Honor. Counsel.

8 On January 25th, 2017 officers with our York County
9 Multi-Jurisdictional Drug Enforcement Unit, and the Federal
10 Drug Enforcement Administration, performed a lawful and
11 valid search warrant search of Mr. Jonathan Ostrowski's
12 house. And what they found in that house that day is
13 why we are here right now.

14 And so what I want to do over the next few moments is
15 just give you a quick road map of the facts that you're
16 gonna hear, the witnesses and the evidence that are gonna
17 be in court, and the law that you'll have to apply at the
18 very end of this trial when the judge gives it to you and
19 sends you into the jury room to deliberate.

20 The facts of this case are very straight forward. In
21 the early morning hours of January 25th 2017, Investigator
22 Leland Harrelson of the York County Multi-Jurisdictional Drug
23 Enforcement Unit and his team were on Bailey Avenue in
24 Rock Hill. And Investigator Harrelson was doing
25 surveillance on 162 Bailey Avenue and saw Mr. Ostrowski

1 leave. Officers then throughout the course of the day got
2 the search warrant and went inside the house when no one was
3 there. And you will hear what they found, and you will see
4 what they found because they documented what they did
5 through pictures. And you will hear testimony from all
6 the officers --

7 MR. PHILLIPS: Your Honor, we have a matter of law.

8 THE COURT: All right.

9 MR. PHILLIPS: I apologize.

10 THE COURT: Let me have the lawyers come up here.

11 (BENCH CONFERENCE HAD OFF THE RECORD OUT OF THE
12 HEARING OF THE JURY AT 03:41 P.M.)

13 THE COURT: All right. See that's one of those
14 examples of a bench conference, okay.

15 Solicitor, you may proceed.

16 SOLICITOR HAYES: Thank you, your Honor.

17 And so as I was saying, the officers who went into
18 that house documented what they saw through photographs to
19 really give you a sense of what the inside of that house
20 was like. But then they also seized a lot of the evidence
21 that they found, particularly items that are illegal. And
22 as you will hear at nauseam over the course of this trial
23 methamphetamine is illegal here in South Carolina and just
24 everywhere, and especially in large quantities. And you
25 will hear, and you will see, that officers seized over

1 31 grams of methamphetamine from 162 Bailey Avenue.

2 And that number is very important because the way
3 drug charges work in South Carolina is they're based
4 on weight. The weight of the drug tells us how much is
5 really there. And you'll hear from the officers who deal
6 with this everyday what 31 grams of methamphetamine
7 actually means. And I don't blame you if you don't know
8 it now because I didn't know before I started this job
9 what different quantifies of different drugs look like and
10 what different quantities of different drugs can actually
11 do. Because 31 grams if you look at it maybe it's not that
12 much, but when you hear from the officers who deal with
13 this on a daily basis, you will understand that is
14 a significant quantity. And it's a quantity that rises
15 to the level of trafficking, because that is what Mr.
16 Ostrowski is charged with, trafficking methamphetamine
17 greater than 28 grams.

18 And when you hear trafficking you might think of
19 boats coming into a harbor full of drugs underneath the
20 seat. Or people coming across hidden tunnels under a
21 border or people with eighteen wheelers with boxes of soap
22 in the back but there's really a bunch of drugs in the
23 front. And that would all qualify as trafficking. Don't
24 get me wrong, that certainly counts. But it also has a
25 more day to day application.

1 People traffic drugs in much more mundane ways. Ways
2 that you might not think of right off the top of your head
3 because its not something flashy or not something that would
4 make the news with a bunch of pictures. Its 31 grams in a
5 house, more mundane application but trafficking none-the-
6 less.

7 And you're gonna hear from the judge the exact
8 legal definition of trafficking and it's very important
9 for you to have this road map in your mind as you hear
10 the evidence in this case. Trafficking in South Carolina
11 is the constructive possession of 28 grams or more of
12 methamphetamine. That's it. That's what trafficking is.

13 And that phrase constructive possession is very
14 important and will come up throughout the entirety of this
15 trial. Constructive possession is just a simple legal
16 concept for attaching ownership of objects to people when
17 that object is not on your person at that time. So it's
18 fancy words but it's a straight forward concept.

19 Constructive possession is how we attach ownership
20 of objects to people that object was not necessarily on
21 their person at that particular time. And this is something
22 that we do everyday without even thinking about it in every
23 area of our lives. Say for instance you get called for
24 jury duty and you show up on a Monday morning and you're
25 not really excited to be there but you have to be there

1 and you walk in and what's the first thing -- I know y'all
2 can't relate to this -- but what's the first thing that
3 happens? The deputy tells you you got to leave your cell
4 phone in the car. So what do you do? You turn around
5 and you go back to your car and you lock up your cell
6 phone in the car and you come back in for jury duty.

7 Do the person who locked their phone in the car give
8 up ownership of that phone? Of course not. In fact they
9 wanting to take a break so they go back and check their
10 phone. They never gave up any rights with respect to
11 that phone. They still own that phone all day long. It's
12 just not on their person at that time. That's
13 constructive possession. And that applies to good things
14 like your phone and bad things like methamphetamine.

15 And so that's really the heart of this case. You're
16 going to see the witness or hear the witnesses, see the
17 photos, look at the physical evidence in front of you on
18 the question of constructive possession of that 31 grams
19 of methamphetamine. And that constructive possession is
20 gonna be established to you through many different avenues
21 but primarily the fact that that's Mr. Ostrowski's house.
22 It was found in a pair of men's pants, it was -- Excuse
23 me, I lost my chain of thought. Those are the avenues
24 that we will use to show you constructive possession
25 of that methamphetamine to show Mr. Ostrowski had it even

1 though it wasn't on his person at the time the officers
2 found it. Keep that cell phone example in your mind. Just
3 because something is in another place doesn't mean you
4 don't still own it.

5 But then you're gonna hear about three other charges
6 charges that are important in this case and that go along
7 with the methamphetamine charge. The first is possession
8 of a weapon during the commission of a violent crime.

9 Now what in the world is that? That's exactly
10 just like it sounds. Our legislature has listed certain
11 crimes and put a label on them as violent. And that is a
12 a legal phrase; that it includes things that you might
13 use the common definition of violent: Bank robberies,
14 burglary, that type of thing. But it also includes
15 other crimes that are added onto the list that may not
16 involve personal injury or blood shed at that moment
17 and trafficking methamphetamine is one of those crimes.

18 So what that means is if somebody that's trafficking
19 methamphetamine they can't have a gun. They are not
20 allowed to possess a gun while they're doing their
21 methamphetamine operations. So that's another charge that
22 will be in front of you at the end of the day because a gun
23 was located in the house as well.

24 And we have a special provision of law in South Carolina
25 that in a drug case somebody has drugs in their house,

1 and they have a gun nearby, because guns and drugs
2 mixed together cause bad things, you're not allowed to do
3 it. So when's there a connection between drug activity and
4 firearms, it's possession of a weapon during the commission
5 of a violent crime.

6 And there's two other gun charges that will be in
7 front of you as well. Possession of a gun with the
8 serial number obliterated. And that is just like it
9 sounds. It's illegal to have a gun with no serial
10 number on it because we have to be able to identify these
11 things. It's important to the State to know where that
12 gun came from, and when a serial number has been destroyed
13 on the gun, it's illegal to have that gun just because
14 it doesn't have a serial number on it. And so the gun
15 that was found in this case you'll also see has no serial
16 number.

17 And the final charge is possession of a handgun by
18 a person convicted of a crime of violence. And crimes of
19 violence are of the type that when somebody's been
20 convicted of them they are no longer allowed to have a
21 firearm anymore in South Carolina. No matter what they're
22 doing, even if they're just sitting in their house, they
23 are not allowed to have a gun because of that conviction.

24 And you will hear evidence and testimony that Mr.
25 Ostrowski has been convicted of a crime that prohibits

1 him from owning a firearm. So with that one gun comes
2 three charges. And so the gun and the drugs together
3 give us the four charges that you will ultimately decide.

4 And so I started this case telling you that I wanted
5 to give you a road map of the facts, the evidence, and the
6 law, and I hope that I've done that and I hope that it
7 hasn't been too boring, but that's what we're gonna
8 present to you over the next couple of days.

9 The facts related to what was found at 162 Bailey
10 Avenue and how it is tethered to Jonathan Ostrowski
11 that's the facts you're gonna hear. The evidence is gonna
12 be on the table in front of you, and there's a lot of it,
13 and it's gonna take us a while to get through it, and I'm
14 sorry about that in advance but that's what we have to do.
15 As the judge said it's not all flash. A lot of it is
16 laying the evidence out on the table. And then the law
17 as I have just explained it to you and the judge will
18 charge you at the end trafficking methamphetamine is
19 very straight forward.

20 Constructive possession of 28 grams or more;
21 possession of a weapon during the commission of a violent
22 crime, possession of a firearm with the serial number
23 obliterated, and possession of a firearm by a person
24 convicted of a crime of violence are all just like they sound
25 and they will be very straight forward for you at the end.

1 So that's your road map because we are going to one
2 very specific destination. And when I get up in front of
3 you at the end of this case and close, I'm gonna ask you,
4 and I'm gonna ask you to find Mr. Ostrowski guilty
5 because that's where the road has led us. Thank you.

6 THE COURT: Thank you, Solicitor.

7 Mr. Phillips.

8 MR. PHILLIPS: Thank you, your Honor.
9 Counsel.

10 SOLICITOR HAYES: Yes, sir.

11 OPENING STATEMENT BY MR. PHILLIPS:

12 MR. PHILLIPS: John, please stand up for me.

13 (DEFENDANT STOOD AT DEFENSE TABLE.)

14 MR. PHILLIPS: ladies and gentlemen, this is Jonathan
15 Ostrowski. You heard from the very beginning as this
16 trial when they were about to pick you for this jury that
17 this is the *State versus Jonathan Ostrowski*. You got to
18 look at what that means. The *State versus Jonathan*
19 *Ostrowski*. The government is also on trial here; that it's
20 often times lost in jury trials that the case is all
21 about Mr. Ostrowski. but its also about the government.

22 The government has all the power, all the money and
23 all the resources to accuse you of a crime, to arrest you,
24 and your only constitutional protection, your own remedy
25 is this courtroom right here, is to come before you declare

1 your innocence and defend yourself.

2 (DEFENDANT RETAKES HIS SEAT.)

3 MR. PHILLIPS: What you haven't heard in this case is
4 that he wasn't present during that execution of the search
5 warrant. He wasn't there. That there is a woman named
6 Heather Westerfield who says the drugs are hers. So he's
7 not there, there's somebody else saying that they're her
8 drugs, and at the end of the day it's all about holding
9 the government to their burden of proof.

10 Now, the presumption of innocence that the judge
11 talked to you about it's not just some phrase, it's not
12 just some lip service that we provide. It's through blood
13 sweat and tears of our military, our armed forces, that's
14 given us these constitutional protections. With that
15 being said, it's you to analyze the credibility of the
16 State's case. The witnesses that are gonna be on this
17 stand, that's the evidence from which you get to decide
18 whether they've crossed that threshold; whether they've
19 met that burden, that you have the sworn duty to hold
20 'em to it.

21 If after you've heard the State's opening and you
22 thought he's probably guilty, if you thought that, you
23 need to take a step back. You have a sworn duty. There's
24 no testimony, there's been no evidence presented, you
25 have the sworn duty to take a step back and say I have to

1 give him a fair trial. I swore under oath before God
2 to give him a fair trial, to listen to the evidence and to
3 hold them to prove it.

4 I like to often say one of the things about this
5 sworn duty is it's easy when - and I'm guilty of it as
6 well - and it's obviously when you're sitting at home and
7 you turn on the news and a crime story pops up it's easy
8 to go, God, I'm glad they arrested the guy. I can't
9 believe that happened. Well, that's a classic example
10 of making that assumption, what you swore not to do today.

11 You don't know any facts about that case. You don't
12 know any specifics about it. A person could be a hundred
13 percent completely innocent and all you heard was a
14 snippet on the news. But what you did today was you swore
15 that you'll take the evidence that's presented from that
16 witness stand, and you will decide the credibility, and
17 based on your duty as to whether they've proven beyond a
18 reasonable doubt of his guilt, of a man who was not there,
19 or the person who says the drugs are hers. This is
20 important. At the end of the day this case is about faith.

21 When someone declares their innocence and has
22 requested their jury trial, they have faith; they have
23 faith in your verdict. When we choose you as jurors they
24 have faith that you will be fair, that you will listen
25 closely, and at the end of this journey that we will have

1 throughout the trial he has faith in your verdict and will
2 have faith that you will find him not guilty based on the
3 evidence that's presented in this courtroom. Not based on
4 mere suspicion because you will hear when the judge later
5 on in the trial the mere suspicion is not enough. The
6 law says just because something is suspicious, and when
7 you put it together, that that's not enough to carry the
8 day. Mere suspicion is not enough. Thank you.

9 THE COURT: Thank you, Mr. Phillips.

10 All right, the State can call it's first witness.

11 SOLICITOR HAYES: Yes, your Honor. May I approach
12 briefly for just a second?

13 THE COURT: Yes, sir.

14 (BENCH CONFERENCE HAD OFF THE RECORD OUT OF THE
15 HEARING OF THE JURY AT 03:57 P.M..)

16 THE COURT: He's about to call a witness, we have
17 -- there are some other witnesses which are under
18 subpoena for today and we'll go ahead and let them go
19 because we're only gonna get to one witness today.

20 All right, Solicitor, you can call your witness.

21 MR. PHILLIPS: And, your Honor, and just to --

22 THE COURT: The same with you.

23 MR. PHILLIPS: And at the appropriate time renew all
24 motions and put on the record what we discussed.

25 THE COURT: Yeah, we'll do all that.

1 MR. PHILLIPS: Thank you.

2 THE COURT: All right.

3 SOLICITOR HAYES: Your Honor, the State calls
4 Investigator Leland Harrelson to the stand.

5 THE COURT: Okay, sir.

6 (WHEREUPON, HUGH LELAND
7 HARRESON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
8 AS FOLLOWS:)

9 DIRECT EXAMINATION

10 INVESTIGATOR LELAND HARRELSON BY SOLICITOR HAYES:

11 Q. Investigator Harrelson, can you tell us your full
12 name, please?

13 A. My full name is Hugh Leland Harrelson, Junior.

14 Q. And who is your current employer?

15 A. I'm employed by the City of Rock Hill as a police
16 officer and I'm currently assigned to the York County
17 Multi-Jurisdictional Drug Enforcement Unit as an
18 investigator.

19 Q. How long have you been a police officer?

20 A. I've been a police officer for ten years and I've
21 been a narcotics investigator for the past seven.

22 Q. Were you on duty on January 25th, 2017?

23 A. Yes, I was.

24 Q. Did you perform a Search Warrant of 162 Bailey
25 Avenue on that date?

1 A. I did.

2 Q. And as well, as members of your team?

3 A. Yes, that is correct.

4 Q. Did that Search Warrant result in charges against
5 Mr. Jonathan Stanley Ostrowski?

6 A. It did.

7 Q. Is Mr. Jonathan Stanley Ostrowski present in the
8 courtroom?

9 A. He is.

10 Q. What is he wearing and where is he seated?

11 A. That's the gentleman in the blue shirt to the far
12 right.

13 Q. And the Search Warrant was performed at 162
14 Bailey Avenue in Rock Hill?

15 A. That is correct.

16 Q. What county is that in?

17 A. That's in York County.

18 Q. Tell us whereabouts 162 Bailey Avenue is.

19 A. It runs off of Ebenezer Road. It's near -- There
20 is a church, I think it's Ebenezer -- I think it might
21 be Baptist or Methodist -- but it's right at the corner
22 next to that church, and Bailey Avenue runs off of
23 Ebenezer near Hollis Lakes Road if you're familiar
24 with that.

25 Q. So it would be between the hospital and the airport

1 on Ebenezer Road?

2 A. Yes, that is correct.

3 Q. Okay. What time did you arrive in the area of 162
4 Bailey Avenue on January 25th?

5 A. Around 7:00 a.m. in the morning.

6 Q. Okay. What did you see when you got there?

7 A. I saw Mr. Ostrowski get into his vehicle and leave
8 the residence.

9 MR. PHILLIPS: Same prior objection.

10 THE COURT: All right. Over ruled.

11 BY SOLICITOR HAYES:

12 Q. Please continue, sir.

13 A. Shortly after I had gotten there I observed him
14 leave.

15 Q. And how long did you continue to sit there?

16 A. I sat there a couple of more hours until kind of the
17 late morning until I saw some other activity at the
18 residence.

19 Q. Okay. At one point did your team obtain a search
20 warrant for 162 Bailey Avenue?

21 A. We did, yes.

22 MR. PHILLIPS: Renew prior objection.

23 THE COURT: All right. Over ruled.

24 BY SOLICITOR HAYES:

25 Q. About what time did you go into the house to perform

1 that search warrant?

2 A. Approximately right around 12 o'clock noon that
3 afternoon.

4 Q. Okay. And how long were you inside the house
5 performing the search warrant?

6 A. We were there for several hours. I would say two
7 to three hours from start to finish.

8 Q. Now, Investigator Harrelson, in the course of your
9 duties as a narcotics officer, have you come into
10 contact with methamphetamine?

11 A. I have, yes.

12 Q. How often do you come into contact with
13 methamphetamine?

14 A. Quite often here in York County.

15 Q. Do you come into contact with methamphetamine
16 users?

17 A. I do, yes.

18 Q. Do you come into contact with methamphetamine dealers?

19 A. I have, yes.

20 Q. Do you come into contact with methamphetamine
21 traffickers?

22 A. I have, yes.

23 Q. Do you come into contact with methamphetamine
24 paraphernalia?

25 A. Yes, I have.

1 Q. Are you familiar with how to package or how people
2 prepare and package methamphetamine?

3 A. Yes, I am.

4 Q. Are you familiar with the street value of
5 methamphetamine?

6 A. I am, yes.

7 Q. Are you familiar with the for lack of a better term
8 wholesale value of methamphetamine?

9 A. Yes, I am.

10 Q. Are you familiar with the average methamphetamine
11 dose --

12 MR. PHILLIPS: Your Honor.

13 THE COURT: Yes.

14 MR. PHILLIPS: I know we're trying to speed things
15 along a little bit but the leading.

16 THE COURT: All right. Well, I mean noted.

17 Just try not to lead too much but I'm gonna --

18 SOLICITOR HAYES: Your Honor, we're laying the
19 foundation ---

20 THE COURT: I gotcha.

21 SOLICITOR HAYES: --- to qualify Investigator
22 Harrelson.

23 THE COURT: Thank you.

24 BY SOLICITOR HAYES:

25 Q. Investigator Harrelson, are you familiar with dose

1 units that people typically use methamphetamine at?

2 A. Yes, I am.

3 Q. How many years experience do you have investigating
4 methamphetamine?

5 A. Seven years.

6 Q. And you obtained this knowledge from your on the
7 job training and experience?

8 A. Yes I have and some occasional training that I do
9 outside of my agency.

10 Q. Can you tell us what meth related training's you
11 have?

12 A. I've actually certified as a methamphetamine lab
13 technician which is if someone is manufacturing
14 methamphetamine to disassemble the lab and dispose of
15 it properly. Also I've taken some other training
16 involving, you know, how people sell, package and deliver
17 illegal narcotics.

18 Q. How many methamphetamine related arrest would you
19 say you make in a month?

20 A. In a month probably four or five times a month we're
21 dealing with somebody in some sort of methamphetamine.

22 SOLICITOR HAYES: Your Honor, at this time I would
23 move to have Investigator Harrelson qualified as an
24 expert in methamphetamine packaging, distribution,
25 paraphernalia, and valuation.

1 MR. PHILLIPS: We would object to that.

2 THE COURT: All right. Do you wish to voir dire the
3 witness about his qualifications?

4 MR. PHILLIPS: Your Honor, may we approach real quick?

5 THE COURT: Yes, sir.

6 (BENCH CONFERENCE HELD OFF THE RECORD OUT OF THE
7 HEARING OF THE JURY AT 04:04 P.M.)

8 CROSS-EXAMINATION - VOIR DIRE

9 INVESTIGATOR LELAND HARRELSON BY MR. PHILLIPS:

10 Q. As far as your training and experience, what specific
11 classes have you had regarding methamphetamine?

12 A. I've had a -- Like I said earlier as far as the
13 methamphetamine technician as far as disassembling labs.
14 I actually went to a street -- I think it was a street
15 crimes drug class several years ago, and that's in
16 recognizing, you know, street level drugs which
17 methamphetamine is one of 'em along with several other
18 ones, and it's dealing with, you know, where people store
19 the drugs, how they package 'em and, you know, also deliver
20 'em to their clients.

21 Q. How much time did you spend on meth?

22 A. Oh meth probably an hour, hour and a half.

23 Q. So about an hour and a half of training about meth?

24 A. Yes, that is correct.

25 Q. And through these classes, your other experience

1 just in being a narcotics officer through arresting
2 defendant's; is that right?

3 A. That's correct. Arresting defendants, also
4 interviewing and speaking with them, you know,
5 interacting with them in different situations.

6 MR. PHILLIPS: I have no further qualification
7 questions. Just the argument.

8 THE COURT: All right. Any further questions
9 regarding his qualifications?

10 SOLICITOR HAYES: The Court's indulgence, your Honor.

11 THE COURT: All right. And, ladies and gentlemen, let
12 me take this opportunity to explain to you, when somebody
13 is qualified by a particularized skill, or training, or
14 education they can be classified as an expert witness in
15 court. In other words an expert witness is a witness who
16 can give an opinion about something.

17 Normally when a person testifies in court they can't
18 give an opinion. They can simply testify about what they
19 saw, heard, smelled, et cetera, something of the like. But
20 exceptions exist for witnesses who are classified as
21 experts, okay. And so what's at issue now is whether or
22 not the witness is gonna be classified as an expert and
23 that's a decision that I have to make.

24 And do you have any questions, Solicitor, about
25 qualifications before I make a -- hear from y'all legal

1 arguments?

2 BY SOLICITOR HAYES:

3 DIRECT EXAMINATION- VOIR DIRE

4 INVESTIGATOR LELAND HARRELSON BY SOLICITOR HAYES:

5 Q. Investigator Harrelson, based on your first-hand
6 experience, do you have knowledge about the manner in
7 which meth is used, dealt, and trafficked on the streets
8 of York County?

9 A. I do, yes.

10 SOLICITOR HAYES: No further questions, your Honor.

11 THE COURT: All right. Thank you.

12 Ladies and gentlemen of the jury, if you'll please
13 go back to your jury room, I do have a matter of law I
14 need to take up with the lawyers. Don't talk about the
15 case.

16 (JURY EXITS COURTROOM AT 04:09 P.M.)

17 THE COURT: Yes, sir.

18 MR. PHILLIPS: Thank you, your Honor. The Defendant
19 objects to the witness being qualified as an expert in
20 those fields. The applicable case for nonscientific
21 experts are when qualifying an expert whose testimony is
22 nonscientific is *State v. White*, that's 382 S.C. 265.

23 Specifically our arguments in the objection would be
24 one, starting at Rule 702 of the *South Carolina Rules of*
25 *Civil Procedure*, that specialized knowledge, what your

1 Honor just explained to the jury; how it would aid the
2 trier of fact. In this case as the Solicitor stated in
3 opening that this case is a constructive possession case
4 and the State, I assume, will present a lab forensic
5 technician to say that the drugs that were seized were
6 tested and tested positive for methamphetamine.

7 In this case its for the trier of fact, for the jury
8 to determine whether he is in possession of those drugs.
9 Going into further discussion about how its packaged,
10 street value, how distributions occurred, all this extra
11 stuff starting at Rule 401 is not relevant.

12 And second, under Rule 403 it would just cause or
13 its approbative value if -- that it does have would be
14 substantially out weighed by it's prejudicial effect and
15 would only serve to confuse the jury, to mislead them on
16 the fact that the whole purpose of what they really are
17 here to decide, which is what the State said in their
18 opening, is whether he is in constructive possession of
19 those drugs.

20 To qualify him as an expert one, it doesn't fall under
21 Rule 702 and its truly adding to the jury's misleading and
22 certainly not relevant under Rules 401 and 403.

23 The case that I would present to your Honor is *State*
24 *v. Jamieson* that's 372 S.C. 649. In that case, it's kind
25 of the exact opposite of this one, there's a defendant

1 inside a truck who's asleep. The police officer's sees the
2 truck as suspicions, pulls up to the truck. Jamieson pops
3 up from inside the truck and drives off and they go on a
4 chase and they, of course, arrest him and find drugs in the
5 car.

6 He makes the argument of third party guilt that the
7 drugs are not his. He says that the drugs are not his. He
8 - The officer that was qualified as an expert in that case
9 they allowed it for -- because it was a expert on the
10 street value of cocaine and crack cocaine they allowed -
11 specifically our - let me make sure. Our Court of Appeals
12 allowed the jury that this -- being qualified as an expert
13 and allowed the jury to better determine whether a person
14 would reasonably leave expensive narcotics unguarded and
15 disguised as trash in a truck allegedly used by numerous
16 people because his defenses is, Yes I'm present with the
17 drugs they're just not my drugs. It's another guy who
18 works at the trucking company.

19 In this case the defendant's not present, it's the
20 opposite. The defendant is not present and the drugs are
21 in this residence. With having this expert testimony it
22 would only serve -- First, we argue again that it's not
23 relevant, but it would certainly under Rule 403 would serve
24 only to - Any approbative value it would provide the jury
25 would be substantially outweighed and only serve to confuse

1 the jury when the only issue they need to decide is whether
2 he's constructively possessing these drugs.

3 Any testimony that's then given this expert tag on
4 street value and packaging. This isn't a distribution case
5 it was a distribution -- distribution case. I think all
6 this testimony becomes highly relevant, but again, this is
7 a constructive possession case and we argue that it's not
8 appropriate.

9 THE COURT: Thank you. Solicitor.

10 SOLICITOR HAYES: Your Honor, we just got started so
11 your Honor has yet to see the evidence that's forthcoming
12 from the State. But your Honor will see pictures of what
13 the inside of this house looked like, and these are
14 pictures that the jury is going to need to understand what
15 they're looking at. Pictures of packaging material,
16 pictures of paraphernalia for use; pipes, scales, baggies.

17 These are things they need to understand how they come
18 together because they go to this defendant's knowledge
19 because this defendant's pled not guilty to knowing about
20 this meth, so we have to prove that he did, and we want to
21 show the jury a house full of methamphetamine and
22 paraphernalia, and we want an expert to explain to them
23 what they're looking at, because it may not be readily
24 apparent when you look at a box of sandwich baggies, or a
25 pipe, that to a drug officer is a meth pipe all day long to

1 a civilian they may not know.

2 And the --

3 THE COURT: Go ahead.

4 SOLICITOR HAYES: I'm sorry, your Honor. The case law
5 I would cite to. other than also text message purposes we
6 get into text messages about what different terminology
7 means with respect to meth. The case law references all
8 the qualifying expert in drug evaluation and distribution,
9 packaging, paraphernalia. I would direct the Court to *State*
10 *versus Robinson* a Court of Appeals case from 2012, 396 S.C.
11 577 where Commander Brown of the York County Drug
12 Enforcement Unit was held to be properly qualified as an
13 expert in these fields because of his training and
14 experience, classes that he takes and classes that he
15 teaches. And we've had testimony from Investigator
16 Harrelson that he's been an officer for seven years, he is
17 attending classes concerning this, he sees this on a daily
18 basis from his own case work, so, qualifying an officer as
19 an expert in this field is well established under our case
20 law since 2012.

21 And I think it's interesting that it was Commander
22 Brown here in York County receiving the qualification. We
23 would ask that your Honor qualify Investigator Harrelson
24 the same so that he can explain to the jury really what
25 they're looking at and how it goes to this Defendant's

1 knowledge. This is a lot of methamphetamine. This is not
2 something you just casually throw away because you don't
3 care because its only worth ten dollars.

4 We're talking, you know, big amounts of meth that cost
5 a lot of money. And how all of this ties together in this
6 house goes to this defendant's knowledge. We would ask
7 that your Honor qualify him.

8 THE COURT: Thank you. Anything else from the
9 Defense, briefly?

10 MR. PHILLIPS: Yes, your Honor. And while the jury's
11 not here we can do the quick housekeeping matters of, of
12 course renewing all prior pretrial motions.

13 THE COURT: Your protected in the record. You don't
14 have to keep contemporaneously objecting. I promise you
15 you're protected. Go ahead.

16 MR. PHILLIPS: The only other thing was the opening,
17 if we wanted to go back, the jury's not here so I can just
18 put it on the record.

19 THE COURT: Well let me make my decision about the
20 expert first.

21 MR. PHILLIPS: Yes, your Honor.

22 THE COURT: The expert stuff.

23 MR. PHILLIPS: Yes, your Honor.

24 THE COURT: All right. I'm not gonna qualify him as
25 an expert after hearing arguments and considering

1 everything. I mean certainly he can testify about
2 everything you just said rather than offer his opinion.
3 And he can testify about what he saw, he can testify about
4 the way the house was; he can testify about what he found
5 it in, he can testify about what a pipe looks like, he can
6 testify about what a sandwich bag is and the significance
7 of a sandwich bag. He can testify all about that in his
8 experience and knowledge and skill as an officer, an
9 investigating officer with the DEU without attaching the
10 label of an expert on that.

11 You know if we attach the level -- the label of an
12 expert opinion on that it's, you know, I believe its more.
13 I agree with Mr. Phillips that it is substantially more
14 prejudicial than approbative so therefore I'm not gonna
15 allow that. Okay.

16 Now the other issue, Mr. Phillips, you were talking
17 about the --

18 MR. PHILLIPS: Real quick, your Honor. One, having
19 the reference to the unlawful search warrant, the objection
20 referenced in opening. and then the other was the -- when
21 we approached during opening statements there was a
22 statement by the prosecutor that they saw the defendant
23 leaving the residence that morning. That is not contained
24 anywhere in the discovery. The first time the defense
25 learned of the fact of the DEU Unit seeing the Defendant

1 leave the residence that morning, the Defense heard that
2 for the first time in opening statement. It's not
3 contained anywhere in the discovery. Everything revolved
4 around that day relates to Ms. Peters but there's nothing
5 as far as identifying Mr. Ostrowski leaving that residence
6 on January 25th.

7 THE COURT: And nothing in anything that you received?

8 MR. PHILLIPS: That's correct.

9 THE COURT: All right. And I mean did the State - Did
10 you ask for statements of the police officer, or the
11 witnesses, or the investigators, in discovery what they're
12 gonna say?

13 MR. PHILLIPS: Yes. And that's in of course our
14 Motion to Compel Discovery argument we had today.

15 THE COURT: Right. I'm with you.

16 MR. PHILLIPS: And I'm not alleging anything
17 intentional. That's not what I'm saying. I'm just saying
18 we never -- there was nothing in the Incident Reports,
19 nothing in that Case Summary that's of course Exhibit --
20 There's nothing in any of the reports --

21 THE COURT: That indicated that the investigating
22 officers saw the Defendant leave the house ---

23 MR. PHILLIPS: And I think this --

24 THE COURT: --- before they conducted and executed on
25 the Search Warrant?

1 MR. PHILLIPS: That's correct, your Honor. I think
2 this shows the prejudice of my Motion to Compel Discovery
3 for having those investigation files because I think had we
4 received that information, those full investigation files,
5 in that Motion to Compel I would have saw something. There
6 should have been some note probably referencing the fact
7 that they did witness him leave.

8 THE COURT: Okay. What do you say about that?

9 SOLICITOR HAYES: Your Honor, this is just information
10 in possession of a witness that I had ask -- I called
11 Investigator Harrelson a few weeks ago, or a few days ago,
12 or whenever it was we had the conversation and went, When
13 was the last time you saw Jonathan Ostrowski at the house?
14 Well we saw him leave that morning. Well I just called the
15 witness to ask him what he saw. I mean it's not
16 memorialized or recorded anywhere. It doesn't - The
17 officer -- There's no law that says an officer has to put
18 everything he saw in writing. Officers are allowed to
19 testify based on what they remember.

20 Memory is subject to cross-examination. But as far as
21 that statement and learning about that statement, I just
22 picked up the phone and called my witness. Or it may have
23 been in person, I can't remember. But that's all we did
24 and I just -- its just nothing. Witnesses testify to what
25 they remember all the time and it's not necessarily

1 recorded. So the State's asserts there's nothing improper
2 there, it's just a witness testifying to what he saw, and
3 he'll be subject to ample cross-examination by Mr. Phillips
4 on that.

5 THE COURT: All right. I agree with the State on
6 that. I think -- Your objection is duly noted on the
7 record. I mean, you know, I don't see any violation of
8 the spirit or intent of the discovery rules under the
9 criminal procedures so.

10 We'll let it lie the way it is, your objection is
11 noted and we'll go forward. What we'll do is just continue
12 your questioning. When the jury comes back just continue
13 into the questioning of your witnesses - of your witness.
14 He won't be qualified as an expert, over your objection, I
15 understand. You're protected in the record on that.

16 And just ask him whatever factual questions you want
17 to ask him.

18 SOLICITOR HAYES: Yes, sir.

19 THE COURT: Certainly as an investigator he can
20 testify both to what he saw and the significance of what he
21 saw, Mr. Phillips. Do you understand my ruling on that? I
22 mean certainly as -- I think he has the particularized
23 skill, knowledge, and expertise - Well, I won't say
24 expertise.

25 Skill, knowledge, and ability to testify about the

1 significance of a glass pipe with residue on it. Or the
2 significance of finding a sandwich -- a bunch of sandwich
3 bags at a place that's suspected of suspicious drug
4 activity.

5 MR. PHILLIPS: And I understand. As an officer he can
6 say that they see sandwich bags in ---

7 THE COURT: Correct.

8 MR. PHILLIPS: --- when they have drug activity but
9 he's not gonna be labeled as an expert to say in my expert
10 opinion this is evidence of drug activity.

11 THE COURT: Right. Now I think that would be an
12 inappropriate prejudicial comment on the facts.

13 MR. PHILLIPS: Thank you.

14 THE COURT: And that was the basis of my ruling on
15 that.

16 Okay, bring 'em back out.

17 (JURY REENTERS COURTROOM AT 04:23 P.M.)

18 THE COURT: All right, thank you, ladies and gentlemen
19 of the jury.

20 The Defense objection is sustained.

21 You may continue to question ---

22 SOLICITOR HAYES: Thank you, your Honor.

23 THE COURT: --- the witness.

24 DIRECT EXAMINATION

25 INVESTIGATOR LELAND HARRELSON BY SOLICITOR HAYES:

1 Q. Investigator Harrelson, in your experience what is
2 the typical dose unit of methamphetamine?

3 A. The typical dose unit is .5 grams.

4 Q. Okay. What is the street value of one gram of
5 methamphetamine?

6 A. Approximately a hundred dollars.

7 MR. PHILLIPS: Renew objections, your Honor.

8 THE COURT: All right. As to what?

9 MR. PHILLIPS: As to the value.

10 THE COURT: That's over ruled.

11 BY SOLICITOR HAYES:

12 Q. So a gram of meth is a hundred dollars at retail?

13 A. Correct, yes.

14 Q. Investigator Harrelson, when you went into the house
15 on January 27th did your team take pictures?

16 A. We did, yes.

17 SOLICITOR HAYES: May I approach the witness, your
18 Honor?

19 THE COURT: Yes.

20 SOLICITOR HAYES: Your Honor, may we approach?

21 THE COURT: Yes, sir.

22 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
23 OF THE JURY AT 04:25 P.M..)

24 BY SOLICITOR HAYES:

25 Q. Investigator Harrelson, I'm showing you what's been

1 premarked for identification as State's Exhibit 1.

2 If you could take a look at that and tell me if you
3 recognize that.

4 A. Yes I do.

5 Q. What is that picture?

6 A. It's the picture of the carport at 162 Bailey Avenue.

7 Q. Okay. So kind of as if you're walking in from the
8 side of the house?

9 A. Yes, that is correct.

10 SOLICITOR HAYES: Your Honor, at this time I would
11 move what's been premarked as State's Exhibit 1 into
12 evidence as State's Exhibit 1.

13 MR. PHILLIPS: Renew pretrial motions.

14 THE COURT: All right. Objection over ruled.
15 Introduced into evidence.

16 SOLICITOR HAYES: Thank you, your Honor.

17 (WHEREUPON, STATE'S EXHIBIT NO. 1, IDENTIFIED AND
18 MARKED, RECEIVED INTO EVIDENCE.)

19 THE COURT: Are you gonna do 'em in a batch or you
20 gonna do each individual?

21 SOLICITOR HAYES: I think from my Madam Court Reporter
22 she needs individual.

23 MADAM COURT REPORTER: Doesn't matter to me, Judge.
24 I got to go by what he said.

25 THE COURT: Okay. Hang on a second. Now, it's my

1 understanding that there's only an issue as to two
2 photographs?

3 MR. PHILLIPS: I believe so, your Honor.

4 THE COURT: All right. Well introduce all of 'em at
5 once, rather than the two, and then I'll deal with the
6 objections on the two.

7 MR. PHILLIPS: Yes, sir.

8 THE COURT: Okay. So this is gonna be 2?

9 MADAM COURT REPORTER: A through F, whatever they are.

10 THE COURT: Yeah.

11 MADAM COURT REPORTER: How's that?

12 SOLICITOR HAYES: Yes, ma'am.

13 MR. PHILLIPS: The same just subject to prior
14 objection.

15 THE COURT: Absolutely.

16 (WHEREUPON, STATE'S EXHIBIT 2, A THROUGH BB, PREMARKED
17 FOR IDENTIFICATION.)

18 SOLICITOR HAYES: Your Honor, permission to publish
19 State's Exhibit 1 to the jury.

20 THE COURT: Permission granted.

21 (WHEREUPON, STATE'S EXHIBIT 1 PUBLISHED TO THE JURY.)

22 BY SOLICITOR HAYES:

23 Q. So, Investigator Harrelson, tell us what we're looking
24 at here on State's Exhibit 1.

25 A. You're kind of standing out in the driveway and this

1 is looking at the house from the side, so you're looking at
2 the carport and then, you know, the side door to the
3 residence.

4 Q. Okay. Did y'all enter and exit through that door?

5 A. We did, yes.

6 Q. Did y'all search this carport area?

7 A. We did, yes.

8 Q. And this is 162 Bailey Avenue?

9 A. It is, that is correct.

10 THE COURT: So, 2 A, 2(A) through Double B.

11 MADAM COURT REPORTER: Yes, sir.

12 THE COURT: All right. That's Exhibit 2(A) through
13 Double B for the record.

14 BY SOLICITOR HAYES:

15 Q. Investigator Harrelson, I'm showing you these
16 exhibits; as the Judge just stated 2(A) through 2 double B.
17 If you could look through those please and let me know if
18 you recognize them?

19 A. Yes, sir.

20 (WITNESS COMPLIES.)

21 A. Yes I do recognize them. These are photographs that
22 were taken at 162 Bailey Avenue.

23 Q. Are they a true and accurate copy of everything they
24 depict?

25 A. Yes, they are.

1 Q. Do you have personal knowledge of each of those
2 pictures and what they contain?

3 A. Yes I do.

4 SOLICITOR HAYES: Your Honor, at this time I would
5 move into evidence what's been premarked as Exhibits 2(A)
6 through 2(BB) as - into evidence as State's Exhibits.

7 THE COURT: All right.

8 MR. PHILLIPS: Subject to prior --

9 THE COURT: All right, subject to prior objection.
10 That objection is over ruled and they will come into
11 evidence as stated.

12 SOLICITOR HAYES: Thank you, your Honor.

13 (WHEREUPON, STATE'S EXHIBIT NUMBER 2 A THROUGH 2 BB
14 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

15 SOLICITOR HAYES: Thank you, ma'am.

16 THE COURT: Permission to publish granted if you want
17 too.

18 SOLICITOR HAYES: Thank you, your Honor.

19 Q. Investigator Harrelson, I'm showing you what's been
20 admitted into evidence as State's Exhibit 2(M).

21 Could you tell us what we're looking at there?

22 A. That looks like -- You know its on top of a table or
23 a dresser, some photographs.

24 Q. Who is depicted in those photographs?

25 A. I can see Jonathan Ostrowski.

1 Q. Whereabouts in the house is this table?

2 A. I believe that was in a bedroom.

3 Q. Investigator Harrelson, I'm showing you what's been
4 admitted into evidence as State's Exhibit 2(A).

5 Could you tell us what that is?

6 A. Photographs on top of a table. That was, I think,
7 right off of the kitchen. There might a been a little bar
8 there at that area.

9 Q. Okay. Who are depicted in these photographs?

10 A. Jonathan Ostrowski and Alexandra Peters.

11 Q. Okay. And this is Exhibit 2(U). Could you tell us
12 what we're looking at here?

13 A. Could you turn the picture? I think it's -- I believe
14 that is a basket that contains, you know, various items.

15 Q. Did anything stand out in that basket to you as a
16 drug investigator?

17 A. Can I take a look at the photo? Its really hard ---

18 Q. Yes you can.

19 A. --- to see it at this angle.

20 Q. The limits of technology.

21 A. Thank you.

22 MADAM COURT REPORTER: What do you need?

23 A. The light.

24 MADAM COURT REPORTER: The witness needs a light.

25 A. Thank you.

1 (COURTROOM LIGHTS TURNED UP.)

2 A. Yeah, in the photograph I see what appears to be the
3 top of what would go onto a digital scale.

4 Q. Okay. And that's actually 2(B). I'm sorry.

5 SOLICITOR HAYES: Madam Clerk, if we can have the
6 lights down.

7 Q. Now this object being the top of the digital scale?

8 A. Yes, that is correct.

9 Q. What are digital scales used for?

10 A. For weighing out drugs.

11 Q. What would be the purpose of weighing out drugs?

12 A. So of course if somebody's purchasing drugs from
13 somebody, you know, they purchase a certain amount for a
14 certain amount of money, they're gonna --

15 MR. PHILLIPS: Objection, yoru Honor.

16 THE COURT: I'm sorry.

17 MR. PHILLIPS: Objection, your Honor. Rules 401 and
18 403.

19 THE COURT: What was the question again, Solicitor?

20 SOLICITOR HAYES: What's the purpose of weighing
21 drugs?

22 MR. PHILLIPS: No.

23 THE COURT: Repeat your question.

24 SOLICITOR HAYES: I thought the question was what's
25 the purpose of weighing drugs.

1 MR. PHILLIPS: What was the purpose of scales.

2 THE COURT: Okay. Objection over ruled.

3 MR. PHILLIPS: Oh, excuse me, your Honor.

4 BY SOLICITOR HAYES:

5 Q. Please continue.

6 A. A scale is used, you know, if you're gonna go in and
7 purchase say twenty dollars worth of drugs the person
8 selling it wants to make sure that you get that amount.
9 You know they don't want to give you too much and they want
10 to get exactly you know what you're paying for.

11 Q. I'm showing you what's been marked as 2, or what's
12 been admitted as 2(U). Can you tell us what this is?

13 A. It's a piece of tin foil.

14 Q. Is it in a same basket as the picture we just looked
15 at?

16 A. Yes it is.

17 Q. What's the significance of that in your investigation?

18 A. A lot of times people will use tin foil to store
19 methamphetamine and also to smoke methamphetamine out of
20 the tin foil.

21 Q. Now that's the same basket we just looked at?

22 A. That is correct.

23 Q. Did y'all seize that tin foil at any point? Why does
24 it exist in one picture and not in the other I guess is my
25 question?

1 A. I must have already taken the tin foil out of the
2 basket.

3 Q. Okay. So when you search a house and you see
4 something like tin foil you would seize it?

5 A. Yes, that is correct.

6 Q. This is State's Exhibit 2(0). Could you tell us
7 what we're looking at here?

8 A. On the top of the table I see a digital scale and
9 also a methamphetamine pipe in the ashtray.

10 Q. That's a complete digital scale?

11 A. Could I take a look at the photo?

12 Q. Yes.

13 A. From this angle.

14 THE COURT: Flip on the light.

15 MR. PHILLIPS: And speculation on the pipe, your
16 Honor.

17 THE COURT: All right. Over ruled.

18 A. All right. Yes, this is a complete digital scale.

19 Q. Whereabouts in the house was that located?

20 A. That was in the den on a coffee table located kind of
21 in front of a couch.

22 Q. Okay. This is Exhibit 2(P). Can you tell us what
23 we're looking at here?

24 A. An ashtray with a used methamphetamine pipe.

25 Q. And where was that located?

1 A. On the same table.

2 Q. Okay. This is Exhibit 2(Y). Can you tell us what
3 we're looking at there?

4 A. That is a marijuana bowl. That's a glass bowl used
5 to smoke marijuana out of.

6 Q. This is Exhibit 2(Q). Can you tell us what we're
7 looking at here?

8 A. It looks like some razor blades along with a roll
9 of tin foil.

10 Q. What is the significance of razor blades?

11 A. Its used to chop up --

12 MR. PHILLIPS: Renew objection, your Honor.

13 THE COURT: Over ruled.

14 BY SOLICITOR HAYES:

15 Q. Please continue.

16 A. Used to chop up drugs such as methamphetamine.

17 Q. Where was this razor blade found?

18 A. I believe that was on a table in the residence.

19 Q. This is Exhibit 2(S). Can you tell us what we're
20 looking at here?

21 A. Yes. That is a picture of the refrigerator which
22 was inside the kitchen.

23 Q. This is Exhibit 2(R). Can you tell us what we're
24 looking at here?

25 A. Yes, that is a picture of a York County Natural

1 Gas receipt with Jonathan Ostrowski's name on it and also
2 the address of 162 Bailey Avenue.

3 Q. And where was this located?

4 A. Inside the residence on a table.

5 Q. Investigator Harrelson, is it possible that that was
6 somewhere else in the house?

7 A. Yes, it could a been on the refrigerator.

8 Q. I've already showed you this exhibit.

9 A. Can I take just a quick look at the picture?

10 Q. Yes, I'm sorry.

11 A. I'm sorry. Thank you. Okay. Yeah, the natural gas
12 bill was hanging from a magnet on the front of the
13 refrigerator.

14 Q. Okay.

15 A. Inside the kitchen.

16 Q. Okay. Thank you. Sometimes its hard to see up on
17 the screen. So this would be the location of the gas bill?

18 A. That is correct.

19 Q. Which y'all took a close up right here?

20 A. Yes.

21 Q. And this is 2(N). Excuse me, we've already published
22 to that. This is 2(B). Can you tell me what that is?

23 A. Yes. That is a picture of a used methamphetamine
24 pipe.

25 Q. Can you tell me where y'all located that?

1 A. I don't recall exactly where that was at the
2 residence from that particular picture.

3 Q. But it's safe to say inside 162 Bailey Avenue?

4 A. Yes, that is correct.

5 Q. Investigator Harrelson, this is 2(E). Can you tell
6 us what we're looking at there?

7 A. Yeah, it's a plate. It has some razor blades on top
8 of the plate.

9 Q. Okay. Investigator Harrelson, this is 2(Z). Looks
10 like another razor blade that y'all found?

11 A. It is, yes, sir.

12 Q. Investigator Harrelson, this is 2(W). Can you tell
13 me what that is?

14 A. It looks like a kind of a homemade device used to
15 smoke methamphetamine.

16 Q. Investigator Harrelson, this is Exhibit -- I
17 apologize. I can't read the Exhibit handwriting on there
18 but this is one of the Exhibit 2. Can you tell us what
19 we're looking at here?

20 A. Yes. A box of sandwich baggies.

21 Q. And now where is this located? It looks like an
22 outdoor location.

23 A. Yeah. There was a shed in the back of the residence,
24 it was inside the shed.

25 Q. Okay. What all outbuildings in the house did y'all

1 search?

2 A. There was an outbuilding out behind and we searched
3 it as well.

4 Q. So you searched the carport, the shed behind the
5 house. Anything else outside of the house?

6 A. I think there was a vehicle there that we searched
7 as well.

8 Q. Did you locate anything inside the vehicle?

9 A. No, sir, I don't believe we did.

10 Q. What's the significance of sandwich baggies to your
11 investigation?

12 A. Its used to package drugs.

13 Q. And where were these located?

14 A. In the shed out behind the residence.

15 Q. This is Exhibit 2(AA). Can you tell us what we're
16 looking at here?

17 A. That's a picture of a toolbox with a used
18 methamphetamine pipe.

19 Q. And where was that located?

20 A. In the shed out behind the residence.

21 Q. This is Exhibit 2(Y). Can you tell us what we're
22 looking at here?

23 A. Can I take a look at that particular photo?

24 Q. Yes.

25 SOLICITOR HAYES: Your Honor, may I approach?

1 THE COURT: Yes.

2 A. It's a methamphetamine pipe. It looks like its in a
3 tray.

4 Q. And where was that found?

5 A. In the shed out behind the residence. That is a pipe
6 that has not been used yet. It's clean on the inside.

7 Q. Okay. This is Exhibit 2(BB). Can you tell us what
8 we're looking at there?

9 A. Can I take a closer look at that particular photo?

10 Q. Yes.

11 SOLICITOR HAYES: Your Honor, may I approach?

12 THE COURT: Yeah.

13 A. Yes, this is a toolbox. A picture that was taken
14 from the shed out back of the residence and it's filled
15 with tools along with a digital scale.

16 Q. So that would be the scale right there?

17 A. Yes, sir, that is correct.

18 Q. This is Exhibit 2(H). Can you tell us what we're
19 looking at here?

20 A. It's a dresser that was -- or a little shelf that was
21 inside the residence.

22 Q. Okay. Do you remember where that was?

23 A. Can I take a closer look at that photograph?

24 Q. Yes.

25 SOLICITOR HAYES: May I approach, your Honor?

1 THE COURT: Yes.

2 A. That was in the bedroom at the residence.

3 Q. This is 2(G). Can you tell us what that is?

4 A. It's a pistol along with a box of ammunition.

5 Q. Did you personally recover this or did somebody else
6 recover it?

7 A. Someone else actually recovered that item.

8 Q. Okay. Do you remember where that was located?

9 A. I do not.

10 Q. Okay. This is 2(D). Can you tell us what we're
11 looking at here?

12 A. Could I take a closer look at that picture or
13 photograph?

14 Q. Yes.

15 SOLICITOR HAYES: May I approach, your Honor.

16 THE COURT: Yes, sir.

17 A. Yes, it's a picture of some hanging clothes along with
18 a purse and a little stand with some other purses inside
19 of there.

20 Q. Okay. Would you agree with me those are female
21 items?

22 A. Yes, they are.

23 Q. Did you encounter a female at the residence that day?

24 A. Inside the residence?

25 Q. In, or around, the residence that day.

1 A. Yes we did.

2 Q. Who was that you encountered?

3 A. Alexandra Peters.

4 Q. Okay. Did you take her into custody on an unrelated
5 charge?

6 A. We did.

7 Q. Do you have knowledge of the relationship between
8 Mr. Ostrowski and Ms. Peters?

9 A. Boyfriend and girlfriend.

10 Q. This is 2(C). Is this kind of more of the same?

11 A. It is, yes, just a closer --

12 Q. Female items, female cloths?

13 A. Yes it is.

14 Q. Whereabouts in the house is this located?

15 A. Its kind of in the middle of the house. Where the
16 front door was they had kind of made a area for a closet
17 and a dressing area.

18 Q. This is 2(T). Can you tell us what we're looking at
19 here?

20 A. Yeah, that's a shelf. That's in the same closet
21 area. If you're looking straight ahead the previous
22 picture of the purses and the hanging items would have been
23 to the left. And behind this shelf with all the clothes --
24 clothing would be the front door to the residence.

25 Q. Now what -- Did you locate anything in any of these

1 clothes?

2 A. I did, yes.

3 Q. What did you locate in these clothes?

4 A. I located a clear plastic baggie which appeared to be
5 a crystal like substance.

6 Q. Did you seize that clear plastic baggie?

7 A. I did, yes.

8 Q. Whereabouts on this shelf did you locate it?

9 A. If you go to the far right, and it would be the third
10 shelf down where you see the brown pants, inside of the
11 pocket of one of the brown pants I located that item.

12 Q. So in this cube?

13 A. That is correct.

14 Q. This is Exhibit 2(I). Can you tell me what that's a
15 picture of?

16 A. Yeah. That's a picture of the man's brown work
17 pants that I found the substance in one of the pockets.

18 Q. What's the size on that label?

19 A. Can I take a look at the ---

20 Q. Yes.

21 A. --- photograph? I'm sorry.

22 Q. Actually I have a better one on that in front of you.
23 But these are the pants that you located the substance
24 in?

25 A. That is correct.

1 Q. And this is Exhibit 2(J).

2 A. Yeah, it's a pair of Columbia sportswear pants size
3 38.

4 Q. Size 38 mens?

5 A. Yes, that is correct.

6 Q. That's a close up of the pants we just looked at in
7 the previous picture?

8 A. Yes, sir, that is correct.

9 Q. And these are Items 2(L) and 2(K). I'll put 'em on
10 the screen at the same time because they're pretty close,
11 just slightly different angles.

12 A. Yes, that is a picture of the brown pants that you see
13 and also the crystal substance that I found in one of the
14 pockets.

15 Q. Okay. Is that a standard size jean's pocket that it's
16 sitting on top of?

17 A. Yes, it is.

18 Q. Just for comparison purposes?

19 A. That is correct.

20 Q. And you seized that bag of crystal substance?

21 A. Yes, I did.

22 SOLICITOR HAYES: The Court's indulgence, your Honor.

23 THE COURT: Yes, sir.

24 (PAUSE AT 04:56 P.M.)

25 SOLICITOR HAYES: Your Honor, may I approach?

1 THE COURT: Yes.

2 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
3 OF THE JURY AT 04:56 P.M.)

4 THE COURT: Thank you, Investigator, you can step
5 down.

6 (WITNESS LEAVES WITNESS STAND.)

7 THE COURT: Ladies and gentlemen of the jury, it's
8 that hour, we're gonna stop for the day, okay. It's right
9 at 5 o'clock, the witness has more testimony to give I
10 understand from the lawyers, and I don't want to keep you
11 here too long this afternoon. It has been a long day so
12 we'll go ahead and break for the evening.

13 Let me remind you that you are not to talk to anybody
14 about your jury service during this trial. You are not to
15 do any independent research, you're not supposed to -- You
16 cannot Google anybody's names involved in this trial to go
17 look up information. If you do so, you violate your oath
18 as a juror, okay. And again, if anybody tries to get you
19 to do that, or tries to talk to you about things they're
20 not supposed to, let me know and I'll take care of it,
21 okay.

22 I want y'all to have a great evening and I want you
23 back in your jury room tomorrow morning at 9:30. We'll see
24 you then, okay. Thank you very much.

25 (JURY EXITS COURTROOM ON EVENING RECESS AT 04:58

1 P.M..)

2 THE COURT: All right, anything else for the purpose
3 of the record today?

4 SOLICITOR HAYES: Well, your Honor, we did have the
5 two pictures, the last two pictures.

6 THE COURT: Oh, yeah, let's deal with those.

7 SOLICITOR HAYES: Your Honor, I think we do need to
8 proffer Investigator Harrelson on that.

9 THE COURT: All right, what are they? Just tell me
10 what they are.

11 SOLICITOR HAYES: The State asserts they're pictures
12 of drugs ledgers. The Defense, I assume, disagrees so we
13 would offer them --

14 THE COURT: Can I take a look at 'em?

15 SOLICITOR HAYES: Yes, sir.

16 THE COURT: What are they?

17 SOLICITOR HAYES: Those have --

18 THE COURT: No, what - what's the number of 'em, where
19 they have been identified?

20 SOLICITOR HAYES: These have not been premarked.

21 They've been internally by me but they haven't been
22 premarked by the court reporter.

23 THE COURT: All right.

24 (PHOTOS RECEIVED UP BY THE COURT TO REVIEW.)

25 THE COURT: All right, Mr. Phillips, what's your

1 objection?

2 MR. PHILLIPS: Again, as to 401 relevance, then of
3 course 403, that any approbative value with notebook pieces
4 of notebook paper that have names and numbers written
5 beside them would be far substantially outweighed by their
6 prejudicial effect. This is a trafficking case, again the
7 issue is constructive possession on a bag that was just
8 shown on the monitor and that was in a pair of pants. Two
9 pieces of paper that have names and numbers beside it,
10 again, accumulative to the other objections that I've had
11 regarding the testimony, regarding essentially what would
12 be intent like a distribution case that it would one: Not
13 only be substantially outweighed by it's prejudicial effect
14 but would mislead the jury as far as the issue that's
15 before them.

16 The issue is not distribution of methamphetamine but
17 specifically as to constructive possession. These ledgers
18 I don't believe would serve any relevant fact --

19 THE COURT: All right, stop. The Defendant's charged
20 with trafficking in methamphetamine. The State must prove
21 beyond a reasonable doubt that the Defendant knowingly
22 sold, manufactured, cultivated, delivered, purchased,
23 brought into this State, provided financial assistance, or
24 otherwise aided, abetted, attempted or conspired to sell,
25 manufacture, cultivate, deliver, purchase, or bring into

1 this State, or was knowingly in actual or constructive
2 possession, or attempted to become in actual or
3 constructive possession of methamphetamine.

4 That's the ---

5 MR. PHILLIPS: Full --

6 THE COURT: --- text book definition of trafficking.
7 So the word sell is in there, the word deliver is in there,
8 the words purchase is in there. I mean how are these not
9 relevant? I understand they may be prejudicial to the
10 Defense. I mean the mere fact that he's charged criminally
11 is prejudicial to him, okay. But I mean the State, you
12 know, has the ability to introduce relevant evidence. How
13 are these - these pieces of paper not relevant as to what
14 was found by way of a search warrant?

15 MR. PHILLIPS: So, relevance obviously is a very low
16 standard.

17 THE COURT: Right.

18 MR. PHILLIPS: The main issue, what I think the one
19 that holds water ultimately, is the 403 argument.

20 THE COURT: More prejudicial than approbative.

21 MR. PHILLIPS: That's correct. And could, again,
22 confusion of the issues of in opening statement the State
23 presented their case that this is a constructive possession
24 case. They didn't make any arguments as to the sale or
25 distribution of methamphetamine.

1 THE COURT: Gotcha. All right. And I've already
2 sustained your objection to him testifying as an expert in
3 his opinion. And I've allowed under Rule 701 him to offer
4 -- I wouldn't want to call it opinion testimony. I've
5 allowed him as a lay witness and based upon, you know, what
6 he does for a living to identify things to say what it is,
7 what he knows them to be. That was the basis of the
8 Court's decision on that.

9 Solicitor, tell me why you want to offer -- Do you
10 just want to show that these were found?

11 SOLICITOR HAYES: Your Honor, I think the officer can
12 testify that that's consistent with drug ledges.

13 THE COURT: No he can't since I didn't qualify him as
14 an expert. He can testify to that's what was found.

15 SOLICITOR HAYES: Yes, sir.

16 THE COURT: Do you understand what I'm saying?

17 SOLICITOR HAYES: I do understand, your Honor.

18 THE COURT: In other words -- I haven't heard the
19 arguments. I'm gonna allow the photos in over objection,
20 but I'm not gonna allow him to testify that that's what he
21 thinks they are.

22 SOLICITOR HAYES: Yes, sir.

23 THE COURT: You got it?

24 SOLICITOR HAYES: Yes, sir.

25 THE COURT: So, I mean do you still want 'em to come

1 in?

2 SOLICITOR HAYES: I'll think about it over night, your
3 Honor.

4 THE COURT: Okay. There we go. All right, now, what
5 I do want from y'all, or do we have the text message y'all
6 said y'all were gonna give me?

7 SOLICITOR HAYES: Yes, sir. My investigator ---

8 THE COURT: Excellent.

9 SOLICITOR HAYES: --- did a good job, made us a copy
10 of every text message the State would intend to introduce.

11 THE COURT: And you already have those, right, Mr.
12 Phillips? So all I need to marinate on over night is
13 whether or not I'm gonna allow these in as clear and
14 convincing evidence under a Lyle slash 404(B) exception to
15 prove other bad acts by way of a common scheme or plan.

16 SOLICITOR HAYES: Yes, your Honor. The State has
17 additional argument we would like to make for the record on
18 that point.

19 THE COURT: And we can do that tomorrow morning.

20 SOLICITOR HAYES: Yes, sir.

21 THE COURT: Before we start. All right.

22 Did you hear what I said, Mr. Phillips?

23 MR. PHILLIPS: I'm apologize.

24 THE COURT: What I'm saying, I got these text
25 messages, all right. And the State obviously wants to get

1 these in under the common scheme or plan exception under
2 404(B), right?

3 Right?

4 SOLICITOR HAYES: Yes, your Honor.

5 THE COURT: Or prior bad acts.

6 SOLICITOR HAYES: Also the res gesti theory.

7 THE COURT: Gotcha.

8 SOLICITOR HAYES: More than you want to hear
9 basically.

10 THE COURT: Right. And so then we have to determine --
11 We'll have to determine whether or not it's clear and
12 convincing evidence as well as prejudicial versus
13 approbative value and of these prior bad acts.

14 Then the State also wants me -- also wants to get in
15 evidence of when he was arrested in Chester County on these
16 warrants that are before the Court of what he had in his
17 possession then?

18 SOLICITOR HAYES: Yes, sir.

19 THE COURT: All right. Now, tell me how that's gonna
20 come in?

21 SOLICITOR HAYES: Well, your Honor, under 404(B) we
22 say prior bad acts colloquially when we discussed it but
23 its actually other bad acts. And so there's not a prior
24 time requirement for a 404(B) introduction. And so we have
25 Mr. Ostrowski getting arrested very soon in time after the

1. arrest warrant is issued, and he's padded down and they
2 locate this, and they locate this money, and I think it's
3 part of the res gesti, it all goes together. This is - You
4 heard the testimony that he left the house at 7:00 or 7:30
5 that morning. He's in custody in Chester at 3:40 with
6 seven hundred dollars in his pocket and a gram of crystal
7 like substance on him.

8 THE COURT: I gotcha. All right.

9 SOLICITOR HAYES: So it kind of all goes together.

10 We do have case law citations on that point at the
11 appropriate time.

12 THE COURT: All right. And of course I understand
13 perfectly your argument on that. I just wanted to try to
14 marinate in my head over night what we're talking about.

15 Do you have -- Do you want to go ahead and hand up
16 case law so I can have my clerk to look at 'em over night?

17 SOLICITOR HAYES: Yes, sir.

18 THE COURT: I will do it as well.

19 (DOCUMENTS RECEIVED UP BY THE COURT.)

20 THE COURT: And, Mr. Phillips, likewise, if you have
21 any case law you want to hand up you can go ahead and do
22 that. If not, --

23 MR. PHILLIPS: I don't have a printer at my table like
24 the Solicitor's office.

25 THE COURT: Okay. All right. Anything else for the

1 good of the cause today?

2 MR. PHILLIPS: Yes, your Honor. Co-counsel, Judah
3 VanSyckle has been notified -- has the investigator of
4 another matter. This case gets weirder and weirder as far
5 as new witness statements ---

6 THE COURT: All right.

7 MR. PHILLIPS: --- so we have to put it on the record.

8 THE COURT: All right, what you found out?

9 MR. VANSYCKLE: Your Honor, Investigator Skidmore
10 texted me a picture of a statement that he says he got
11 today, or that he indicates he got today, and that
12 statement would seem to implicate the person who gave the
13 statement as being the person who owned the weapon in this
14 case, and would seem to imply that its not Ostrowski's.

15 And so, we don't have that yet, we've requested it
16 from Mr. Skidmore and it's supposed to be brought to us.
17 We're waiting to have a phone conversation after we get out
18 of court.

19 THE COURT: You got a name?

20 MR. VANSYCKLE: Yes, your Honor.

21 THE COURT: All right. It's not the same witness who
22 says that the meth was hers?

23 MR. VANSYCKLE: No, your Honor.

24 MR. PHILLIPS: And for the record this is Mr.
25 Phillips. I can say as an officer of the Court this

1 information is new to us and we certified earlier it's
2 coming to us as we get it.

3 THE COURT: Sure.

4 MR. PHILLIPS: I just wanted to make sure your Honor
5 knew that.

6 THE COURT: Y'all are all good lawyers. Go ahead.

7 MR. VANSYCKLE: Your Honor, the person who wrote this
8 statement is a fellow by the name of Chris Raines and I
9 can't tell from the picture that I've got of the statement
10 any kind of date of birth. I'm happy to show the State and
11 the Court a picture of the statement that I have --

12 THE COURT: Yeah. Doesn't matter to me. Show it to
13 him.

14 (SOLICITOR HAYES REVIEWS REFERENCED MESSAGE.)

15 THE COURT: You know, and again I understand that you
16 just got to go with the way things ebb and flow in any type
17 of trial, and that's why we have the law of constructive
18 possession.

19 MR. PHILLIPS: Thank you, your Honor. We just wanted
20 to bring that to your Honor's ---

21 THE COURT: Yeah.

22 MR. PHILLIPS: --- attention.

23 THE COURT: And I appreciate y'all doing that.

24 MR. PHILLIPS: Thank you.

25 SOLICITOR HAYES: I'm sorry, your Honor. I apologize.

1 THE COURT: Well, you know, if and when that witness
2 is offered what's the State's view?

3 SOLICITOR HAYES: Your Honor, at this time it just
4 appears to be another witness who wants to testify. I
5 don't really know if I have any objection at this point but
6 I don't waive any just because I hadn't thought of any
7 right now.

8 THE COURT: Sure. We'll deal with that at the
9 appropriate time. Thank y'all for the development.
10 Anything else?

11 SOLICITOR HAYES: No, sir.

12 THE COURT: All right. We're done for the day.
13 I'll see y'all tomorrow morning at 9:30 a.m.

14 SOLICITOR HAYES: Yes, sir.

15 THE COURT: Thank you.

16 MR. VANSYCKLE: Your Honor.

17 MR. PHILLIPS: Thank you, your Honor.

18 Your Honor, one last thing from Mr. Ostrowski. You
19 said you would --

20 THE COURT: Right. I'm not reconsidering it today.
21 He's in on my Bench Warrant right now, okay. I haven't
22 estreated or ended his bond. Remember, I didn't do that,
23 but I am ordering that he be held over night on my bench
24 warrant. We haven't had a bench warrant hearing yet on
25 that either.

1 All right, take him into custody.

2 MR. PHILLIPS: Yes, your Honor.

3 (DEFENDANT EXITS COURTROOM.)

4 THE COURT: All right.

5 SOLICITOR HAYES: Thank you, your Honor.

6 THE COURT: All right.

7 (COURT IN EVENING RECESS AT 05:10 P.M.)

8 (COURT BACK IN SESSION WEDNESDAY, FEBRUARY 28, 2018 AT
9 09:44 A.M.)

10 SOLICITOR HAYES: Good morning, your Honor.

11 THE COURT: Good morning. All right, the first matter
12 to deal with this morning is, if y'all are ready to deal
13 with it now, I would like to go ahead and do it since the
14 jury just got here we can go ahead and knock it out, is the
15 404(B) stuff.

16 Y'all ready to argue that now?

17 MR. PHILLIPS: Yes, your Honor.

18 THE COURT: All right.

19 SOLICITOR HAYES: Yes, your Honor.

20 THE COURT: All right.

21 SOLICITOR HAYES: Just for clarification, the text
22 messages as well, I think chronological in trial
23 presentation, your Honor, for the first thing we can ---

24 MR. VANSYCKLE: Your Honor, can we get - -

25 THE COURT: Oh, yeah.

1 MR. PHILLIPS: I apologize.

2 THE COURT: I just assumed he was out --

3 MR. PHILLIPS: That's my fault.

4 MR. VANSYCKLE: I know I look a lot like Mr. Ostrowski
5 but

6 THE COURT: Especially picture number 15.

7 MR. VANSYCKLE: Yes, absolutely.

8 (DEFENDANT JONATHAN OSTROWSKI REENTERS COURTROOM.)

9 THE COURT: All right, we're back on the record in the
10 Owstrowski matter. What I want to deal with first,
11 gentlemen, is I want to hear y'all's arguments related to
12 purported evidence that the State plans to offer concerning
13 prior bad acts or whatever y'all seeking to do.

14 The State handed me last night a bunch of text
15 messages and a selfie reportedly from the Defendant's
16 phone, Items 1 through 36. I want to hear from the State
17 first and then I want to hear from you then, Mr. Phillips,
18 as to why I shouldn't let it in. The State's already told
19 me they want me to let in the -- what happened when he was
20 arrested in Chester with what appeared to be a crystal like
21 substance and bunch of case, so, let me hear from the State
22 first and Mr. Phillips, I'll defer to you and we'll just go
23 from there.

24 MR. PHILLIPS: Yes, your Honor.

25 THE COURT: All right. Yes, sir, Solicitor.

1 SOLICITOR HAYES: Your Honor, so I will make this
2 argument with respect to all our anticipated 404(B)
3 evidence which includes the Chester meth as I've been
4 calling it, the Chester money, and then the text messages.

5 The first case I would direct your Honor's attention
6 to is one that we handed up last night, *State versus King*
7 349 South Carolina 142.

8 THE COURT: Go ahead.

9 SOLICITOR HAYES: There it states the general rule,
10 your Honor, that in a 404(B) and looking at Headnote 7, it
11 just states the standard *Lyle* and 403 --

12 THE COURT: Yeah, I got all that. No, I don't need
13 the *Hornbook* stuff. I understand the reliability, I
14 understand clear and convincing evidence, I understand
15 logical connection, I understand the substantial
16 connection, I understand all that stuff. What I'm
17 concerned about is prejudicial versus approbative. That's
18 my focus here, okay.

19 And, the Defense, you know I don't want to steal your
20 thunder, this is a trafficking case and under trafficking
21 cases it's all about the weight, okay.

22 MR. PHILLIPS: Yes, sir.

23 THE COURT: So I want to know what the relevance is
24 and what's the connection between all these text messages
25 which report to drug dealing going on. I mean there is

1 some weight stuff on there, the text messages, but tell me
2 how that's connected to trafficking.

3 SOLICITOR HAYES: Yes, your Honor. Trafficking as
4 your Honor noted yesterday could be proven through multiple
5 avenues. The statute contemplates selling, bringing it
6 into the state, aiding and abetting, those type of items
7 like we would think of a distribution trafficking or a PWID
8 trafficking just for lack of a better term.

9 It incorporates those type of items as one way to
10 prove trafficking which would certainly go towards the text
11 messages showing intent to sell, intent to transport.

12 But even if you prove trafficking purely on a
13 constructive possession theory, possession under South
14 Carolina law is knowledge and intent to control the
15 disposition. That's straight out of the jury charge.
16 That's in every closing power point on a constructive
17 possession case. Knowledge and intent to control the
18 disposition.

19 And disposition is a broader word even in itself. And
20 I think in this case our 404(B) evidence goes to intent to
21 control the disposition which is a vital element even on a
22 simple constructive possession trafficking case. The
23 disposition that this Defendant intended just happens to be
24 selling. That doesn't mean that it's a disposition
25 nonetheless. So I just refer your Honor to the *Hornbook*

1 law on constructive possession --

2 THE COURT: You got any more recent case law that you
3 believe is very similar to the case at bar?

4 SOLICITOR HAYES: I would cite, your Honor, to *State*
5 *versus Gore*, 299 South Carolina 368.

6 THE COURT: All right.

7 SOLICITOR HAYES: And the facts of that case,
8 basically the trial judge allowed reply testimony by a
9 confidential informant who stated that he had purchased
10 cocaine from the Defendant at a trailer on two prior
11 occasions. And the holding in that case was that the State
12 argues it's testimony was admissible to establish the
13 element of intent. We agree. The evidence that Appellant
14 sold cocaine from the trailer on two occasions only one
15 month earlier tends to establish his intent regarding the
16 cocaine and his possession at the time in question.

17 We conclude the probative value of this evidence
18 outweighs it's prejudicial effect and find no error in the
19 trial judge's ruling, and that's *State versus Gore*. And I
20 think a lot of it would apply to even a trafficking case,
21 and even a trafficking case based on constructive
22 possession, because we still have to prove to the jury that
23 the Defendant had the intent to control the disposition.
24 So, *State versus Gore*, your Honor.

25 I would also direct you to *State versus Wilson*, 345

1 South Carolina 1. And in that case the testimony was from
2 the Defendant's girlfriend who testified that she had seen
3 the Defendant sell drugs to an unidentified woman a couple
4 of days earlier at the motel this took place. The
5 girlfriend testified --

6 THE COURT: All right, so *Wilson*, the evidence was
7 before?

8 SOLICITOR HAYES: Yes, your Honor.

9 THE COURT: Now in all these cases you're showing me
10 the evidence of the prior bad act evidence that was allowed
11 in was before?

12 SOLICITOR HAYES: Yes, sir.

13 THE COURT: All right. You see where I'm going with
14 that?

15 SOLICITOR HAYES: Yes, sir. And part of the Chester
16 drugs, I would direct your Honor to the text of Rule
17 404(B).

18 THE COURT: Uh-huh.

19 SOLICITOR HAYES: Which does not contain a prior in
20 time requirement. The 404(B) simply calls it other bad
21 acts, evidence of other crimes, wrongs, or acts, is not
22 admissible to prove the character of a person in order to
23 show action and conformity therewith. It may however be
24 admissible to show motive, identity, the existence of a
25 common scheme or plan, the absence of mistake or accident,

1 or intent.

2 And I think under a 404(B) theory for other bad acts
3 we're gonna be able to get into all of those. The motive
4 for why Mr. Ostrowski has these drugs, the identity of the
5 owner of these drugs, the common scheme or plan in the
6 disposition of these drugs, the absence of mistake as to
7 the presence of the drugs, and the intent of Mr. Ostrowski
8 to dispose of these drugs. All the 404(B) check marks are
9 arguably present.

10 THE COURT: Provided of course that it's more
11 approbative ---

12 SOLICITOR HAYES: Yes, your Honor.

13 THE COURT: --- than prejudicial.

14 SOLICITOR HAYES: And I think that's where we get back
15 to *Gore* and *Wilson* and *State versus Martin*. For the record
16 that's 347 South Carolina 522. I think that is our
17 evidence in *State versus King* 349 South Carolina 142.

18 I think that's where the case law is going. I think
19 they give us these -- the 404(B) analysis, they tell us it
20 fits into 404(B). And they also tell us that evidence very
21 much like the evidence we are about to present passes a 404
22 -- a 403 threshold on approbative versus prejudicial.

23 I think that's what these cases stand for, so I think
24 your Honor has a 403 question. I would just direct your
25 Honor to the facts of these cases where our Appellate

1 Court's gave us the green light.

2 THE COURT: Gotcha.

3 SOLICITOR HAYES: And then one more thing, your Honor.

4 THE COURT: All right.

5 SOLICITOR HAYES: For the record and I apologize.

6 I also note that there is a res gestae theory that may
7 go to some of your Honor's concerns about the timing of
8 particularly the Chester drugs since it happened after the
9 search warrant, and that is *State versus Dennis* 402 South
10 Carolina 627, the *Hornbook* law and res gestae

11 Your Honor, I don't believe that that has a prior in
12 time requirement. If I can find where I highlighted it.

13 But, your Honor, just for citing it from the - off the
14 top of my head, the res gestae theory of other bad acts may
15 be an integral part of the crime which the Defendant is
16 charged and may be needed to aid the - or may be needed to
17 aid the fact finder understanding the context in which the
18 crime occurred.

19 Your Honor is gonna hear testimony that this search
20 warrant was concluded just short of 3 o'clock in the
21 afternoon on January 25th. Mr. Ostrowski was in custody
22 within an hour in Chester.

23 THE COURT: Right. I see the text message that he's
24 in Great Falls.

25 SOLICITOR HAYES: Excuse me, Great Falls.

1 THE COURT: Right. Well that's Chester County.

2 SOLICITOR HAYES: So, it's all part and partial of the
3 same day. And we have the testimony he left his house 7:00
4 or 7:30 in the morning. He's in custody just before 4
5 o'clock that same day; has a crystal like substance on him,
6 so for those many reasons, your Honor, we submit that our
7 text messages, and our Chester meth and Chester money, are
8 admissible under the res gestae theory -- res gestae and
9 404(B).

10 Thank you, your Honor.

11 THE COURT: Yes, sir. Mr. Phillips, briefly.

12 MR. PHILLIPS: Thank you, your Honor. First, before
13 going directly into the case law, that this objection would
14 also be subject to the prior search warrant objections;
15 that this would be a renewal of those prior objections ---

16 THE COURT: Right.

17 MR. PHILLIPS: --- that were denied. And going
18 directly to the case law, I understand your Honor is
19 concerned that the 403 analysis is where you're at. In
20 looking at a different State v. Gore case that's 283 S.C.
21 118. It's a 1984 case. Notably the Court said when the
22 prior bad acts are similar to the one and for which the
23 Appellant is being tried, the danger of prejudice is
24 enhanced because you get that well obviously if he had
25 those text messages about dealing drugs it could make the

1 jury imply that he must be the owner of those drugs. Kind
2 of the typical 404(B) analysis of the jury making their
3 decision based on evidence that would tend to make it think
4 that he must be the owner simply because of that evidence.
5 You know, the intent of why the --

6 THE COURT: Yeah, but isn't that circumstantial
7 evidence that the jury can consider when they're weighing
8 all the evidence? And wouldn't that be substantial
9 circumstantial evidence under that -- you know the most
10 recent updated charge of constructive -- of
11 circumstantial evidence?

12 MR. PHILLIPS: I mean if we're looking at whether that
13 satisfies a directed verdict on circumstantial evidence,
14 you know, as far as being whether it meets the threshold of
15 substantial, I think that's a different issue and certainly
16 one that would be arguable that it would be consider
17 substantial circumstantial evidence to go towards a jury.

18 In looking at *State v. Humphries*, that's 354 S.C. 87,
19 it's a 2003 case, the Court's said finding or found an
20 error in admitting a witnesses' prior bad act testimony
21 under the common plan or scheme exception because the prior
22 bad act evidence, or the other bad act evidence, was highly
23 significant as it was the only direct evidence of the
24 Defendant's intent to deal marijuana.

25 So in that case, you know again we're kind of fighting

1 most -- a lot of this case law is for distribution cases
2 and this is a trafficking case. But in that *Humphries* case
3 from the direct quote was highly significant as it was the
4 only direct evidence of the intent to deal. And in this
5 case they're saying this is - this is - under the common
6 plan this is that intent, obviously he must own those
7 drugs. Because it's clear that he could have been dealing
8 drugs but not been the owner of those drugs.

9 And that's where the jury could be making their
10 decision solely based on those text messages which in a
11 constructive possession case -- again that's the State's
12 theory in opening, but this is just a constructive
13 possession case.

14 THE COURT: Right.

15 MR. PHILLIPS: And *Humphries* says that's the only
16 direct evidence --

17 THE COURT: Hold on a second. It's a constructive
18 possession case for 31 grams of methamphetamine which by
19 weight and definition is trafficking methamphetamine.

20 I mean I understand where you're going with that. I'm
21 just -- I'm having a hard time -- Look, I understand
22 trafficking, as I started out this analysis, is typically
23 just is a weight crime. Do you understand where I'm going
24 with that? It's not -- I agree with you, it's not a
25 distribution crime necessarily. And I'm familiar with the

1 case law and the distribution and stuff, but isn't the
2 definition -- the statutory definition of trafficking
3 selling, delivering, and possessing, and the intent to
4 possess?

5 MR. PHILLIPS: I mean that's certainly part of it but
6 that's where we have the 403 analysis. Again, when you're
7 looking at *Gore* and when it talks about how the danger of
8 unfair prejudice is enhanced, *Humphries* where the only
9 direct evidence is this, or in this case be the text
10 messages, but in that case it was the only direct evidence
11 as the intent to deal marijuana for the *Humphries* case.

12 And then of course being proved by clear and
13 convincing evidence is also the highest standard that we
14 have. Certainly -- I have a couple of other arguments as
15 to the text messages themselves, but if we want to deal
16 with that first before we -- separate.

17 THE COURT: Yeah, let's deal with the text messages
18 first and then we'll deal with the *Chester* stuff.

19 MR. PHILLIPS: Well, and I have additional arguments
20 on the text messages as I was doing research.

21 THE COURT: Okay.

22 MR. PHILLIPS: I think there would be a legitimate
23 argument that the text messages couldn't be properly
24 authenticated under Rule 901 of the *South Carolina Rules of*
25 *Evidence*.

1 THE COURT: Well I don't know, I hadn't heard the
2 person try to authenticate 'em yet.

3 MR. PHILLIPS: Okay.

4 THE COURT: I can't rule on that right now.

5 MR. PHILLIPS: Okay, we'll deal with that when it
6 comes.

7 THE COURT: Okay.

8 MR. PHILLIPS: So in dealing just with this issue and
9 not -- we'll save that for when it's timely. In dealing
10 with the text messages, any approbative value that they
11 have it would be far substantially outweighed by the danger
12 of unfair prejudice that the jury would make their
13 determination solely based on these text messages versus
14 the evidence as to possession.

15 THE COURT: Okay. Now, let me ask you, is your witness
16 here, Solicitor, to proffer -- to authenticate this, or do
17 you want to do that later on?

18 SOLICITOR HAYES: Your Honor, the physical phone will
19 come in through standard chain of custody.

20 THE COURT: Right.

21 SOLICITOR HAYES: And then the authentication of the
22 phone we're planning on offering through the officer who is
23 trained to run the program.

24 THE COURT: All right. So we'll deal with that at the
25 appropriate time.

1 SOLICITOR HAYES: Yes, sir.

2 THE COURT: Okay.

3 MR. PHILLIPS: And just as a heads-up, my argument
4 would also be that they would need the network provider,
5 the custodian of records to testify to proffer -- do a
6 proffer authentication.

7 THE COURT: Okay. We'll deal with that at the
8 appropriate time. All right, talk to me about the Chester
9 stuff.

10 MR. PHILLIPS: As far as the Chester, obviously it is
11 closely related in time, but in this instance he has -- to
12 make sure I articulate this properly -- The single fact
13 that it is a subsequent -- I just want to make sure this is
14 said exactly right -- So in turn it would be very similar
15 to the same argument that the danger of unfair prejudice
16 would be enhanced because it's similar. Essentially that
17 the fact that he is arrested and has a small amount of
18 methamphetamine on his person, and that he has seven
19 hundred dollars cash, doesn't in and of itself I would say
20 prove that he had the intent to possess a bag of meth that
21 was found in a pair of pants.

22 I don't know if there's any other way to go further
23 than that other than just that any substantial or any
24 approbative value that it would have would be -- you know
25 substantially outweighed by the standard of unfair

1 prejudice.

2 In looking at kind of -- you know I don't want to go
3 backwards but there was another case as far as what would
4 be for the text messages, *State v. Carter* 323 S.C. 465,
5 Court said finding evidence of prior drug transactions
6 involving a defendant and a cooperating government witness,
7 and that's even with another witness that the government
8 had, not just text messages, there had been inherent issues
9 with that, before the alleged drug transaction against
10 most of these cases are distribution was not admissible.

11 And in those cases it's all about intent. I mean it's
12 coming in all under intent.

13 THE COURT: All right. Thank you, sir.

14 MR. PHILLIPS: Thank you, your Honor.

15 THE COURT: All right. Let me go ahead and cut to the
16 chase. All right, I considered the arguments of both the
17 lawyers as well as my review applicable to the case law. I
18 also as y'all know took the proposed evidence home with me
19 last night and looked over it so I would make a
20 determination first thing this morning.

21 Let me say for the purpose of the record the balancing
22 test which I conducted. I find that this falls directly
23 under the holdings and Rule 404(b) prior bad acts. I find
24 that the proposed evidence of the text messages in the
25 three weeks or so preceding that I looked at, what the

1 State has offered, in the three weeks or so preceding the
2 execution of the Search Warrant is, appears to be clear and
3 convincing to me at least, as well as logically relevant to
4 the issue at hand that of trafficking.

5 Having said that, the next issue is whether or not its
6 more approbative than prejudicial. Clearly these text
7 messages are prejudicial to the Defense and there is no
8 question about that. However, they are substantially
9 approbative to the State's case, and therefore, having
10 deducted that balancing test in considering all the factors
11 I need to consider, I am going to allow most of the text
12 messages in when they are properly authenticated when we go
13 through that exercise later on.

14 All right, so the text message prior to the Search
15 Warrant will come in, most of 'em. I'm gonna go through
16 and talk about that in a moment.

17 As to the Items seized from him when he was arrested
18 in Chester: Having conducted the same analysis and having
19 conducted the same balancing test, I find that that
20 evidence that he was arrested with - a gram I believe ---

21 SOLICITOR HAYES: Yes, your Honor.

22 THE COURT: --- of what appeared to be crystal meth,
23 along with a substantial amount of cash, that's
24 substantially prejudicial, more prejudicial than
25 approbative, so I'm not gonna allow that in. Okay.

1 So the text messages come in. What he had on him at
2 the time of his arrest does not come in. Okay.

3 Now, looking at the text messages. Item marked number
4 15. Why does this need to come in?

5 SOLICITOR HAYES: Your Honor, let me pull our copy of
6 that. I'm sorry.

7 THE COURT: That's the picture, okay, with the long
8 hair and the tattoos and the chain.

9 SOLICITOR HAYES: Your Honor, from the State's
10 perspective that would go to identity of the owner of the
11 phone. I think in 2018 the best way to tell it's
12 somebody's phone is to for lack of a better word look at
13 their mirror selfies. I mean I think that's the age we
14 live in; I think that's what people do. They take pictures
15 of themselves on their phone and I think it is like putting
16 your thumb print on the back of a phone.

17 THE COURT: All right.

18 MR. PHILLIPS: The Defense would argue that that
19 specific picture would be -- have it's own 403 analysis in
20 the sense that the officer is gonna testify that they
21 seized the phone on his person. I don't believe identity
22 would be that big of an issue if the phone is seized when
23 he was arrested. So because identity wouldn't be as big of
24 an issue, the approbative value of having a picture with
25 him with long hair and tattoos showing, I don't see how the

approbative value would be very high.. And certainly would be substantially outweighed - -

THE COURT: Well, are y'all - - -

MR. PHILLIPS: - - - by the prejudicial effect.

THE COURT: - - challenging the admissibility? I believe you told me earlier you're challenging the admissibility and authentication of this phone and his messages.

MR. PHILLIPS: So to kind of to walk you through all the challenges we would have to renew prior motions on, of course, all the Fourth Amendment searches that this would just be in a long line of fruit of the poisonous tree, tainted evidence, that they would have never had an arrest warrant --

THE COURT: All right. Let me tell you, we're not going up that tree again. We have barked up that tree twenty times.

MR. PHILLIPS: And then --

THE COURT: Mr. Phillips, let me talk.

MR. PHILLIPS: Yes, sir.

THE COURT: Okay. You are protected in this record. I'm saying this right now for the Court of Appeals and the Supreme Court. He is protected for the remainder of this trial on all the objections he's made up to this point. There is no need for contemporaneous objections.

1 I promise you that protection, okay. You're an
2 appellate lawyer, you're an excellent lawyer, okay. And
3 you're an appellate lawyer, you don't have to keep doing
4 all of that. I promise you you're protected, okay.

5 MR. PHILLIPS: Thank you.

6 THE COURT: Go ahead.

7 MR. PHILLIPS: Thank you, your Honor. So, the other
8 argument, in addition to authentication, would be that the
9 text messages would be considered inadmissible hearsay.
10 But as far as this specific picture, I think it has it's
11 own 403 analysis that if he gets arrested and the phones on
12 him they're gonna testify that we got the phone from
13 Jonathan Ostrowski; that identity would not be the issue
14 there if they're saying they got the phone from him.

15 I mean that officer is gonna testify I took the phone
16 from him; that any approbative value -- and I say it would
17 be very low for that picture -- would be substantially
18 outweighed by it's prejudicial effect. The picture itself
19 as your Honor has acknowledged is -- it's a bad picture as
20 far as the long hair and the tattoos. I don't see how it
21 would further any State's theory that he is in constructive
22 possession of those -- of the drugs. I think that the
23 picture by itself is -- has its on 403 analysis and should
24 not be admitted and would be substantially outweighed by
25 it's prejudicial effect.

1 THE COURT: All right. Any further argument on that?

2 SOLICITOR HAYES: Your Honor, if they're gonna say its
3 not his phone I think the jury would be entitled to hear --
4 to see that arguably selfies are on the phone.

5 THE COURT: All right. Some of these text -- While I
6 think about that some of these text are duplicative of the
7 same text, so tell me why is that?

8 SOLICITOR HAYES: Your Honor, we wanted to show --
9 They took photographs of the screen of the phone, we wanted
10 to show some of those just to show it's the same phone.
11 But they didn't get into how deep the phone really goes
12 until they ran a program and you get the printout that we
13 provided to your Honor of the text messages.

14 THE COURT: So whoever your witness is is gonna talk
15 about why there's this versus this?

16 SOLICITOR HAYES: Yes, sir.

17 THE COURT: Okay. All right.

18 SOLICITOR HAYES: But that's just the explanation for
19 that.

20 THE COURT: Yes, sir. Anything else?

21 MR. PHILLIPS: And the issue created by the pictures,
22 I think the phone dump is separate as far as a foundational
23 issue it's foundationally fine. But pictures of the phone,
24 that has a foundation problem because we can just take a
25 picture of drugs and then have the officer admit the

1 evidence that way.

2 I think if they go through as far as foundationally
3 there's no issue with the phone dump. But from a
4 foundation standpoint you can't in my -- in the Defense
5 position you couldn't enter in a picture of the phone text
6 messages. I don't know how you lay the proper foundation
7 for that. I mean that's the problem for, you know, having
8 duplicative text messages and one of 'em is just a picture.
9 If we were allowed to do that we could just take a picture
10 of drugs and then put it into evidence.

11 THE COURT: Okay. All right, I'm gonna allow in all
12 the text messages including Number 15. Okay, we ready for
13 the jury?

14 SOLICITOR HAYES: The State is ready, your Honor.

15 THE COURT: You ready for the jury?

16 MR. PHILLIPS: Yes, your Honor.

17 THE COURT: All right, let's bring 'em in.

18 SOLICITOR HAYES: Your Honor.

19 THE COURT: Yeah.

20 SOLICITOR HAYES: Just for the record, since there is
21 a sequester in place, my co-counsel is going to explain
22 some of your Honor's rulings to the sequestered witnesses
23 so that they don't violate your Honor's order.

24 THE COURT: Okay.

25 MR. PHILLIPS: And that would include the selfie?

1 THE COURT: Yeah, I'm gonna allow him to accept that.

2 That would be for the record. I conducted the 403
3 analysis, while I do find that the picture, and the Court
4 was concerned about the picture, since the Defense is
5 challenging the authenticity and the admissibility of the
6 phone, and the accompanying messages, I do find that the
7 State should be allowed to offer that into evidence for
8 proof of ownership of the phone, okay.

9 And while it is prejudicial, it's approbative effect
10 outweighs the prejudicial effect. Okay.

11 Bring in the jury.

12 MR. PHILLIPS: Your Honor, may we approach real quick
13 since the jury's coming in?

14 THE COURT: Yes, sir.

15 (BENCH CONFERENCE OFF THE RECORD AT 10:14 A.M.)

16 (JURY REENTERS COURTROOM AT 10:15 A.M.)

17 THE COURT: All right. All members of the jury are
18 present. Good morning, ladies and gentlemen, how's
19 everybody? I see lots of good smiles on faces. That's
20 good. All right, we'll go ahead and get started this
21 morning.

22 You may recall the witness left from yesterday.

23 SOLICITOR HAYES: Yes, your Honor. We were in the
24 middle of Investigator Leland Harrelson's testimony.

25 THE COURT: All right, sir, come on back up. You're

1 still under oath, just have a seat here.

2 INVESTIGATOR HARRELSON: Yes, sir.

3 DIRECT EXAMINATION

4 INVESTIGATOR LELAND HARRELSON BY SOLICITOR HAYES:

5 Q. Investigator Harrelson, I know you just sat down but
6 with the Judge's permission would you mind stepping down so
7 that we can look at these pictures again just to kind of
8 get back to where we were?

9 A. Yes, sir.

10 SOLICITOR HAYES: If your Honor would allow?

11 THE COURT: Yes. Sure.

12 (WITNESS LEAVES WITNESS STAND.)

13 BY SOLICITOR HAYES:

14 Q. Investigator Harrelson, do you have a better view of
15 these pictures now from this angle?

16 A. I do, yes, sir.

17 Q. Can you tell us what that is and the significance
18 to the investigation?

19 A. Yeah, this picture is a picture of a toolbox with
20 tools. And also a black digital scale in the corner of the
21 toolbox.

22 Q. Okay. Can you tell us what this picture is and the
23 significance to this investigation?

24 A. It's another picture of a toolbox drawer and in the
25 left hand corner is a used methamphetamine pipe.

1 THE COURT: Would you just tell me what the number is
2 when you show 'em the picture?

3 SOLICITOR HAYES: Yes, your Honor.

4 The first one we showed was State's Exhibit 2(BB).

5 The next one was 2(AA).

6 THE COURT: Thank you.

7 BY SOLICITOR HAYES:

8 Q. Investigator Harrelson, this is Exhibit 1. Would
9 you remind us what that is?

10 A. Yeah, that's taken from the driveway. That's kind of
11 the side entry into the house going through a carport.

12 SOLICITOR HAYES: Your Honor, this is Exhibit 2(B).

13 Q. Investigator Harrelson, can you remind us what that
14 is?

15 A. Yeah. That's a picture of a used methamphetamine
16 pipe.

17 Q. Investigator Harrelson, this is Exhibit 2(E). Can
18 you remind us of what that is?

19 A. Yes. It's a picture of a box of several razor blades
20 in a container.

21 Q. And what are razor blades used for in your business?

22 A. To cut up drugs into smaller amounts.

23 MR. PHILLIPS: Renew prior objection.

24 THE COURT: Over ruled. Yeah, over ruled.

25 BY SOLICITOR HAYES:

1 Q. Investigator Harrelson, this is Exhibit 2(F). Is
2 that more of the same?

3 A. It is. More picture of some blades.

4 Q. Investigator Harrelson, this is Exhibit 2(I). Remind
5 us what that is.

6 A. Yes. A pair of size 38 men's pants.

7 Q. And what was discovered in those pants?

8 A. A plastic baggie containing a crystal like substance.

9 Q. Investigator Harrelson, this is 2(J). Can you remind
10 us what that is?

11 A. Yes, sir. A closeup picture of the tag showing the
12 size 38 that it was a men's pants.

13 Q. Investigator Harrelson, this is 2(K) and 2(L). Can
14 you remind us what these are?

15 A. Yes, sir, that is a plastic baggie with the crystal
16 like substance that I located inside the pant pocket.

17 Q. Were the pants hanging or folded when you found 'em?

18 A. They were folded.

19 Q. Investigator Harrelson, this is Exhibit 2(O). Can
20 you remind what this is?

21 A. It's a digital scale on a coffee table along with a
22 methamphetamine pipe in the ashtray.

23 Q. Okay. Whereabouts in the house was that coffee table
24 located?

25 A. It was in the living room.

1 Q. Investigator Harrelson, this is Exhibit 2(P).

2 Would you remind us what that is?

3 A. That's just a closeup picture of the used
4 methamphetamine pipe inside the ashtray.

5 Q. Okay. Investigator Harrelson, this is Exhibit 2(Q).

6 Can you remind us what that is and what the
7 significance is to the investigation?

8 A. Yeah, it's a box of tin foil and also some razor
9 blades. The razor blades, again, to chop up
10 methamphetamine. The tin foil can be used to store and
11 also to smoke methamphetamine.

12 Q. Investigator Harrelson, this is Exhibit 2(T). Can
13 you remind us what that is and the significance to the
14 investigation?

15 A. Yes, sir. That is a picture of the shelf where I
16 located the pants. It was if you go to the far right from
17 the top it would be the third one down is where I located
18 the pair of brown pants.

19 Q. Okay. Investigator Harrelson, this is Exhibit 2(W).

20 Can you remind us what that is and the significance to
21 the investigation?

22 A. Yeah, it was a picture of something I thought that was
23 used to smoke methamphetamine due to the burnt hand on it
24 and I just took a photo of it.

25 Q. Have you ever seen a device like that before?

1 A. I've seen something similar to that. Not exactly like
2 that.

3 Q. Okay. Investigator Harrelson, this is Exhibit 2(X).

4 Could you remind us what that is and the significance
5 to the investigation?

6 A. Yes. A glass bowl used to smoke marijuana.

7 Q. Investigator Harrelson, this is Exhibit 2(Y). Could
8 you remind us what that is and the significance to the
9 investigation?

10 A. Yeah, it's a box that has a methamphetamine pipe in it
11 that has not been used.

12 Q. Okay. Investigator Harrelson, this is Exhibit 2(Z).

13 Could you remind us that that is and the significance
14 to the investigation?

15 A. Yes. It's a box of - - -

16 MR. PHILLIPS: Renew prior objections.

17 THE COURT: All right. Over ruled.

18 A. A box of sandwich baggies that were located in the
19 shed out behind the residence. And sandwich baggies are
20 commonly used to package drugs.

21 Q. All right. Thank you, Investigator Harrelson, that's
22 all of the pictures we're gonna look at for now.

23 (WITNESS RETURNS TO WITNESS STAND.)

24 Q. Investigator Harrelson, based on your experience as
25 a law enforcement officer in methamphetamine

1 investigations, how would you summarize the contents of the
2 house and what it meant to you?

3 MR. PHILLIPS: Objection.

4 THE COURT: Over ruled.

5 BY SOLICITOR HAYES:

6 Q. You may answer.

7 A. Okay. Clearly somebody who was using, and also
8 selling methamphetamine, due to the methamphetamine pipes,
9 the digital scales used to weigh out drugs, and also the
10 sandwich baggies and tin foil used also to package drugs
11 for sale to another individual.

12 Q. Investigator Harrelson, did you and your team seize
13 physical evidence from the house?

14 A. Yes, sir, we did.

15 SOLICITOR HAYES: The Court's indulgence, your Honor.

16 THE COURT: Yes, sir.

17 BY SOLICITOR HAYES:

18 Q. I'm showing you what's been marked as -- what's been
19 premarked as State's Exhibit 4 for identification. Could
20 you take a look at that please?

21 A. Yes.

22 Q. Do you recognize that object?

23 A. I do, yes.

24 Q. Did you seize that object from 162 Bailey Avenue
25 on January 25th, 2017?

1 A. Yes, sir, I did.

2 Q. What is that object?

3 A. It is a glass pipe with marijuana.

4 SOLICITOR HAYES: Your Honor, at this time I would
5 move to admit into evidence what's been premarked as
6 State's Exhibit 4 as State's Exhibit 4.

7 MR. PHILLIPS: Subject to prior objections.

8 THE COURT: All right. Over ruled. Admitted.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER 4, IDENTIFIED AND
10 MARKED, RECEIVED INTO EVIDENCE.)

11 BY SOLICITOR HAYES:

12 Q. Investigator Harrelson, would you mind holding that
13 up so the jury can see it?

14 (WITNESS COMPLIES/PUBLISHES STATE'S EXHIBIT 4 TO THE
15 JURY.)

16 Q. And that was located inside 162 Bailey Avenue?

17 A. It was yes, sir.

18 Q. Whereabouts?

19 A. It was located on a coffee table in the living room.

20 Q. Did you take a picture of that object?

21 A. Yes, sir, I did.

22 Q. And did we look at that picture yesterday and today?

23 A. Yes, we did.

24 Q. All right. Thank you, sir.

25 Investigator Harrelson, I'm showing you what's been

1 marked for identification as State's Exhibit 8. This one
2 is sealed. Would you mind opening that with a pair of
3 scissors?

4 (WITNESS COMPLIES.)

5 Q. Can you take a look at those items and let us know if
6 you recognize them?

7 A. Yes, I do recognize them.

8 Q. Okay. What are those two items?

9 A. One is a digital scale; the other one is a box of
10 sandwich bags.

11 Q. Did you seize those items from 162 Bailey Avenue on
12 January 25th, 2017?

13 A. Yes, sir, I did.

14 Q. Did we look at pictures of those items yesterday and
15 today?

16 A. Yes, we did.

17 SOLICITOR HAYES: Your Honor, at this time I would
18 move what's been premarked as State's Exhibit 8 into
19 evidence as State's Exhibit 8.

20 MR. PHILLIPS: Subject to prior objection.

21 THE COURT: All right. Over ruled and admitted.

22 (WHEREUPON, STATE'S EXHIBIT NUMBER 8, IDENTIFIED AND
23 MARKED, RECEIVED INTO EVIDENCE.)

24 BY SOLICITOR HAYES:

25 Q. Investigator Harrelson, could you show those to the

1 jury please? Just hold 'em up.

2 A. Sure.

3 (WITNESS PUBLISHES STATE'S EXHIBIT 8 TO THE JURY.)

4 A. A black digital scale and a box of sandwich bags.

5 Q. And where were those located in 162 Bailey Avenue?

6 A. They were located in the work shop.

7 Q. And you can put those back in the bag.

8 A. Certainly.

9 Q. Investigator Harrelson, I'm showing you what's been
10 marked for identification as State's Exhibit 6. If you
11 would open that with a pair of scissors and let us know if
12 you recognize that object.

13 (WITNESS COMPLIES.)

14 A. Yes, sir, I do.

15 Q. What is that item?

16 A. It's a digital scale.

17 Q. Did you seize that item at 162 Bailey Avenue on
18 January 25th?

19 A. Yes, I did.

20 Q. Whereabouts did you seize it from?

21 A. It was located under coffee table in living room.

22 SOLICITOR HAYES: Your Honor, at this time I would
23 move into evidence what's been premarked as State's Exhibit
24 6 into evidence as State's Exhibit 6.

25 MR. PHILLIPS: Subject to prior objection.

1 THE COURT: Yes, sir. Over ruled and admitted.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER SIX, IDENTIFIED
3 AND MARKED, RECEIVED INTO EVIDENCE.)

4 BY SOLICITOR HAYES:

5 Q. Investigator Harrelson, could you show that to the
6 jury?

7 A. Yes, sir.

8 (STATE'S EXHIBIT SIX PUBLISHED TO THE JURY BY
9 WITNESS.)

10 A. It's a black digital scale and also the top that
11 comes along with it.

12 Q. Did we locate a picture of that object yesterday and
13 today?

14 A. Yes, we did.

15 Q. You can put that back in the bag.

16 (WITNESS RETURNS ITEM TO EVIDENCE BAG.)

17 Q. Investigator Harrelson, I'm showing you what's been
18 premarked for identification as State's Exhibit 5. If you
19 could open that bag with scissors and let us know if you
20 recognize the object.

21 (WITNESS COMPLIES.)

22 A. Yes, sir, I do.

23 Q. What are those objects?

24 A. They're packaging materials, small plastic bags.

25 Q. Okay. Did you seize those items from 162 Bailey

1 Avenue on January 25th, 2017?

2 A. I did, yes, sir.

3 Q. Whereabouts at in 162 Bailey Avenue did you find them?

4 A. They was on top of the refrigerator.

5 Q. Could you --

6 SOLICITOR HAYES: Your Honor, at this time I would
7 move into evidence what's been premarked for identification
8 as State's Exhibit 5 as State's Exhibit 5.

9 THE COURT: All right.

10 MR. PHILLIPS: Subject to prior objection.

11 THE COURT: All right. Noted and over ruled.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER 5, IDENTIFIED AND
13 MARKED, RECEIVED INTO EVIDENCE.)

14 BY SOLICITOR HAYES:

15 Q. Could you please show those to the jury, Investigator
16 Harrelson?

17 A. Certainly.

18 (WITNESS PUBLISHES STATE'S EXHIBIT FIVE TO THE JURY.)

19 Q. They're kind of hard to see at this point. Can you
20 describe the designs that are on those little baggies?

21 A. Yeah. There's two that are actually just clear
22 plastic baggies; there's another one with little card
23 symbols on them. Then there is another one with some grey
24 lines.

25 Q. Okay. What's the significance of those - significance

1 of those baggies in your line of work as a drug officer?

2 MR. PHILLIPS: Objection. Same as the prior under
3 improper lay opinion --

4 THE COURT: All right. Over ruled under Rule 701 of
5 the South Carolina Rules of Evidence.

6 SOLICITOR HAYES: Thank you.

7 Q. You may answer the question, Officer.

8 A. It's used to package drugs.

9 Q. You may put those back in the envelop.

10 (WITNESS COMPLIES.)

11 Q. Now, Investigator Harrelson, I'm showing you what's
12 been marked for identification as State's Exhibit 7.

13 If you would open that package with scissors and let
14 us know if you recognize that object.

15 A. Yes, I do.

16 Q. What is that object?

17 A. It's a glass methamphetamine pipe.

18 Q. Did you recover that item from 162 Bailey Avenue?

19 A. Yes, I did.

20 SOLICITOR HAYES: Your Honor, at this time I would
21 move into evidence as State's Exhibit 7 what's been
22 prelabeled as State's Exhibit 7.

23 MR. PHILLIPS: Subject to prior objection.

24 THE COURT: All right. Over ruled and admitted.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER 7, IDENTIFIED AND

1 MARKED, RECEIVED INTO EVIDENCE.)

2 BY SOLICITOR HAYES:

3 Q. Whereabouts in the house was that item located?

4 A. It was on top of the refrigerator.

5 Q. You can put that back in the envelop.

6 (WITNESS COMPLIES.)

7 MR. PHILLIPS: May we approach, your Honor?

8 THE COURT: Yes, sir.

9 (BENCH CONFERENCE HAD OFF THE RECORD OUT OF THE
10 HEARING OF THE JURY AT 10:31 A.M.)

11 (ATTORNEY PHILLIPS AT SIDE BAR WITH WITNESSES WHO
12 ENTERED THE COURTROOM.)

13 THE COURT: Thank you, Mr. Phillips.

14 MR. PHILLIPS: Thank you, your Honor.

15 THE COURT: Yes, sir.

16 BY SOLICITOR HAYES:

17 Q. Investigator Harrelson, I am showing you what has been
18 premarked for identification as State's Exhibit 3, showing
19 you for the purposes of identification only. Can you look
20 at that and tell me if you recognize it?

21 A. I do, yes, sir.

22 Q. Okay. And did you seize that item? Well, first of
23 all what is that item?

24 A. It's a plastic baggie with a crystal like substance
25 that I seized.

1 Q. Okay. Where did you seize that item from?

2 A. I seized it from the right front pants pocket.

3 Q. Did you physically remove it from the pants pocket?

4 A. I did, yes.

5 Q. What did you do after you found it?

6 A. I placed it into a bag to be transported to our office
7 to fill out later on when we got back.

8 Q. Okay. Is that item in substantially the same
9 condition right now as it was when you found it?

10 A. The only difference is there's another outer bag. But
11 my bag with my seal and my signature and the date up at the
12 top where I sealed it is intact.

13 Q. So from the time you seized that evidence on January
14 25th to the time you relinquished custody of that item, did
15 you alter it in any way?

16 A. No, I did not.

17 Q. Did you tamper with it?

18 A. No, sir, I did not.

19 Q. To whom did you relinquish custody of that object at
20 the end of your investigation?

21 A. I signed it over to our evidence locker which is
22 located in our office at the Rock Hill Law Center.

23 Q. Can you describe the evidence locker for the jury?

24 A. Yeah, its in just a small office. It's a locker
25 made out of big metal -- It's a big metal container broken

1 up into different shelves that have a lock on 'em. And
2 also we have an area we can slide smaller pieces of
3 evidence. So when we're done filling out our evidence we
4 have an evidence sheet and we place all that inside the
5 locker and lock the lock and then periodically the evidence
6 custodian with the York County Sheriff's Office comes and
7 collects that evidence out of the locker and brings it back
8 to the Moss Justice Center.

9 Q. Okay. Is that evidence locker in a locked building?

10 A. It is, yes.

11 Q. Is that the police station?

12 A. It is, yes. It's the Rock Hill Police Department.

13 Q. Once you put an item in the evidence locker does any
14 one take it out who is not authorized?

15 A. We have no way in our office of retrieving the
16 evidence. Once it is locked in the locker it is there
17 until the evidence custodian comes to collect it.

18 Q. Thank you, Investigator Harrelson, if you could hand
19 that back to me at this time.

20 (WITNESS COMPLIES.)

21 (WHEREUPON, STATE'S EXHIBIT NUMBER ELEVEN, PREMARKED
22 FOR IDENTIFICATION.)

23 Q. Investigator Harrelson, I'm showing you what's been
24 marked for identification purposes only as State's Exhibit
25 11. If you could take a look at this please.

1 A. Yes, sir.

2 Q. Do you recognize that item?

3 A. I do, yes, sir.

4 Q. What is that item?

5 A. It is a piece of tin foil with a crystal like
6 substance.

7 Q. Did you seize that item from 162 Bailey Avenue?

8 A. I did, yes.

9 Q. On January 25th, 2017?

10 A. That is correct.

11 Q. Is this item in substantially the same condition
12 now as it was when you seized it?

13 A. It is except for the outer bag and the red seal up
14 at the top along with my initials and the date are intact.

15 Q. From where in the house did you seize it?

16 A. I seized this from the top of the refrigerator.

17 Q. Okay. What did you do with that item at the end of
18 your investigation?

19 A. The same as the other one. You know I placed it into
20 a bag when I got to our office. That's when we fill out
21 our evidence bag and we seal it up and then place it in the
22 evidence locker.

23 Q. Same evidence locker you use for the other item you
24 just looked at?

25 A. Yes, that is correct.

1 Q. From the time you collected that item to the time
2 you put it in the evidence locker, did you alter it with --
3 alter or tamper with it in any way?

4 A. I did not.

5 Q. And it's in the same condition today as it was when
6 you recovered it?

7 A. It is, yes.

8 Q. Thank you, Investigator Harrelson. You can hand that
9 to the court reporter.

10 (WITNESS COMPLIES.)

11 Q. Investigator Harrelson, I'm showing you what's been
12 marked for identification purposes only as State's Exhibit
13 12. If you would not mind, please open that package and
14 let us know if you recognize the object inside.

15 A. Yes, I do recognize it.

16 Q. How did you come into or what date did you come into
17 contact with that item?

18 A. January the 25th.

19 Q. From whom did you receive that item?

20 A. Lieutenant Neal with the Chester County Narcotics
21 Unit.

22 Q. And I know this is an obvious question, but what is
23 that item?

24 A. It's a cell phone.

25 Q. Okay. And you received it from, whom again, I'm

1 sorry?

2 A. Lieutenant Neal with the Chester County Sheriff's
3 Office.

4 Q. And what did you do with that item after you received
5 it?

6 A. I took it and turned it over to our evidence locker.

7 Q. Okay. Between the time you received that item and the
8 time that you gave up custody of that item, did you alter
9 with it -- did you alter it or tamper it in any way?

10 A. I did not.

11 Q. Is that item physically - Does it look the same today
12 as it did on January 25th, 2017?

13 A. It does.

14 Q. Investigator Harrelson, if you could put that back
15 in the package and hand that to the court reporter please.

16 (WITNESS COMPLIES.)

17 Q. Investigator Harrelson, back to what's been marked
18 as State's Exhibit 3 and State's Exhibit 11, the package of
19 crystal, the large package of crystal like substance and
20 the tin foil with a small amount of crystal like substance.

21 Would those -- From the time you recovered them did
22 those go to anyone else's custody on January 25th, 2017?

23 A. No, they did not.

24 Q. Did anyone have access to them on January 25th, 2017
25 besides you?

1 A. No, sir.

2 Q. Hard to say to anyone who is not a law enforcement
3 officer?

4 A. No.

5 Q. When you entered the house and ultimately found these
6 items, who was in the house when you first went in?

7 A. There was nobody in the residence.

8 Q. Investigator Harrelson, about what time of day were
9 you done searching 162 Bailey Avenue and done seizing
10 items?

11 A. It was around approximately 2 o'clock.

12 Q. Okay. So what happened next in the investigation?

13 A. We went back to our office and I obtained a warrant
14 for -- several warrants for Mr. Ostrowski.

15 Q. And to your knowledge was he shortly arrested on
16 those warrants?

17 A. Yes, he was.

18 Q. To your knowledge what county was he arrested in?

19 A. Its Chester County.

20 Q. On what day did that happen?

21 A. That's the same day, January the 25th.

22 Q. Okay. When you learned that he was in Chester
23 County what did you do?

24 A. I went down to Chester County to speak with the
25 officers who had arrested him.

1 Q. Okay. And who went with you from York County?

2 A. Investigator Atwell who worked in my office at the
3 time. We went together.

4 Q. Okay. Did you see Jonathan Ostrowski on that day?

5 A. I did, yes.

6 Q. Did you conduct an interview of Jonathan Ostrowski
7 on that day?

8 A. Yes, I did.

9 Q. Tell us about that interaction from start to finish.

10 Q. We went in, it was in part of the Chester jail so we
11 had to secure our weapons in a locker and myself and
12 Investigator Atwell went into a small interview room. We
13 were just kind of sitting across from the table from each
14 other. I read Mr. Ostrowski his *Miranda Warning* before
15 starting the interview and I ask him if the drugs inside
16 the residence belonged to him and he stated no. But he did
17 state that some methamphetamine pipes did belong to him
18 that were located in the residence.

19 Q. Is that all that Mr. Ostrowski said to you?

20 A. It was, yes.

21 Q. Okay. Who was in the room during that interview?

22 A. Myself, Mr. Ostrowski, and Investigator Atwell.

23 Q. I believe you answered this, but were you wearing a
24 weapon at that time?

25 A. I was not. When you go into -- typically into any

1 type of holding facility, a jail, we're not allowed to
2 bring our weapons in. We secure them in a locker outside
3 of the jail.

4 Q. Were y'all standing or seated? Were y'all seating --
5 seated or standing? I'm sorry.

6 A. We were sitting.

7 Q. Were y'all in chairs or at a table?

8 A. It was a table with a couple of chairs.

9 Q. Did Mr. Ostrowski ask for any food or water during
10 the course of your talk to him -- talk with him?

11 A. He did not.

12 Q. Did he appear to understand your questions?

13 A. He did.

14 Q. Did you threaten him or pressure him in any way?

15 A. I did not.

16 Q. Did Investigator Atwell threaten or pressure him in
17 any way?

18 A. He did not.

19 Q. Based on your experience and how he looked that day
20 do you think he understood his rights?

21 A. Yes, I do.

22 Q. After the interview was over what did you do at that
23 point?

24 A. I left. I met with Lieutenant Neal and got the cell
25 phone that belonged to Mr. Ostrowski.

1 Q. Okay. And what did you do after that?

2 A. Then I went back to our office in Rock Hill.

3 Q. And at that point -- At what point in the day did you
4 drop the evidence into the evidence locker?

5 A. Can I look at the exact time on ---

6 Q. Yes.

7 A. --- on the evidence box? It was 10:00 a.m. on the
8 26th.

9 Q. Okay. So what happened to the evidence from the
10 afternoon of the 25th to the morning of the 26th?

11 A. We secured it a conference room in our office.

12 Q. Is that standard procedure in an investigation like
13 this?

14 A. It is at times when we're running late in the day.

15 Sometimes we will secure it in a locked conference
16 room and then the door to our office is locked and only the
17 Investigators in our office and, you know, have access to
18 our office to get inside so it is secure. And then the
19 following morning we filled out the evidence and did all
20 our paperwork.

21 Q. And for the jury's information, where is your office
22 located?

23 A. It's located in the Rock Hill Police Department.

24 Q. Inside the building?

25 A. It is, yes.

1 Q. About what time on January 25th did you conclude at
2 everything you had to do that day?

3 A. It was around 5:00 or 6:00 that evening.

4 Q. Bear with me just a second, Investigator.

5 Just a few more questions about your position on
6 Bailey Avenue on January 25th. Where were you positioned
7 when you saw Mr. Ostrowski leave the house that day?

8 A. I was in the woods across the street from his house.

9 Q. And about what time did he leave?

10 A. It was a little bit after 7:00 a.m. in the morning.

11 MR. PHILLIPS: Renew prior objection.

12 THE COURT: Over ruled.

13 BY SOLICITOR HAYES:

14 Q. Did anyone else go in or out that morning?

15 A. One other person did, a female, Alexandra Peters.

16 Q. Did your team take her into custody on an unrelated
17 charge?

18 A. Yes, we did.

19 Q. How long after she left the house was she in custody
20 based on your recollection?

21 A. Probably five to ten minutes.

22 Q. About what time did that happen?

23 A. I believe that was around late morning around 11
24 o'clock.

25 Q. Okay. Other than Mr. Ostrowski and Ms. Peters, did

1 anyone else -- did you observe anyone else besides law
2 enforcement go in or out of that house?

3 A. I did not.

4 Q. Investigator Harrelson, are you aware that a firearm
5 was found in that house?

6 A. I am aware, yes.

7 Q. Did we look at pictures of that?

8 A. Yes, we did.

9 Q. What's the significance of that to a methamphetamine
10 investigation?

11 A. A lot of times drugs --

12 MR. PHILLIPS: Objection.

13 THE COURT: Sustain.

14 SOLICITOR HAYES: The Court's indulgence, your Honor.

15 THE COURT: Yes, sir.

16 (PAUSE AT 10:47 A.M.)

17 BY SOLICITOR HAYES:

18 Q. Investigator Harrelson, in the course of your
19 investigation, and the phone that you received, did you
20 ever take pictures of the screen of that phone?

21 A. Yes, I did.

22 Q. What did you take pictures of off of the screen of
23 that phone?

24 MR. PHILLIPS: Renewed objection.

25 THE COURT: Over ruled.

1 A. I took pictures of the text messages from the phone.

2 SOLICITOR HAYES: Your Honor, may we approach?

3 THE COURT: Yeah. Let's do this, ladies and
4 gentlemen. I need to take a brief recess, okay. Give me
5 just about five or ten minutes, okay. Y'all go ahead and
6 freshen up as well. Head on back to your jury room and
7 don't talk about the case.

8 (JURY EXITS COURTROOM AT 10:49 A.M.)

9 THE COURT: All right, is this gonna take long or do I
10 need to go right now? What do you want?

11 SOLICITOR HAYES: Your Honor, we would just --

12 THE COURT: Here I am.

13 SOLICITOR HAYES: Because of your ruling on the phone
14 we can get - premark the text messages.

15 THE COURT: Yeah.

16 SOLICITOR HAYES: The picture of the text messages,
17 and so we would like to go ahead and do that now.

18 THE COURT: Okay.

19 SOLICITOR HAYES: Just to save some time and avoid
20 offering this in front of the jury.

21 THE COURT: Yeah, that's fine. We'll need to get all
22 that done during the break.

23 Your objection is noted and over ruled.

24 MR. PHILLIPS: And to make sure that it's foundation,
25 authentication, and hearsay.

1 THE COURT: Well ---

2 SOLICITOR HAYES: If your Honor --

3 THE COURT: --- I haven't done foundation yet. I
4 haven't done authentication yet. I haven't done hearsay
5 yet. All I've done is say that they're gonna be able to
6 come in provided that those three things are met.

7 SOLICITOR HAYES: Yes, your Honor. Perfect.

8 THE COURT: Okay.

9 MR. PHILLIPS: Thank you, your Honor.

10 THE COURT: Yeah.

11 (COURT IN RECESS AT 10:51 A.M.)

12 (COURT BACK IN SESSION AT 11:01 A.M.)

13 (WHEREUPON, STATE'S EXHIBIT 13 THROUGH 26 PREMARKED
14 FOR IDENTIFICATION.)

15 THE COURT: You can be seated. Did you get 'em
16 marked?

17 SOLICITOR HAYES: Yes, your Honor.

18 (DEFENDANT, JONATHAN OSTROWSKI, REENTERS COURTROOM.)

19 THE COURT: You want me to talk to your people now,
20 Mr. Phillips?

21 MR. PHILLIPS: Yeah. As a practical matter I think
22 that's --

23 THE COURT: All right.

24 MR. PHILLIPS: That would be good.

25 THE COURT: All right. Good. Go ahead and bring them

1 in here and we'll do that on the record real quick.

2 (WITNESSES ENTER THE COURTROOM.)

3 THE COURT: All right, ma'am, you come on up here as
4 well. All right, both of you raise your right hands.

5 (WHEREUPON, CHRIS RAINS,
6 HEATHER WESTERFIELD, BOTH BEING FIRST CALLED AND DULY
7 SWORN, TESTIFIED TO THE COURT AS FOLLOWS:)

8 THE COURT: All right. Thank you, sir. What is your
9 name?

10 A. Chris Rains.

11 THE COURT: Chris Rains?

12 MR. RAINS: R-a-i-n-s, your Honor.

13 THE COURT: Thank you. And, ma'am, what is your name?

14 A. Heather Westerfield.

15 THE COURT: Heather Westerfield?

16 MS. WESTERFIELD: Yes, sir.

17 THE COURT: All right. Thank you. I wanted to take
18 this opportunity, I understand that y'all may be witnesses'
19 for the Defense in this case, at least that's what Mr.
20 Phillips has told me, and I want to make sure that y'all
21 both understand your rights, okay.

22 Neither one of you are in trouble. I just wanted to
23 make sure you understand your rights, so, I know you're
24 nervous but don't be nervous, because I want to make sure
25 you understand everything.

1 All right, first of all you have the right to remain
2 silent, okay. Nobody can force you to testify if you don't
3 want to testify, okay. Because you can never be compelled
4 to testify against yourself because the *United States*
5 *Constitution* says that, okay. Now if you do testify of
6 course you're gonna be -- you're subject to being cross-
7 examined by the Solicitor's office on any relevant matter,
8 okay.

9 And, more importantly if you testify, at least based
10 upon what Mr. Phillips indicated your testimony may be, you
11 could be implicating yourself and could possibly face
12 criminal charges because of that, okay.

13 I just want to make sure you both understand your
14 rights; that nobody can force you to testify, and that if
15 you do testify you must voluntarily knowingly and
16 intelligently do that.

17 Mr. Rains, do you understand your rights as I advised
18 them to you?

19 MR. RAINS: Yes, sir.

20 THE COURT: Ma'am, do you understand your rights as
21 I advised them to you?

22 MS. WESTERFIELD: Yes, sir.

23 THE COURT: All right. So I want to make sure you
24 understand that if you choose to testify you're doing so
25 voluntarily, nobody is making you do that. Do you

1 understand?

2 MR. RAINS: Yes, sir.

3 THE COURT: Ma'am, do you understand?

4 MS. WESTERFIELD: Yes, sir.

5 THE COURT: All right. Mr. Phillips, do you want me
6 to question the witnesses' any further about that?

7 MR. PHILLIPS: The only thing is I think both have
8 indicated -- they've tried to ask me legal questions that I
9 cannot answer and I've instructed them that I cannot
10 answer. Because of that if your Honor, I think what would
11 be most comfortable and ensure everybody's rights, if your
12 Honor would appoint them legal counsel so they can at least
13 consult.

14 THE COURT: All right.

15 MR. PHILLIPS: If your Honor doesn't feel that's
16 appropriate because of the advice, I just wanted to makes
17 sure that ---

18 THE COURT: Gotcha.

19 MR. PHILLIPS: --- that's something that I put out
20 there.

21 THE COURT: All right. Thank you for bringing that
22 up, Mr. Phillips.

23 All right, I'm not appointing you legal counsel
24 because neither one of y'all are facing any criminal
25 penalties. But I will tell you that you may want to talk

1 to a lawyer prior to your testifying because a lawyer can
2 advise you of your rights in further detail and advise you
3 what the significance of testifying in court is, okay.

4 Because you're heard and I know you've seen it on TV
5 and in movies, you have the right to remain silent anything
6 you say can and will be used against you in a court of law,
7 but this is a court of law. So whatever you say is gonna
8 be recorded right over there on that machine and it can be
9 used against you later on and you could be, you know,
10 looking at something, okay.

11 So I just want to make sure you understand that. And
12 of course if you can't afford a lawyer the Court will
13 appoint you a lawyer but that's only if and when you're
14 facing criminal charges.

15 Yes, sir.

16 MR. PHILLIPS: And just to make sure everything's out
17 in the open, that I've informed the Solicitor's office as
18 well as your Honor, that I'm not sure how the witnesses got
19 my work cell phone number but I did have a voice mail from
20 Mr. Rains and I had text messages from Ms. Westerfield. I
21 told both of them I couldn't answer any legal questions;
22 that they should seek counsel. If they want to communicate
23 with the Defense they should go through the private
24 investigator Pete Skidmore, Junior. And just wanted to put
25 that that everybody's been notified of that contact.

1 THE COURT: Is that correct, Mr. Rains?

2 MR. RAINS: Yes, sir.

3 THE COURT: Ms. Westerfield, is that correct?

4 MS. WESTERFIELD: Yes, sir.

5 THE COURT: So you understand Mr. Phillips is not
6 y'all's lawyer?

7 MS. WESTERFIELD: I already have a --

8 THE COURT: You got you a lawyer?

9 MS. WESTERFIELD: Yes, sir.

10 THE COURT: All right. Good. All right, just make
11 sure you talk to him or her and then of course when and if
12 y'all are called to testify I just want to make sure you
13 understand your rights.

14 Mr. Rains, do you understand everything I've said to
15 you?

16 MR. RAINS: Yes, sir.

17 THE COURT: Ms. Westerfield, do you understand
18 everything I've said to you?

19 MS. WESTERFIELD: Yes, sir.

20 THE COURT: All right. Thank you. If y'all please
21 exit the courtroom. Thank you very much.

22 MR. PHILLIPS: Thank you.

23 Thank you, your Honor.

24 THE COURT: All right.

25 (MR. RAINS AND MS. WESTERFIELD EXIT COURTROOM.)

1 THE COURT: All right, we ready?

2 SOLICITOR HAYES: Your Honor, the State is ready.

3 THE COURT: You ready?

4 MR. PHILLIPS: Yes, your Honor.

5 THE COURT: Let's roll.

6 MR. PHILLIPS: Thank you.

7 (JURY REENTERS COURTROOM AT 11:11 A.M.)

8 THE COURT: All right, all members of the jury are
9 present. You may resume questioning.

10 SOLICITOR HAYES: Thank you, your Honor.

11 DIRECT EXAMINATION

12 INVESTIGATOR LELAND HARRELSON BY SOLICITOR HAYES:

13 Q. Investigator Harrelson, you identified a cell phone
14 on the Exhibit that's been marked as State's Exhibit 12 for
15 identification. I'm gonna hand that to you again.

16 Are there any distinctive features on this particular
17 item -- on this particular item that would distinguish it
18 from any other cell phone out of the box? Please take a
19 look.

20 A. Yeah. I mean the cell phone has a black rubber case
21 that was on it and also the screen on the cell phone is
22 cracked.

23 Q. Okay. If you could hold that up. Or, excuse me,
24 please don't hold it up. And you received that phone from
25 Lieutenant Neal of the Chester County Sheriff's Office?

1 A. I did. Yes, that is correct.

2 Q. While you were doing this investigation was that
3 phone able to power on?

4 A. It was, yes.

5 Q. Did you at any point in your investigation power
6 that phone on and take pictures of the screen?

7 A. I did, yes.

8 Q. What specifically did you take pictures of on the
9 phone?

10 A. Of text messages.

11 Q. How did you select those messages to take pictures of?

12 A. I was looking for text messages in reference to drugs.

13 Q. I'm showing you what's been marked for identification
14 purposes as State's Exhibit 13 through State's Exhibit 26.

15 If you could take a look at those and let me know if
16 you recognize them.

17 (WITNESS COMPLIES.)

18 A. Yes, I do recognize them.

19 Q. Are those pictures that you took of this phone?

20 A. Yes, they are.

21 Q. Are those true and accurate depictions of what you
22 saw on the screen of that phone when you were taking those
23 pictures?

24 A. Yes, they are.

25 Q. Between those photos -- Is there any depiction or any

1 identifying feature on the photograph that you took that
2 would relate it to that phone that is marked for
3 identification as Item 12?

4 A. The screen in the pictures of the photos that I took
5 match the cracks on the screen of the actual phone.

6 Q. Okay. Thank you, Investigator Harrelson. If you
7 could put those down for the Court Reporter's use.

8 Now, Investigator Harrelson, what are some common
9 slang terms for methamphetamine?

10 A. Ice, Crystal, Clear are the some of the slang terms
11 for methamphetamine.

12 Q. Investigator Harrelson, do you have experience in
13 looking at cell phones during your investigations as a
14 police officer?

15 A. I do.

16 Q. When someone texts from a phone, what side of the
17 thread does the sender appear on?

18 A. Can I look at the picture?

19 Q. You may.

20 MR. PHILLIPS: Your Honor, if he's talking about his
21 opinion in knowing which side it comes from he won't need
22 to look at a -- the picture of the cell phone if he knows.

23 THE COURT: He can look at the cell phone.

24 A. The person sending the text is on the left-hand side.
25 And then the person responding is on the right-hand side.

1 Q. Okay. Who would be -- If I am -- If you are holding a
2 phone, and you type a message in, and your message is sent,
3 where on the screen does your message appear?

4 A. On the left-hand side of the phone.

5 Q. Thank you, Investigator Harrelson. I think you can
6 put those down for the court reporter.

7 The last question, Investigator Harrelson. I know
8 that you previously identified Jonathan Ostrowski as
9 present in the courtroom. Is the individual present in the
10 courtroom seated at the defense table the same person that
11 you talked to in Chester on January 25th, 2017?

12 A. Yes, he is.

13 Q. Is this the same person that you saw leaving the
14 residence in the early day light hours on January 25th,
15 2017?

16 MR. PHILLIPS: Renewed objection.

17 THE COURT: Over ruled.

18 A. Yes, it is.

19 Q. Please point to him.

20 (WITNESS POINTED TOWARD DEFENDANT.)

21 Q. And describe his clothing.

22 A. In the blue shirt.

23 SOLICITOR HAYES: Thank you, Investigator Harrelson,
24 please answer any questions that Mr. Phillips may have.

25 THE COURT: Mr. Phillips.

1 MR. PHILLIPS: Thank you, your Honor.

2 CROSS-EXAMINATION

3 INVESTIGATOR LELAND HARRELSON BY MR. PHILLIPS:

4 Q. Good morning, Investigator Harrelson.

5 A. Good morning.

6 Q. Let's go right to that conversation you said you had
7 with Mr. Ostrowski. You said that the only thing he told
8 you was that he admitted he had methamphetamine pipes That
9 was your testimony?

10 A. That is correct.

11 Q. Under sworn testimony under oath?

12 A. Yes.

13 Q. Then you also ask him whether he owned the drugs and
14 he denies it.

15 A. That is correct.

16 Q. So it wasn't just this one single statement, there
17 was more?

18 A. It was two statements. I ask him if the drugs in the
19 house belonged to him and he stated no. And then I ask him
20 about the methamphetamine pipes which he said belonged to
21 him.

22 Q. So, he did give you more than just this one single
23 admission of methamphetamine pipes. He denied ownership of
24 the drugs?

25 A. Yes, that is correct.

1 Q. And you didn't say that on direct examination.

2 I mean when ask what was the only thing said and you
3 said oh, just that he claimed ownership of the pipes; is
4 that right?

5 A. I believe that is correct. I misspoke.

6 Q. Now going to kind of your training on writing reports
7 and in this case you wrote the case summary; is that right?

8 A. That is correct.

9 Q. And when you go through the training at the Criminal
10 Justice Academy, they teach you to write very detailed
11 reports; is that right?

12 A. Yes, that is correct.

13 Q. I mean because you have hundreds if not thousands of
14 cases every year?

15 A. Yes, that is correct.

16 Q. And its hard to remember what happened a year or two
17 ago and all the cases seem to blur together at some point?

18 A. Yes, that is correct.

19 Q. And the way you're taught at the Criminal Justice
20 Academy is to write it as fairly as you could remember it?

21 A. Yes.

22 Q. And as accurately as you could remember it?

23 A. Yes, that is correct.

24 Q. Because that report needs to reflect what happened at
25 that time because your memory is best on that day, right?

1 A. Yes, that is correct.

2 Q. You want a complete report, no things missing?

3 A. Yes, that is correct.

4 Q. And you want a report that's true because that's
5 what happened?

6 A. Yes, that is correct.

7 Q. There is no where mentioned in any of the discovery,
8 any reports, that you saw Mr. Ostrowski leave that
9 residence that morning; is that right?

10 A. That is correct.

11 Q. The first time that ever came about was right here in
12 this courtroom as far as I'm concerned, is that right?

13 A. That is correct.

14 Q. So, the first time you've ever noted that Mr.
15 Ostrowski left that residence on January 25th was right
16 here in this courtroom?

17 A. That is correct, yes.

18 Q. You didn't write a report?

19 A. I did write a report. I did not have that information
20 in the report.

21 Q. And you didn't write it and you didn't put it in the
22 Case Summary?

23 A. That is correct.

24 Q. And when you spoke to the Solicitor about it you
25 didn't do a supplemental report?

1 A. I did not, no.

2 Q. And you're trained that if you forget to include
3 something you create a supplemental report?

4 A. At times we do, yes.

5 Q. And then when you're prepping for this trial and you
6 realize, you know what, I never included anything about
7 this very very important fact that I saw Mr. Ostrowski, the
8 defendant in this case, leave the residence. Prepping for
9 trial in talking to the Solicitor you see that facts
10 omitted, because you know I don't know anything about it
11 and you don't file a supplemental report?

12 A. I did not file an additional report.

13 Q. So the first time that ever came out is through your
14 testimony here today or yesterday?

15 A. That is correct.

16 Q. And you want your reports to be fair?

17 A. Yes, that is correct.

18 Q. You want 'em to be accurate?

19 A. That is correct.

20 Q. You want 'em to be complete?

21 A. That is correct.

22 Q. And you want 'em to be true?

23 A. Yes, that is correct.

24 Q. And having the fact that the person that's on trial
25 here in a very serious case is leaving the residence that

1 morning that's what you would call a critical fact?

2 A. I would say it's a fact in the case, correct.

3 Q. And should have been contained in the report?

4 A. Yes.

5 Q. But its not there?

6 A. No, it is not in the report.

7 Q. Not until it came out until you started prepping for
8 trial?

9 A. That is correct. I try to put all the information
10 into the report and this particular fact was not in the
11 report.

12 Q. When you were having conversations with the
13 prosecutor's office about preparing for trial, that's
14 when it came up?

15 A. Yes, that is correct.

16 Q. And the Commander of the DEU Unit, what's his
17 relationship with the Solicitor's Office?

18 A. He works for the Solicitor's office.

19 Q. So your boss works for the Solicitor's Office?

20 A. Yes, that is correct.

21 Q. Now in going through these pictures its fair to say
22 there's stuff everywhere, right?

23 A. Yes, that is correct.

24 Q. And you found a lot of pipes that would imply that
25 probably several people frequent the residence; is that

1 right?

2 A. I wouldn't say several people. I found a lot of pipes
3 at the residence meaning somebody had been smoking
4 methamphetamine.

5 Q. Well, I mean you've provided a lot of opinion
6 testimony so far as to your dealings with drug activity.
7 It would be fair to say that most people aren't smoking by
8 themselves; is that right?

9 A. It is common for people to smoke together. It is
10 common for people to smoke alone.

11 Q. And especially when there's multiple evidence of
12 multiple pipes?

13 A. I mean I can't say that one person used every single
14 pipe there versus if it was five or six people. I just
15 found several pipes throughout the residence.

16 Q. But that would be consistent with it, right? You
17 provided a lot of opinion evidence so far, that would be
18 consistent with say a bunch of people getting together and
19 smoking methamphetamine?

20 A. Yes, that is consistent. People do get together and
21 smoke drugs.

22 Q. Now, earlier you identified Mr. Ostrowski being in the
23 picture, and you identified Ms. Alexandra Peters in the
24 picture.

25 A. Yes, that is correct.

1 Q. Now, there's somebody else in the picture that you
2 just happened to skip over and wasn't ask about. Who is
3 that?

4 A. I do not know that person.

5 Q. You don't know who that is?

6 A. I do not.

7 Q. Did you investigate that person?

8 A. No, I did not.

9 Q. So, you have no clue who that is; have no idea what
10 his relation is to this case?

11 A. No, I don't know who that picture of a person was. I
12 know there was a kid's bedroom there.

13 Q. Now, you would classify him as a child?

14 A. The room that I can remember there I know it was a
15 child's bedroom. I don't know. I'm not saying it was a
16 younger child; maybe a teenager.

17 MR. PHILLIPS: May I approach, your Honor?

18 THE COURT: Yes, sir.

19 BY MR. PHILLIPS:

20 Q. And if you would, thank you.

21 A. Sure.

22 Q. You wouldn't classify that individual as a child
23 would you?

24 A. No, I would say teenager, young adult.

25 Q. Possibly nineteen?

1 A. Yes.

2 Q. I mean, just a guess, it's impossible to know the
3 age.

4 A. That is correct, yes, sir.

5 Q. Because you don't know anything about the person?

6 A. I do not, no.

7 Q. Thank you.

8 MR. PHILLIPS: I apologize, Madam Court Reporter.

9 This is State's Exhibit 2(A).

10 Q. And this is where you said you found the bag of
11 methamphetamine?

12 A. That is correct.

13 MR. PHILLIPS: Madam Court Reporter, this is State's
14 Exhibit 2(T).

15 Q. And that's the picture of the armoire; is that right?

16 A. Yes, sir.

17 Q. And behind that's the front door of the residence?

18 A. That is correct.

19 Q. And that's a open hallway, right? In the residence
20 that's open access; that's not in a bedroom?

21 A. No, it is not in a bedroom.

22 Q. So, the spare bedroom in the house, if you were to
23 walk out of that, you have access to this open area?

24 A. Yes, you do.

25 Q. If you walk out of any part -- of any part in a

1 closed off portion of the room, this is in an open access
2 area?

3 A. It is, yes.

4 Q. Its not in the main bedroom?

5 A. No, it is not.

6 Q. It's like a makeshift closet?

7 A. That is correct.

8 Q. And if somebody would say, staying in the house, they
9 wouldn't have to be staying in a specific bedroom to have
10 access to that armoire. It's literally blocking the front
11 door in the open hallway, what would be when you walk in
12 the foyer ---

13 A. Yes.

14 Q. --- I guess you would call it?

15 A. That is correct.

16 Q. Do you know anything about Heather Westerfield?

17 A. I do not.

18 Q. Any investigations?

19 A. No, sir, I do not know her at all.

20 Q. Did you know that Mr. Ostrowski does paint and
21 drywall?

22 A. I do not know exactly what he does for a living.

23 Q. So in doing this investigation you have no clue that
24 he does paint and drywall?

25 A. I mean I know he did construction work. I don't know

1 exactly what type of work that he did do.

2 Q. And as far as the razor blades, it's not as if you
3 found one or three; there was two full industrial size
4 packs of razor blades?

5 A. Yes, that is correct.

6 Q. How many razor blades do you think are in pack?

7 A. Approximately 10 to 15.

8 Q. Now, we talk about the gun as well in the bag of
9 drugs. Did you fingerprint the bag of drugs?

10 A. I did not.

11 Q. Did you fingerprint the gun?

12 A. No, I did not.

13 Q. Did you do touch DNA on the bag of drugs?

14 A. No, I did not.

15 Q. Did you do touch DNA on the gun?

16 A. No, I did not.

17 Q. And as an officer who does investigations you know if
18 you were to do both of those things you could elicit
19 evidence of ownership?

20 A. At times, yes, I think you can get DNA and prints from
21 a bag or a weapon.

22 Q. And touch DNA is basically when you touch something
23 you just by the very nature of, you know, sweat on you, you
24 know, and skin cells, it leaves in the crevices of an
25 object that you touch. Is that your knowledge of just

1 basic what they would test for DNA?

2 A. Yes, I believe that is correct.

3 Q. And you're not sure who was staying in that other
4 spare bedroom?

5 A. No, I was not.

6 Q. Did you take any pictures of that spare bedroom?

7 A. No, I did not.

8 Q. Did you take pictures of the entire house? I mean to
9 basically show an accurate of where, you know, like say the
10 living room as far as couch and the spare bedroom, you
11 know, do you have those pictures?

12 A. No, I did not take any other additional pictures.

13 Q. On all these pipes that were found in different
14 locations of the house, did you do any fingerprints on the
15 pipes?

16 A. No, I did not.

17 Q. Did you do any touch DNA on the pipes?

18 A. No, I did not.

19 Q. Specifically a pipe you put it to your mouth relevant
20 DNA possibly could be there?

21 A. That is correct.

22 Q. As far as the razor blades, if someone was doing
23 contract work that is a possible explanation for having
24 razor blades is it not?

25 A. It is, yes.

1 Q. And as far as this investigation you're in the woods
2 that morning, were you doing twenty-four hour surveillance?

3 A. No, I was not.

4 Q. And did you do surveillance the day before?

5 A. I did off and on surveillance. I was not there all
6 day the day before.

7 Q. All right. Is that provided in the discovery?

8 A. No, it is not.

9 Q. So this surveillance the day before, again, being
10 fair, accurate, complete and true, is any of that in the
11 discovery?

12 A. No, I did not note any other surveillance that I did
13 in the report.

14 Q. And when you got there at 7 o'clock in the morning
15 you don't know who had been there the day before that
16 night? You weren't there before 7 o'clock, right?

17 A. That is correct.

18 Q. So, anybody that came that night, came and went, you
19 would have no idea who that would be?

20 A. That is correct.

21 Q. Because you weren't there?

22 A. That is correct.

23 Q. And again, being fair, accurate and complete and true,
24 as far as your report's concerned that's not listed in the
25 discovery?

1 A. No, it is not. I try to put everything in there. I
2 don't notate every single time I may drive by a residence
3 that I'm looking at but we do, you know, do some
4 surveillance from time to time on different -- on the same
5 place over and over again.

6 MR. PHILLIPS: No further questions. Thank you.

7 INVESTIGATOR HARRELSON: Yes, sir.

8 THE COURT: Any redirect?

9 REDIRECT EXAMINATION

10 INVESTIGATOR HARRELSON BY SOLICITOR HAYES:

11 Q. Investigator Harrelson, Mr. Phillips was asking you
12 about seeing Mr. Ostrowski leave on January 25th, 2017.

13 Did you see that?

14 A. Yes, I did.

15 Q. Were you under oath when you told us that?

16 A. Yes, I was.

17 Q. In your knowledge or to your knowledge based on your
18 policies at your department, what happens to officers who
19 lie on the stand?

20 MR. PHILLIPS: Objection. It's a legal --

21 THE COURT: Sustain.

22 BY SOLICITOR HAYES:

23 Q. Is Mr. Ostrowski worth that to you ---

24 MR. PHILLIPS: Objection, ---

25 Q. --- in --

1 MR. PHILLIPS: --- your Honor.

2 THE COURT: Sustain. Move on, Solicitor.

3 BY SOLICITOR HAYES:

4 Q. Investigator Harrelson, what is your waist size?

5 A. 36.

6 Q. Could you please stand up for the jury?

7 MR. PHILLIPS: Your Honor, relevance, 401?

8 SOLICITOR HAYES: Your Honor, I have an explanation on
9 that.

10 THE COURT: All right. Over ruled.

11 MR. PHILLIPS: May we approach?

12 THE COURT: No.

13 Stand up.

14 BY SOLICITOR HAYES:

15 Q. Investigator Harrelson, could you please stand up?

16 (WITNESS COMPLIES.)

17 Q. Investigator Harrelson, what was the waist size of
18 the pants that the drugs were found in?

19 A. Size 38.

20 SOLICITOR HAYES: Your Honor, if you could instruct
21 the Defendant to stand up?

22 THE COURT: No.

23 MR. PHILLIPS: Objection, your Honor.

24 THE COURT: No. I'm not gonna do that right now.

25 SOLICITOR HAYES: Yes, your Honor.

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

2 SOLICITOR HAYES: No further questions, your Honor.

3 THE COURT: All right. Any re-cross based upon re-
4 direct?

5 MR. PHILLIPS: It will be very brief.

6 THE COURT: All right.

7 RE-CROSS EXAMINATION

8 INVESTIGATOR HARRELSON BY MR. PHILLIPS:

9 Q. None of that information is included in your report?

10 A. As far as the surveillance?

11 Q. As far as seeing Mr. Ostrowski leave the residence.

12 A. That is correct, it is not in the report.

13 Q. The first time as far as the Defense is concerned
14 we heard about it was through your testimony in the
15 Solicitor's opening statement yesterday?

16 A. That is correct, yes.

17 Q. You said you -- Well, is it true that you told the
18 Solicitor that last week during a conversation?

19 A. Yes, I did.

20 Q. You never filed a Supplemental Report?

21 A. I did not do an additional report.

22 Q. Your boss, the Commander Marvin Brown, works for the
23 Solicitor's Office?

24 A. That is correct, yes.

25 Q. This critical information was elicited during trial

1 preparation for this case?

2 A. That is correct.

3 MR. PHILLIPS: No further questions, your Honor.

4 THE COURT: Thank you, sir, you can step down.

5 The State can call it's next witness.

6 (WITNESS LEAVES WITNESS STAND.)

7 SOLICITOR HAYES: We call Lieutenant Johnny Neal with
8 the Chester County Sheriff's Office.

9 Lieutenant Neal, if you could stop by the Bible and
10 take the stand please.

11 THE COURT: Right here.

12 MADAM CLERK: Raise your hand, place your left hand on
13 the Bible.

14 (WHEREUPON, JOHNNY NEAL,
15 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

16 DIRECT EXAMINATION

17 LIEUTENANT JOHNNY NEAL BY SOLICITOR HAYES:

18 Q. Lieutenant Neal, could you tell us your full name
19 for the record please?

20 A. Johnny Neal.

21 Q. Who is your current employer?

22 A. Chester County Sheriff's Office.

23 Q. And how long - Oh, I'm sorry, Lieutenant Neal.

24 (WITNESS ADJUSTING IN WITNESS CHAIR TO ACCOMMODATE
25 WEAPON AND OFFICER GEAR.)

1 THE COURT: It happens.

2 BY SOLICITOR HAYES:

3 Q. Lieutenant Neal, how long have you worked for the
4 Chester County Sheriff's Office?

5 A. Ten years.

6 Q. To what team are you currently assigned?

7 A. I'm the Lieutenant over Narcotics.

8 Q. How long have you been the Lieutenant over Narcotics?

9 A. Five years.

10 Q. Did you arrest Jonathan Ostrowski on January 25th,
11 2017?

12 A. Yes, I did.

13 Q. Whereabouts were you when you arrested him?

14 A. In the Town of Great Falls in Chester, South Carolina.

15 Q. Do you remember the address?

16 A. I can look into my notes and I can tell you.

17 Q. Yes, sir, please refresh your recollection on that
18 point.

19 A. We were at Chester Avenue in Great Falls, South
20 Carolina.

21 Q. When you arrested Mr. Ostrowski --

22 MR. PHILLIPS: Your Honor, may we approach real quick
23 just for a quick matter?

24 THE COURT: Yeah. And by the way that microphone
25 don't work so just talk loud.

1 Yeah.

2 (BENCH CONFERENCE HELD OFF THE RECORD OUT OF THE
3 HEARING OF THE JURY AT 11:38 A.M.)

4 BY SOLICITOR HAYES:

5 Q. Lieutenant Neal, I believe you testified that you
6 arrested him in the Town of Great Falls?

7 A. Yes, sir.

8 Q. In Chester County?

9 A. Yes, sir.

10 Q. When you arrested him did you retrieve a cell phone
11 from him?

12 A. Yes, I did.

13 Q. If you could look at that envelop that has State's
14 Exhibit 12 on it, and the phone that is sitting on top of
15 it.

16 MADAM COURT REPORTER: Its gonna come apart. Its
17 gonna come apart if he picks it up.

18 BY SOLICITOR HAYES:

19 Q. If you could just take a look at it from where you're
20 sitting.

21 A. Okay.

22 Q. Do you recognize that phone?

23 A. Yes.

24 Q. Is that the phone you took from Mr. Jonathan
25 Ostrowksi?

1 A. Yes, sir.

2 Q. Is the person you took that from seated in the
3 courtroom?

4 A. Yes, sir.

5 Q. Where is he?

6 A. Right over there, sir.

7 Q. What is he wearing?

8 A. A blue shirt.

9 Q. And you took that off of his person?

10 A. Yes, I did.

11 Q. What did you do with that phone?

12 A. We turned it into our evidence and then took it over
13 to York County and gave it to Leland.

14 Q. You gave it to Investigator Leland Harrelson?

15 A. Yes, sir.

16 Q. Is he present in the courtroom?

17 A. Yes, he is.

18 Q. Where is he seated?

19 A. He's in the back with the white shirt on and red
20 tie.

21 Q. From the time you took that item, from the time you
22 gave it to Investigator Harrelson, did you tamper with it
23 or alter it in any way?

24 A. No, I didn't.

25 Q. Does it look the same right now as it did on January

1 25th?

2 A. Yes, it does.

3 SOLICITOR HAYES: The Court's indulgence, your Honor.

4 THE COURT: Yes, sir.

5 SOLICITOR HAYES: Your Honor, at this time we would
6 move into evidence what's been marked for identification as
7 State's Exhibit 12 as State's Exhibit 12. That's just the
8 physical phone.

9 MR. PHILLIPS: Subject to prior objection.

10 THE COURT: Yeah. Over ruled and admitted into
11 evidence.

12 (WHEREUPON, STATE'S EXHIBIT NUMBER 12, IDENTIFIED AND
13 MARKED, RECEIVED INTO EVIDENCE.)

14 SOLICITOR HAYES: Madam Court Reporter, I don't have
15 a problem if you need to put it back in the envelop.

16 (STATE'S EXHIBIT NUMBER 12 RETURNED TO EVIDENCE
17 ENVELOP.)

18 THE COURT: Is there a sticker on it as 12?

19 MADAM COURT REPORTER: Yes, sir.

20 THE COURT: Okay.

21 BY SOLICITOR HAYES:

22 Q. Lieutenant Neal, do you recall about what time it
23 was you encountered Mr. Ostrowski in Great Falls?

24 A. I can't tell you the exact time. I can look at
25 my report that I have. I have the report.

1 Q. Yes. Please refresh your recollection from your
2 report and then put it down and answer the question if your
3 recollection has been refreshed.

4 A. It was 3 o'clock.

5 Q. On January 25th, 2017?

6 A. Yes, sir.

7 SOLICITOR HAYES: Lieutenant, I don't have any
8 further questions for you. Please answer any Mr. Phillips
9 may have.

10 THE COURT: Mr. Phillips, your witness.

11 MR. PHILLIPS: Thank you.

12 CROSS-EXAMINATION

13 LIEUTENANT JOHNNY NEAL BY MR. PHILLIPS:

14 Q. Good morning. How are you?

15 A. I'm very good. How are you?

16 Q. Doing great. So with this traffic stop is there a
17 dash-cam video?

18 A. I wouldn't know, sir.

19 Q. And does any of the officers that were involved do
20 they have dash-cam videos?

21 A. No, sir.

22 Q. Do they have body cameras?

23 A. No, sir, at that time.

24 Q. So there's no video recordings of the traffic stop?

25 A. No, sir.

1 THE COURT: Speak up a little bit, sir. Thank you.

2 A. No, sir.

3 Q. And you said you physically searched Mr. Owstrowski?

4 A. Yes, I did.

5 Q. And Agent Crawford, he didn't conduct the search?

6 A. No. I was the one who searched Mr. Ostrowski. I
7 can't even say his name but I do apologize.

8 Q. No, that's quite all right.

9 A. A long night.

10 Q. Does the report said anything like you conducted the
11 search?

12 A. Well I can look back at the report. I'm almost a
13 hundred percent sure that I did conduct the search.

14 Q. Officer, I take your word for it. If you conducted
15 the search that's good enough for me. I understand.

16 So, at this point it's really you just searched him
17 and that's it? You - He had an arrest warrant and you
18 arrested him?

19 A. Say again, sir. I do apologize.

20 Q. You just served the arrest warrant?

21 A. Yeah. And --

22 Q. At the search. Thank you.

23 MR. PHILLIPS: No further questions.

24 THE COURT: All right. Any redirect?

25 SOLICITOR HAYES: No, your Honor.

1 THE COURT: All right. Thank you, sir, you can step
2 down. You're free to leave.

3 (WITNESS LEAVES WITNESS STAND.)

4 THE COURT: Call your next witness.

5 SOLICITOR HAYES: Your Honor, the State calls Jeff
6 Deason.

7 MADAM CLERK: Raise your right hand, place your left

8 . . .

9 (WHEREUPON, JEFFREY DEASON,
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 DIRECT EXAMINATION

12 JEFFREY DEASON BY SOLICITOR HAYES:

13 Q. Mr. Deason, can you state your full name for the
14 record, please?

15 A. Jeffrey Lynn Deason.

16 Q. Who do you work for?

17 A. York County Natural Gas Authority.

18 Q. How long have you worked there?

19 A. Seven years, three months.

20 Q. What is your position there?

21 A. Chief Financial Officer.

22 Q. Have you reviewed your corporate records with respect
23 to 162 Bailey Avenue in Rock Hill?

24 A. Yes.

25 Q. Who had a service address on January 25th of 2017?

1 A. Jonathan Ostrowski.

2 Q. Okay.

3 SOLICITOR HAYES: Thank you, Mr. Deason.

4 No further questions from the State.

5 MR. PHILLIPS: It will be brief, your Honor.

6 THE COURT: All right.

7 CROSS-EXAMINATION

8 JEFFREY DEASON BY MR. PHILLIPS:

9 Q. If somebody has a service address that doesn't make
10 'em the owner of the residence. They don't have to share
11 proof of ownership of the residence; is that right?

12 A. No, sir.

13 Q. And that doesn't mean that that's the sole occupant
14 of the home?

15 A. No.

16 MR. PHILLIPS: No further questions.

17 THE COURT: All right. Thank you, sir, you can step
18 down. You're free to leave.

19 Call your next witness.

20 (WITNESS LEAVES WITNESS STAND.)

21 SOLICITOR HAYES: Your Honor, the State calls Agent
22 Jason Satterwhite.

23 THE COURT: All right.

24 SOLICITOR HAYES: Agent Satterwhite, please stop by
25 the Bible and take the seat on the stand, please.

(WHEREUPON, JASON

SATTERWHITE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED
AS FOLLOWS:)

DIRECT EXAMINATION

AGENT JASON SATTERWHITE BY SOLICITOR HAYES:

Q. Agent Satterwhite, can you tell us your full name?

A. Ronald Jason Satterwhite.

Q. Who is your current employer?

A. The United State's Drug Enforcement Administration.

Q. What is your position there?

A. I'm a special agent.

Q. What are your daily job duties as a special agent?

A. I conduct narcotic's investigations.

Q. Do you ever encounter the York County Multi-
Jurisdictional Drug Enforcement Unit?

A. Yes, sir, I commonly assist them.

Q. Were you assisting them on January 25th, 2017?

A. Yes, sir.

Q. Did you ever go on scene to 162 Bailey Avenue on that
date?

A. I did.

Q. About what time did you arrive?

A. It was approximately 12:53 p.m. that day. I was
assisting them with a search warrant at that location.

Q. Did you go in the house?

1 A. I did.

2 Q. Did you perform any part of that search?

3 A. Yes.

4 MR. PHILLIPS: Renewed objections, your Honor.

5 THE COURT: Over ruled.

6 BY SOLICITOR HAYES:

7 Q. What did you personally observe in the house?

8 A. I observed the layout of the house, the arrangement of
9 the rooms, some evidence that was located, and the other
10 investigators that were present at the scene.

11 Q. Okay. Did you personally recover any of the evidence
12 or you just provided an assisting role?

13 A. I just -- observations.

14 Q. Okay. What time did you arrive at 162 Bailey Avenue,
15 maybe before y'all went in, but what time did y'all get on
16 scene?

17 A. It was a few minutes beforehand. I don't recall
18 exactly the specific time. I know the time of the
19 execution of the search warrant when we entered, the actual
20 door, we arrived a short time before that.

21 Q. Okay. How long did you personally stay on scene?

22 A. Until the search warrant was concluded. It was
23 approximately 2:30, 3 o'clock ---

24 Q. Okay.

25 A. --- the execution of the search warrant. I don't

1 have it time documented, the time the search warrant was
2 concluded.

3 MR. PHILLIPS: And renew the objection referring to
4 the notes.

5 THE COURT: Yes, sir. Noted and over ruled.
6 SOLICITOR HAYES:

7 Q. About how long did it take y'all to search the house?

8 A. It was several hours. If you'll give me a moment I
9 could give you an estimate.

10 (PAUSE.)

11 A. Approximately one hour and forty-five minutes.

12 Q. Were you present prior on scene prior to the search
13 warrant being executed, or was that the first time you
14 arrived was when you went to go inside with the search
15 warrant?

16 A. I was with Lieutenant Rainier approximately 10:00 a.m.
17 that morning on surveillance. We were away from the
18 residence and then we were assisting in an investigation
19 and then later once the search warrant was initiated I
20 relocated to the residence.

21 Q. Did you see anybody go in or out of that house?

22 A. I myself did not.

23 Q. Okay.

24 A. You mean prior to the search warrant?

25 Q. Prior to the search warrant, yes.

1 A. I myself did not.

2 Q. Okay. Did anybody who was unauthorized come in or
3 out of the house while y'all were searching it?

4 A. No.

5 SOLICITOR HAYES: The Court's indulgence, your Honor.

6 THE COURT: Yes, sir.

7 SOLICITOR HAYES: Thank you, Investigator Satterwhite.

8 I don't have any questions -- I don't have any further
9 questions at this time. Please answer any that Mr.
10 Phillips may have.

11 THE COURT: Mr. Phillips.

12 MR. PHILLIPS: Thank you, your Honor.

13 CROSS-EXAMINATION

14 AGENT JASON SATTERWHITE BY MR. PHILLIPS:

15 Q. Good morning. How are you?

16 A. Good morning, sir.

17 Q. Doing well. So, these notes that you've referred to.

18 A. Yes.

19 Q. May I see them?

20 A. Yes.

21 Q. These notes haven't been turned over to me have they?
22 Or is this just your report?

23 A. Just my report.

24 Q. Just the report?

25 A. Yes.

1 Q. Did you have any additional notes?

2 A. Yes.

3 Q. And did you turn those notes over to the prosecutor?

4 A. Yes.

5 MR. PHILLIPS: Your Honor, the notes that he's
6 referring to that have been turned over, that's subject to
7 my prior objection.

8 THE COURT: Yes, sir.

9 BY MR. PHILLIPS:

10 Q. I have not received those notes. Those notes were
11 turned over though?

12 A. Yes.

13 Q. As far as this reports concerned, you referenced the
14 fact that -- Is this your redacted or unredacted report?

15 A. That would be my redacted.

16 Q. Redacted report. Cause that's what I received is a
17 redacted report. And you can have it back as well since
18 then,

19 A. Yes. Thank you.

20 Q. And redacted essentially means that there's
21 information there that is blacked out, that we can't see
22 it; is that right?

23 A. Yes.

24 SOLICITOR HAYES: I'm gonna object, your Honor, I
25 don't think the DEA Incident Report is on trial here.

1 MR. PHILLIPS: It is on trial.

2 THE COURT: All right. Over ruled.

3 BY MR. PHILLIPS:

4 Q. In this report you talk about not of course -- Excuse
5 me, during direct you testified that you didn't see anybody
6 as far as coming and going that day?

7 A. Yes.

8 Q. But as far as specifically to that day how about the
9 day before? Were you surveilling the residence the day
10 before?

11 A. I only conducted surveillance at that location one
12 day previous to that and it was just more or less a
13 familiarization to know where that location was at. That
14 was also dictated in a DEA 6 you would have received.

15 Q. That was December 28th?

16 A. Yes.

17 Q. That you just referred to?

18 A. Yes, sir.

19 Q. And on that date you saw a BMW car; is that right?

20 A. Yes.

21 Q. And you saw three pickup trucks?

22 A. Yes.

23 Q. A Jeep Grande Cherokee?

24 A. Yes.

25 Q. And a Chevrolet Blazer?

1 A. I believe so, yes.

2 Q. All those cars. So that's one, two, three, five cars?

3 A. Approximately, yes.

4 Q. So multiple cars at this house?

5 A. Yes, sir.

6 Q. You saw an individual, white male with a beard, go in
7 and out of the house; is that right?

8 A. Allow me to refresh my memory.

9 Q. Sure.

10 A. I don't recall seeing anyone enter or exit the
11 house. I recall seeing someone occupying a vehicle.

12 Q. At the residence?

13 A. Yes.

14 Q. Okay. So there's a man that was at the residence?

15 A. Correct.

16 Q. That wasn't Mr. Ostrowski?

17 A. Yes.

18 Q. Who was that person?

19 A. I do not know.

20 Q. Well it is, his identity ---

21 SOLICITOR HAYES: Objection, your Honor.

22 Q. --- has been redacted.

23 SOLICITOR HAYES: I would like to approach.

24 THE COURT: All righty.

25 (BENCH CONFERENCE HELD OFF THE RECORD OUT OF THE

1 HEARING OF THE JURY AT 11:55 A.M.)

2 THE COURT: All right. Objection over ruled.

3 BY MR. PHILLIPS:

4 Q. So, you said you did know who he was. You had his
5 license plate number?

6 A. Yes.

7 Q. And you looked up the license plate number?

8 A. Yes.

9 Q. And it said who it was registered to?

10 A. Yes.

11 Q. And as far as you know you had no idea who the
12 identity is? All that's redacted in the report, correct?

13 A. Yes. Just the registered owner of that but it made no
14 correlation between the operator and the registered owner
15 of the vehicle.

16 Q. Did you look further? Did you investigate further?

17 A. Yes. The only thing I can tell you is a description,
18 a vague description as a white male with a beard so
19 basically --

20 Q. And investigated him further when you said there's
21 no connection to that plate and the registered owner. Did
22 you pull the driver's license photograph?

23 A. I can tell you based on my observations that I was
24 unable to determine, positively identify the driver as the
25 registered owner of the vehicle.

1 Q. How would you know that if you didn't pull the DMV?

2 I mean that's -- that's a physical impossibility that
3 you would know -- You knew the registered owner?

4 A. Yes. I conducted an inquiry with the South Carolina
5 DMV.

6 Q. Okay. So you saw who that person is?

7 A. I saw who the registered owner of the vehicle was,
8 yeah.

9 Q. That's what I was asking.

10 A. Yes.

11 Q. So you know what the registered owner looks like?

12 A. Correct.

13 Q. And that's different than this individual?

14 A. Yes.

15 Q. But you don't know the identity?

16 A. No.

17 Q. You've never had any discussions with the prosecutor
18 about the identity?

19 A. I don't know who the identity is.

20 Q. So the prosecutor's may know who the identity of the
21 person is?

22 A. I would not know, sir.

23 Q. The identities of that or that person there was no
24 further investigation, and the identity of the person who
25 owned the vehicle who was that?

1 A. I could not tell you at this time. I only have the
2 redacted.

3 Q. Well you said you looked it up and you saw who it was.

4 A. Yes.

5 Q. Where is all this information? Where is this
6 investigative work, you know?

7 A. I can only tell you at the time that I ran a DMV
8 check with the South Carolina DMV which provided the
9 registered owner of the vehicle.

10 Q. In dealing with the DEA you get a lot of training;
11 is that right?

12 A. Yes.

13 Q. In investigations?

14 A. Yes.

15 Q. And report writing?

16 A. Yes.

17 Q. So which classes do you do as far as part of the Drug
18 Enforcement Administration? I mean this is Federal.
19 What kind of training do you get on report writing?

20 A. Extensive training at Quantico. I've been a DEA agent
21 for ten years and offered numerous affidavits, reports.
22 I've gone through years of training with offices, how to do
23 affidavits, search warrants.

24 Q. Tons of training?

25 A. Yes.

1 Q. And it's fair to say that in that training, again,
2 Federal training, extensive training, that you're taught
3 to make the report complete?

4 A. Yes.

5 Q. To be accurate?

6 A. Yes.

7 Q. To be fair as to what you saw during your
8 investigation?

9 A. Yes, sir.

10 Q. And to be true?

11 A. Yes.

12 Q. And is anything in here about you doing a subsequent
13 investigation as to who the person was from the DMV? Is
14 any of that located in there other than --

15 A. It's entire, sir, the -- An inquiry was conducted on
16 the registered owner of the vehicle.

17 Q. I'm saying as far as you matching the identity and
18 dismissing it as whoever this person may be.

19 A. As far as I'm concerned it's still an active
20 investigation on who that individual is.

21 Q. And that would be the State's position that you're
22 still investigating this person ---

23 A. Yes.

24 Q. --- whomever that person may be?

25 A. Yes.

1 Q. That the State doesn't know the identity of that
2 person?

3 A. I do not know what the other members of the
4 investigation know or do not know. I can tell you I don't
5 know who was driving the vehicle that day.

6 Q. So it's possible that they know? I know the answer
7 to it.

8 A. I don't know, sir.

9 Q. But I don't know who it is. You don't know?

10 A. I can tell you I do not know who was driving the
11 vehicle that day. If I did I would have dictated it in the
12 report.

13 Q. Did you do any further investigation as to his
14 identity?

15 A. No.

16 Q. In preparing for trial did you have discussions with
17 the prosecutor's office?

18 A. Yes.

19 Q. About your investigation?

20 A. Yes.

21 Q. Did you discuss anything regarding this incident?

22 A. No. I provided them with the report I had authored.

23 Q. Unredacted?

24 A. Redacted.

25 Q. They were never provided an unredacted copy?

1 A. I don't believe so. Correction. They were provided
2 -- Because there are elements of our reports that are
3 required to be redacted once they leave the office.

4 Q. We're talking about specifics. This portion, December
5 28th, this person's identity. The person that you saw from
6 the DMV based on the listed owner, was that sent over
7 unredacted?

8 A. Yes, I believe so.

9 Q. So they would have that information?

10 A. There were portions that I redacted before I sent
11 over. They primarily pertain to file number, file title,
12 anything in the indexing section. We do not disseminate
13 that information outside of our agency. That's more for
14 internal records. The information within the body of the
15 details would have been unredacted.

16 Q. Why is the information redacted?

17 SOLICITOR HAYES: Objection, your Honor. I have a
18 matter of law.

19 THE COURT: All right. ladies and gentlemen, leave.
20 I'll get you back out here shortly.

21 (JURY EXITS COURTROOM AT 12:03 P.M.)

22 THE COURT: All right, what you want?

23 SOLICITOR HAYES: Sorry, your Honor, that door's a
24 little slow.

25 THE COURT: Yeah. All right.

1 SOLICITOR HAYES: Your Honor, we went through this in
2 discovery. We disclosed to your Honor that there were DEA
3 required redactions which were done and there were
4 additional redactions by the Solicitor's office that were
5 done to protect the identities of irrelevant people.

6 Because your Honor has read the text messages, your
7 Honor knows the type of game that we're in, and the State
8 takes very seriously protecting people whose names show up
9 in an incident report and they don't have anything to do
10 with anything.

11 And I let Mr. Phillips go a little bit on his cross-
12 examination of Special Agent Satterwhite, but he is
13 creating the inference that the Solicitor's office is
14 hiding information based --

15 THE COURT: Correct. Stop right there.

16 What else -- What do you want to say, Mr. Phillips?

17 I was fixin to shut the whole thing down. Go ahead.

18 MR. PHILLIPS: Two quick points. This person's
19 identity that has not been disclosed, its not a
20 confidential informant. There is no privilege as to that
21 identity but it hasn't been disclosed as we - we've
22 belabored.

23 THE COURT: Right.

24 MR. PHILLIPS: Discovery is different than cross-
25 examination. His *Sixth and Fourteenth Amendment* rights

1 under the *United State's Constitution, Article I, Section*
2 *14*, I believe -- and *Fifth and Fourteenth* -- as far as --
3 and *Article I, Section 3* -- as far as opportunity to
4 present a complete defense, the confrontation clause as
5 well as opportunity to present a full and complete defense,
6 I have a right to fully cross-examine this issue.

7 This is an identity of a person, we have an
8 investigation at issue, identity is at issue in this case
9 because obviously that's why the text messages came in
10 under the common plan of scheme and identity. We have
11 somebody who was at the residence that was notified or was
12 put on point during this investigation. I don't have the
13 or the means to locate the person because that information
14 has been redacted. The full investigation file has not
15 been disclosed.

16 Under the *Sixth Amendment*, as well as the *South*
17 *Carolina Constitution*, we believe that we can go through
18 this on cross-examination that the discovery issue has
19 created this dilemma that we are now faced.

20 SOLICITOR HAYES: Your Honor, this is a defense
21 created dilemma on an irrelevant issue a month before this
22 search warrant was executed. I can't object strongly
23 enough.

24 I request a curative instruction that discovery is a
25 matter of law for the judge, and that its been ruled on and

1 dealt with, to correct the inference that's been created in
2 their mind that the Solicitor's office is improperly hiding
3 things when we stood in open court yesterday in pretrial
4 and told you what we had done.

5 THE COURT: All right. Here's the deal. You know you
6 keep talking about Confrontation Clause, Confrontation
7 Clause. I mean, you know, this bearded white male isn't
8 testifying against your client, Mr. Phillips. He's not
9 here to testify. I've already ruled this pretrial. We're
10 not gonna go into this any more. Your objections are noted
11 for the record. They are over ruled. We're gonna move on
12 but you're not gonna ask him about his report anymore,
13 about the identity of this individual.

14 I'm not gonna do a curative instruction. We've dealt
15 with it, we've moved on and we're gonna keep on going.

16 Okay?

17 SOLICITOR HAYES: Your Honor, in candor --

18 THE COURT: What do you want me to say?

19 SOLICITOR HAYES: Well, your Honor, this is an
20 additional point because I'll bring this up in a little bit
21 but I'll bring it up now while the jury's already out.

22 I think there have been some door opening on some
23 stuff that we said we weren't gonna get into. But the jury
24 may be entitled to hear additional information now.

25 THE COURT: Like what?

1 SOLICITOR HAYES: The fact that the officer's have
2 been doing surveillance on him for six months. I mean the
3 officers have been doing drive-bys. The officers had
4 equipment set up. All stuff we swore not to talk about.

5 THE COURT: Well he went back to December 28th. I may
6 agree with you from December 28th to when the text start in
7 January 3rd, or 4th, or 5th that there's anything there
8 that y'all want to go into.

9 SOLICITOR HAYES: Thank you, your Honor.

10 THE COURT: You know we need to get this trial moving,
11 okay.

12 SOLICITOR HAYES: Yes, sir.

13 THE COURT: And we're on the fourth witness, I think.

14 SOLICITOR HAYES: And, your Honor, I think it picks up
15 from here from the State's side.

16 THE COURT: Okay. All right. I mean as far as -- And
17 I didn't mean to cut you off. As far as a curative
18 instruction, what do you want me to say? Discovery is a
19 legal matter handled between lawyers?

20 SOLICITOR HAYES: Yes, sir, and the Court. And that
21 it's not a fact for the jury to consider.

22 THE COURT: Well, ---

23 MR. PHILLIPS: I would strongly object.

24 THE COURT: --- I mean that's why I don't want to do
25 it. and thank you for saying that for the record, but I

1 agree with Mr. Phillips. I'm not gonna delve too much into
2 that. I mean, you know, he's -- his job as a defense
3 lawyer is not to -- is to try to expose reasonable doubt,
4 okay.

5 And that's part of the defense strategy and I don't
6 see anything necessarily improper about that so I'm not
7 gonna give a curative instruction because that would put
8 too much emphasis on it, and I already shined the light on
9 something that I've already ruled on that we don't need to
10 be talking about anymore, okay. So let's just move on,
11 finish with cross-examination, and let's go, okay?

12 SOLICITOR HAYES: Yes, sir.

13 THE COURT: You good?

14 MR. PHILLIPS: And as far as the opening door part,
15 our argument would be he referenced the prior
16 investigation. And there's got to be explanation for why
17 people are in the woods of this house. I mean it's a self
18 serving thing to limit it to a man in the woods watching
19 the home that morning and the jury not be inferred that
20 they've been investigating when a man's in the woods, and
21 then this specific witness referenced that he had prior
22 investigations of the 28th, so I would say the Defense had
23 not opened the door.

24 SOLICITOR HAYES: Your Honor, they're talking about
25 what was done in advance of January 25th. And as your

1 Honor knows from the discovery there was electronic
2 surveillance. There was ---

3 THE COURT: Right.

4 SOLICITOR HAYES: --- phone ping.

5 THE COURT: That's why I let all that in. I let in
6 the electronic surveillance for the four weeks or three
7 weeks prior to the actual activation of the search warrant.

8 And I think -- You know, I can see where you're going.

9 I mean you got anything from December 28th to the
10 first part of January you want to get in ---

11 SOLICITOR HAYES: Well, your Honor, there was --

12 THE COURT: --- if I agree with you the Defense opened
13 the door?

14 SOLICITOR HAYES: Your Honor, there was a stationary
15 camera live streaming his house. There was a GEO location
16 on his phone. There's two agencies bringing all guns to
17 bear on this defendant.

18 THE COURT: And that information has been shared with
19 the Defense?

20 SOLICITOR HAYES: Because --

21 MR. PHILLIPS: I was told that there was a camera
22 which is why its included in my discovery.

23 THE COURT: Well then we're not gonna go into all of
24 that then. If Mr. Phillips says it hadn't been shared,
25 see, I don't want to create any other red herrings.

1 All right. Let's move on.

2 All right, bring the jury back in. We're breaking at
3 12:30 by the way.

4 (JURY REENTERS COURTROOM AT 12:12 P.M.)

5 THE COURT: Ladies and gentlemen, thank you so much
6 for your patience. As I told you at the outset of the
7 trial, anytime there's legal matters, you know, that I need
8 to deal with, that's why we had you step out, okay. And
9 again, we're not trying to keep anything from you. It's
10 just that I have to deal with matters of law outside your
11 presence. Remember you're the judge of the facts and I'm
12 the judge of the law.

13 Where's Ms. Villamore, or Doctor Villamore?

14 That's you? Yes. You're gonna be the forelady of the
15 jury, okay. Thank you for volunteering. I appreciate it.

16 (JUROR NUMBER 226, SHELAILA VILLAMOR, ASIAN FEMALE,
17 APPOINTED BY THE COURT AS JURY FOREPERSON.)

18 THE COURT: But let me tell you, I'm gonna go ahead
19 and take that opportunity to go ahead and appoint you so
20 that way when you come back from the lunch break you can
21 take your appointed seat. As to Forelady of the trial jury
22 you'll preside over the deliberations in the jury room when
23 you get to that point. You'll also be the official spokes
24 person for the jury here in court. And you'll be the only
25 juror who is authorized to write on the verdict form

1 whatever your verdict's gonna be, but you can't do that
2 until you reached a unanimous verdict. And I'll give you
3 more explicit instructions at the conclusion of the trial.
4 So again, thank you for volunteering. I appreciate that.

5 All right, you may resume cross-examination.

6 MR. PHILLIPS: Thank you, Judge.

7 CROSS-EXAMINATION CONTINUES

8 AGENT JASON SATTERWHITE BY MR. PHILLIPS:

9 Q. Let's talk about the physical evidence in this case.

10 Through your training with the DEA you're trained
11 about fingerprints, touch DNA; you've had training on both
12 of those?

13 A. Yes.

14 Q. And when there is physical evidence in a case you're
15 trained to take those?

16 A. In some instances.

17 Q. And you were part of this collection of evidence?

18 A. I was assisting, yes.

19 Q. Did you tell anyone, or did you instruct, or did you
20 do, or put any requests in for fingerprints?

21 A. No.

22 Q. Did you do -- Did you instruct, tell anybody, or
23 physically start the process for touch DNA?

24 A. No.

25 Q. So there was no -- As far as you're concerned --

1 request for instructions to be done for touch DNA or
2 fingerprints on the drugs?

3 A. No.

4 Q. Or the gun?

5 A. No.

6 Q. Or the methamphetamine pipes that was referenced?

7 A. No.

8 Q. On anything?

9 A. Correct.

10 Q. And you said you got there at 10 o'clock that morning?

11 A. Approximately.

12 Q. Give or take?

13 A. Yes. Approximately.

14 Q. So you wouldn't have known say even in the last
15 twelve hours who would have come and gone from that
16 residence?

17 A. No. I myself, no.

18 MR. PHILLIPS: No further questions.

19 THE COURT: All right. Any redirect?

20 SOLICITOR HAYES: Briefly, your Honor.

21 REDIRECT EXAMINATION

22 AGENT JASON SATTERWHITE BY SOLICITOR HAYES:

23 Q. So Agent Satterwhite, Mr. Phillipa is asking about
24 December 28th, 2016?

25 A. Yes.

1 Q. If I understand correctly you did some drive-by
2 surveillance on that date?

3 A. Yes.

4 Q. You drove by 162 Bailey Avenue and you saw several
5 cars in the yard or the driveway?

6 A. Yes, that's correct.

7 Q. And a white male with a beard?

8 A. Yes.

9 Q. And that white male drove off?

10 A. Yes.

11 Q. And that's all you saw on December 28th?

12 A. That is correct.

13 Q. And you were doing surveillance as a part of your job?

14 A. Yes, sir.

15 Q. And you testified you have experience with fingerprint
16 requests and DNA requests.

17 A. Yes.

18 Q. In your experience how would you describe finding
19 fingerprints on a cellophane bag?

20 A. Its based upon a lot of conditional and environmental
21 conditions. The oil presence, there can be texture.

22 MR. PHILLIPS: Objection. Outside of his expertise.

23 THE COURT: Over ruled.

24 BY SOLICITOR HAYES:

25 Q. Please continue, sir.

1 A. There can be environmental factors that would affect
2 the ability to obtain the evidence from the testing.

3 Q. Okay. So fingerprints -- Is it fair to say that
4 fingerprints may or may not be on a cellophane bag?

5 A. Yes.

6 Q. Does the same principle apply to DNA analysis?

7 A. I'm limited on that.

8 Q. Okay. I understand. I won't ask any further
9 questions about that then. As to the white male you saw on
10 December 28th, do you recall if you saw him go in or out?

11 A. No. I recall I did not see him go in or out of the
12 residence.

13 Q. Okay.

14 A. I only saw him --

15 Q. Just merely present?

16 A. Yes.

17 Q. All right.

18 SOLICITOR HAYES: Thank you, Investigator or, thank
19 you Agent Satterwhite.

20 THE COURT: Any --

21 MR. PHILLIPS: I'll be brief.

22 THE COURT: Yeah. Thank you.

23 RECROSS-EXAMINATION

24 AGENT JASON SATTERWHITE BY MR. PHILLIPS:

25 Q. So let's walk through. You saw a BMW passenger car?

1 A. You referring to ---

2 Q. In the yard?

3 A. --- December 28th

4 Q. Yes, sir.

5 A. Okay.

6 Q. BMW passenger car in the yard, three pickup trucks,
7 right?

8 A. Correct.

9 Q. Jeep Grande Cherokee, Chevrolet Blazer, and the blue
10 Chevrolet that was driven by this white man in the beard,
11 right?

12 A. That is correct.

13 Q. But then you also say later you observed that same
14 truck return to the residence?

15 A. Yes.

16 Q. And that's where your surveillance discontinues?

17 A. Yes.

18 Q. So you don't know whether he - When he returned --
19 You said you saw him leave but you didn't followup
20 with the rest of that report. He returned.

21 A. He returned to the residence, the vehicle returned
22 to the area of the residence. At that time I was parked.

23 Q. Now, when you said the area, that says the driveway of
24 162.

25 A. Yes, sir. But again, I could not see if people were

1 coming or going from inside the house.

2 Q. So if he pulls in -- If he leaves and he pulls in the
3 driveway, this individual that we don't know, he could have
4 went in the residence because you left. You said you
5 discontinued your surveillance.

6 A. Yes.

7 Q. So, on redirect it was he never came or left from the
8 residence but --

9 A. When I'm speaking were coming from the residence, I
10 mean the physical residence. Like anyone entering or
11 exiting the door of the residence. I never . . .

12 Q. Right. But he came back.

13 A. The vehicle came back.

14 Q. And you left. So he could have easily once you left
15 after he came back and parked in the driveway he could have
16 just went inside. Or whoever was in that truck.

17 A. Again, I did not see anything other than what my
18 report dictates. I saw the vehicle leave. I was within
19 eye distance.

20 Q. And you discontinued surveillance?

21 A. Correct.

22 Q. Going to the fingerprints and the touch DNA.

23 A. Yes.

24 Q. This may or may not kind of questions. Have you ever
25 tested DNA on a bag before?

1 A. I have been parts of investigations where DNA was
2 tested.

3 Q. That happens? I mean --

4 A. I'm sorry. I don't understand your question.

5 Q. When there's drug cases and there's bags involved.

6 A. Yes.

7 Q. It's not uncommon to test for fingerprints and touch
8 DNA?

9 A. In some instances we do test for fingerprints and DNA.

10 Q. And when you say it may or may not have had
11 fingerprints we'll never know because it wasn't -- as far
12 as the request there was no test, right?

13 A. There was no request as far as my knowledge of the ---

14 Q. As far as you're concerned?

15 A. --- investigation. Yes.

16 Q. But as one of those things you'll never know if
17 somebody else's fingerprints available on that because you
18 didn't request for it, or DNA. I mean we'll just never
19 know, right?

20 A. There was no request made.

21 MR. PHILLIPS: No further questions.

22 THE COURT: Thank you, sir. You can step down.

23 You're free to leave.

24 (WITNESS LEAVES WITNESS STAND.)

25 THE COURT: Ladies and gentlemen of the jury, we'll go

1 ahead and break at this time for our lunch recess. I want
2 you back in your jury room at 1:45. That give you a good
3 hour and a half break and we'll see you then. Don't talk
4 about the case. Thank you very much.

5 (JURY EXITS COURTROOM ON LUNCH RECESS AT 12:20 P.M.)

6 THE COURT: All right, anything on the record before
7 we leave?

8 SOLICITOR HAYES: No, your Honor. For scheduling
9 purposes I think the State is gonna speed up. I know I'm
10 just saying that. I know it seems like I'm just saying
11 that but I think it might be the truth.

12 THE COURT: All right. Mr. Phillips, anything for the
13 record?

14 MR. PHILLIPS: Let's go have lunch.

15 THE COURT: What's that?

16 MR. PHILLIPS: Let's go have lunch.

17 THE COURT: Yeah, let's do. All right. Thank y'all.

18 (DEFENDANT, JONATHAN OSTROWSKI, EXITS COURTROOM.)

19 (COURT IN LUNCH RECESS AT 12:21 P.M..)

20 (COURT BACK IN SESSION AT 01:45 P.M.)

21 (WHEREUPON, STATE'S EXHIBIT NUMBERS 27 THROUGH 48
22 PREMARKED FOR IDENTIFICATION.)

23 THE COURT: Y'all can be seated.

24 Anything? Go ahead and get him get out here.

25 SOLICITOR HAYES: Your Honor, there is one matter for

1 the record.

2 THE COURT: All right, hang on. I want to let him get
3 out here.

4 MR. PHILLIPS: Mr. Ostrowski.

5 (DEFENDANT, JONATHAN OSTROWSKI, REENTERS COURTROOM AT
6 01:47 P.M.)

7 THE COURT: All right, yes, sir.

8 SOLICITOR HAYES: Your Honor, I'd like to put on the
9 record, I've conferred with Mr. Phillips, the State has
10 three documentary exhibits that are gonna come in possibly
11 before the next break. They do contain prejudicial
12 information. I did redact those. That would be the Bond
13 Form the State is gonna admit into evidence as to the
14 Defendant's address. We redacted the offenses he is not on
15 trial for as well as the offense leveled as far as 1st,
16 2nd, and 3rd offense.

17 We also redacted his social security number. There is
18 also the ABHAN conviction. We redacted any penalty that he
19 received from that sentence as well as the victim's name.
20 And then there's also the Drug Report. We removed any
21 reference to Xanax or the co-defendant, and I run those by
22 Mr. Phillips.

23 THE COURT: All right. Mr. Phillips.

24 MR. PHILLIPS: Well as far as the redactions I'm
25 totally good with.

1 THE COURT: Okay.

2 MR. PHILLIPS: He reviewed them with me and I have no
3 problems with those and they're properly redacted.

4 Of course subject to prior objection.

5 THE COURT: Sure.

6 MR. PHILLIPS: And then the other matter would be as
7 far as the ABHAN conviction we can stipulate to that. We
8 don't have to use court time on it.

9 THE COURT: All right. So the Defense wants to
10 stipulate that Mr. Ostrowski was previously convicted of a
11 violent crime.

12 SOLICITOR HAYES: Crime of violence, your Honor.

13 THE COURT: Crime of violence. Well whatever it's
14 called. What's it called? What does the statute say?

15 SOLICITOR HAYES: Crime of violence.

16 THE COURT: Okay. Possession of a handgun by a person
17 convicted of a crime of violence. All right.

18 What's the State's position on a stipulation?

19 SOLICITOR HAYES: Your Honor, I don't know if we are
20 gonna accept that. I think we are entitled to prove our
21 case. The Clerk of Court is gonna come and testify to that
22 document. It's been redacted of prejudicial information but
23 it is an element we must prove beyond a reasonable doubt.
24 And I think we have proof in the courtroom beyond a
25 reasonable doubt and I think we're entitled to show that to

1 the jury.

2 THE COURT: All right. This is kind of early in the
3 stage of the trial that I ask this, but do you anticipate
4 your client testifying?

5 MR. PHILLIPS: It's up in the air.

6 THE COURT: Still talking about it? Okay.

7 What would your position would be in the event he
8 testified as to them --

9 MR. PHILLIPS: Impeachment?

10 THE COURT: Yeah.

11 SOLICITOR HAYES: My reading of his record reveals no
12 impeachable convictions.

13 MR. PHILLIPS: Because of the ten year window. It's
14 '95 or '96.

15 THE COURT: Oh, the conviction?

16 MR. PHILLIPS: The ABHAN is from twenty years ago.

17 THE COURT: Okay. All right, I'm gonna let the State
18 proceed with it's evidence. They do have the burden of
19 proof in the case. I'll let the State proceed because part
20 of my charge would be that what he was convicted of
21 previously is considered a crime of violence in South
22 Carolina so Defendant's objection noted.

23 What else?

24 SOLICITOR HAYES: State's ready for the jury, your
25 Honor.

1 THE COURT: Lets bring 'em out.

2 (JURY REENTERS COURTROOM AT 01:52 P.M..)

3 THE COURT: All right, all members of the jury are
4 present. Solicitor, you may call your next witness.

5 SOLICITOR HAYES: Your Honor, the State calls
6 Investigator John Rainier.

7 (WHEREUPON, JOHN RAINIER, BEING
8 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 THE COURT: The microphone doesn't work.
10 All right, Solicitor.

11 DIRECT EXAMINATION

12 INVESTIGATOR JOHN RAINIER BY SOLICITOR HAYES:

13 Q. Investigator Rainier, can you tell us your full
14 name for the record?

15 A. John Rainier.

16 Q. And who is your current employer?

17 A. City of Rock Hill Police Department.

18 Q. What Unit are you currently assigned to?

19 A. I'm a group supervisor for the York County Drug
20 Enforcement Unit.

21 Q. Did you participate in the search of a residence at
22 162 Bailey Avenue on January 25th, 2017?

23 A. Yes, sir, I did.

24 Q. What rooms of the house did yo search?

25 A. The master bedroom.

1 Q. Okay. Did you locate any objects in the master
2 bedroom?

3 A. Yes, sir, I did.

4 Q. What did you locate?

5 A. A handgun and a plastic bag with a box of ammunition.

6 Q. Investigator Rainier, I'm handing you what's been
7 marked for identification as State's Exhibit No. 9.

8 If you could please open that box with a pair of
9 scissors and tell us if you recognize the item.

10 (WITNESS COMPLIES.)

11 A. I can.

12 Q. Did you recover that item from 162 Bailey Avenue?

13 A. Yes, sir, I did.

14 Q. What is that item?

15 A. A box of ammunition.

16 Q. What caliber?

17 A. .32 caliber.

18 Q. Okay. Did you recover that item yourself?

19 A. Yes, I did.

20 Q. Did you alter it or tamper with it in any way?

21 A. Just taking it out of a plastic bag and putting it in
22 a evidence envelop.

23 Q. What did you do with that evidence after you collected
24 it?

25 A. My handwriting. I filled out - Sorry, I filled out

1 the evidence package and then I handed it to Investigator
2 Harrelson.

3 Q. Has that item been altered, or tampered, or does it
4 appear in substantially the same condition as you did the
5 day you found it?

6 A. Looks to be in the same condition.

7 SOLICITOR HAYES: Your Honor, at this time I would
8 move what's been marked for identification as State Exhibit
9 No. 9 into evidence as State's Exhibit No. 9.

10 MR. PHILLIPS: Subject to prior objection.

11 THE COURT: Yes, sir. Over ruled and admitted into
12 evidence.

13 (WHEREUPON, STATE'S EXHIBIT NO. 9, IDENTIFIED AND
14 MARKED, RECEIVED INTO EVIDENCE.)

15 BY SOLICITOR HAYES:

16 Q. Investigator Rainier, if you could hand that to the
17 court reporter, please.

18 (WITNESS COMPLIES.)

19 Q. Investigator Rainier, I'm handing you what's been
20 marked for identification as State's Exhibit 10.

21 If you could take a look at that item. Please don't
22 open it but take a look at that item and let me know if you
23 recognize it.

24 A. I do.

25 Q. What is that item?

1 A. It's a firearm, pistol, .32 caliber.

2 Q. Did you locate that gun at 162 Bailey Avenue?

3 A. Yes, sir, I did.

4 Q. Whereabouts did you locate it?

5 A. In a dresser drawer in the bedroom.

6 Q. What did you do after you seized it from 162 Bailey
7 Avenue?

8 A. Placed it in an envelop and marked the envelop and
9 then once I was done completing the cover of the envelop I
10 handed it to Investigator Harrelson.

11 Q. Does it appear -- Excuse.

12 SOLICITOR HAYES: At this time the State moves into
13 evidence what's been marked as Exhibit 10 as State's
14 Exhibit 10.

15 MR. PHILLIPS: Subject to prior objection.

16 THE COURT: All right. Admitted into evidence.

17 (WHEREUPON, STATE'S EXHIBIT No. 10, PREVIOUSLY
18 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

19 SOLICITOR HAYES: The Court's indulgence, your Honor.

20 THE COURT: Yes, sir.

21 (PAUSE.)

22 BY SOLICITOR HAYES:

23 Q. Investigator Rainier, I'm showing you what's been
24 admitted into evidence as State's Exhibit 2(H).

25 Can you tell me what that is? And you can step down

1 if you can't see it from there.

2 A. I can see it, thank you. That's a night stand up in
3 the bedroom.

4 Q. Does that night stand have any relation to this gun?

5 A. That's where I located the firearm and the box of
6 ammunition.

7 Q. Okay. I'm showing you what's been marked or what's
8 been admitted into evidence as Exhibit 2(G), State's 2(G).

9 Could you take a look at that and let me know if you
10 recognize it?

11 A. I do.

12 Q. What is that picture?

13 A. That's the picture of how the firearm and the box of
14 ammunition laid in the drawer of the night stand.

15 Q. Is what is shown in the picture the same as the gun
16 you just held in your hands?

17 A. Yes, sir.

18 Q. Can you describe what the dresser looked like when you
19 walked into the bedroom?

20 A. The dresser was at the foot of -- at the foot of the
21 bed. The bed was kind of pushed almost up into a corner
22 and then at the foot of the bed was the night stand up
23 against the wall.

24 Q. Was the gun readily visible when you walked in?

25 A. I had to open a drawer.

1 SOLICITOR HAYES: Investigator Rainier, I have no
2 further questions. Please answer any that Mr. Phillips may
3 have for you.

4 A. Yes, sir.

5 THE COURT: Mr. Phillips, your witness.

6 MR. PHILLIPS: Thank you, your Honor.

7 CROSS-EXAMINATION

8 INVESTIGATOR JOHN RAINIER BY MR. PHILLIPS:

9 Q. Good afternoon.

10 A. How you doing, sir.

11 Q. Doing well. How are you?

12 A. I'm well.

13 Q. So in searching the master bedroom you said you come
14 upon this weapon and the ammunition in a drawer?

15 A. Yes, sir.

16 Q. And you had training in evidence collection?

17 A. Yes, sir.

18 Q. And when you collected this gun you were wearing
19 gloves?

20 A. I don't know -- I don't know if I was wearing gloves
21 or not.

22 Q. Did you pick up the gun with your bare hand? Do you
23 remember?

24 A. I don't remember. I mean I picked it up because
25 obviously I had to put it into evidence.

1 Q. And in picking up this gun and not sure how you did
2 it, and not sure whether you wore gloves, remember when you
3 got - had your training in evidence collection did they
4 train you to wear gloves when you handle physical evidence?

5 A. Yes, sir.

6 Q. And I understand it's been a long time, you can't
7 remember, so it's possible you picked it up with your bare
8 hands?

9 A. It could be.

10 Q. Okay. And with that being said, in collecting this
11 evidence did you ever request, put in any forms, make any
12 notes, about having the gun or the ammunition
13 fingerprinted?

14 A. I don't know. I did not -- I didn't do the evidence
15 as far as like complete the documents that we have so I
16 don't know if that was done or not.

17 Q. That just wasn't your role?

18 A. Well I mean I'm group supervisor so I mean there was
19 two of us there so I don't know. Again, so long ago I
20 can't remember if we looked it over to have it processed
21 for DNA or fingerprints.

22 Q. So as a supervisor it would be your job to look into
23 those things and followup to see if those things were done?

24 A. Yes, sir.

25 Q. And as the supervisor, you can't remember whether

1 beside your training that you put on gloves and whether you
2 picked the gun up with your bare hand?

3 A. I don't remember that.

4 Q. And you can't remember whether you requested to have
5 it fingerprinted?

6 A. I don't.

7 Q. And then touch DNA, same thing. Can you remember
8 whether you had it submitted for DNA?

9 A. I don't remember that either.

10 Q. And that would apply to the gun and the box of
11 ammunition?

12 A. Correct.

13 Q. Okay. One last little thing. A .32 caliber, those
14 are generally smaller pistols?

15 A. Yes, sir.

16 Q. I mean you're very familiar. You have firearms
17 training?

18 A. Yes, sir.

19 Q. And in the different types of calibers and the size
20 of handguns a .23 caliber is relatively normally a small
21 pistol?

22 A. Yes, sir.

23 Q. And that would be a smaller size ammunition, the
24 bullet, and the smaller size gun as far as how it would fit
25 in your hand?

1. A. Well it would be the same ammunition for the same
2 gun.

3 Q. Okay. But its smaller, it's a small gun?

4 A. Yes, sir.

5 MR. PHILLIPS: No further questions.

6 SOLICITOR HAYES: Nothing further.

7 THE COURT: Thank you, sir. You can step down, you're
8 free to leave.

9 A. Yes, sir. Thank you.

10 (WITNESS LEAVES WITNESS STAND.)

11 SOLICITOR HAYES: Your Honor, the State calls
12 Investigator Robert Jenkins.

13 (WHEREUPON, ROBERT JENKINS,
14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 DIRECT EXAMINATION

16 INVESTIGATOR ROBERT JENKINS BY SOLICITOR HAYES:

17 Q. Investigator Jenkins, can you tell us your full
18 name for the record, please?

19 A. Robert Jenkins.

20 Q. Who is your current employer?

21 A. Rock Hill City Police Department.

22 Q. To what Unit are you currently assigned?

23 A. The York County Multi-Jurisdictional Drug Enforcement
24 Unit.

25 Q. Were you present on scene at 162 Bailey Avenue on

1 January 25th, 2017?

2 A. I was.

3 Q. How would you describe your role during the morning
4 and afternoon of January 25th?

5 A. I maintained surveillance on the residence while
6 they obtained or applied for the search warrants for the
7 residence.

8 Q. Okay. Who stayed on scene with you to do that? Was
9 it just you or was other people there?

10 A. At that time it was just myself.

11 Q. Did you see anyone go in or out while the rest of
12 the team was elsewhere?

13 A. No, I did not.

14 Q. Where were you positioned watching the house?

15 A. At the church parking lot. Ebenezer Presbyterian
16 Church.

17 Q. Did you have a clear view of the house?

18 A. I did.

19 SOLICITOR HAYES: Investigator Jenkins, I have no
20 further questions for you. Please answer any that Mr.
21 Phillips may have.

22 THE COURT: All right.

23 MR. PHILLIPS: No further questions. Thank you.

24 THE COURT: Thank you, sir, you can step down, you're
25 free to leave.

1 (WITNESS LEAVES WITNESS STAND.)

2 THE COURT: Call your next witness.

3 SOLICITOR HAYES: Your Honor, the State calls
4 Investigator Chris Rowe.

5 (WHEREUPON, CHRIS ROWE, BEING
6 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 THE COURT: Sir, just talk loud. The microphone there
8 doesn't work

9 INVESTIGATOR ROWE: Yes, sir.

10 DIRECT EXAMINATION

11 INVESTIGATOR CHRIS ROWE BY SOLICITOR HAYES:

12 Q. Investigator Rowe, can you tell us your full name
13 for the record, please?

14 A. Christopher Edward Rowe.

15 Q. How is your current employer?

16 A. The Rock Hill Police Department and I'm assigned to
17 the York County Multi-Jurisdictional Drug Enforcement Unit.

18 Q. Were you present on scene at 162 Bailey Avenue on
19 January 25th, 2017?

20 A. Yes, sir.

21 Q. How would you describe your role in the investigation?

22 A. I assisted with the search of the residence.

23 Q. Okay. And prior to that were you part of the team
24 that took Alexandra Peters into custody on an unrelated
25 charge?

1 A. Yes, sir, I was.

2 Q. What parts of the house did you search?

3 A. I searched the rear shed behind the residence. I
4 searched the furthest room to the left and the attic.

5 Q. How would you describe the shed that you searched?

6 A. It was a small shed; had a large number of tools in
7 it, standard maybe 10 by 10 shed, something like that.

8 Q. Okay. What items did you see there while you were
9 searching it?

10 A. In the tools there was a glass pipe with what
11 appeared to be methamphetamine residue on it.

12 Q. Did you seize any of those items or did you alert
13 another member of the team?

14 A. No, sir. They were located, they were photographed
15 and they were left in place there at the scene.

16 Q. Okay. And did you locate anything of significance in
17 the attic?

18 A. No, sir.

19 Q. What other room did you search?

20 A. It was the furthest room on the left. Once you enter
21 the residence you go down the hall, the furthest room on
22 the left.

23 Q. Can you describe that bedroom that you searched?

24 A. Standard bedroom. Had a bed in it, had a fish tank,
25 no fish in it. Had a couple of other drawers basically

1 that's it.

2 Q. Was that a guest room or did that look like a guest
3 room or did somebody live there?

4 A. I don't recall. I don't recall exactly what was in
5 it.

6 Q. Did anything stand out to you about that room? Was
7 there any evidence in that room?

8 A. No, sir.

9 SOLICITOR HAYES: Investigator Rowe, I don't have any
10 further questions. Please answer any Mr. Phillips may
11 have.

12 INVESTIGATOR ROWE: Yes, sir.

13 CROSS-EXAMINATION

14 INVESTIGATOR CHRIS ROWE BY MR. PHILLIPS:

15 Q Good afternoon.

16 A. Hey, how are you, sir?

17 Q. Doing well. How about you?

18 A. Good.

19 Q. Real quick. The glass pipes that you collected from
20 the work shop, I don't know whether it was your duty or
21 not, but did you submit anything for those to be tested for
22 DNA?

23 A. No, sir.

24 Q. Did you submit anything for those to be tested for
25 fingerprints?

1 A. No, sir.

2 Q. Somebody that uses a meth pipe presumably would have
3 put it on their mouth and there could be DNA found on that
4 pipe?

5 A. Could possibly.

6 Q. And in collecting the evidence did you put gloves on?

7 A. They were not collected. The pipes were not collected
8 at all. They were just simply photographed and left at the
9 scene of the residence.

10 Q. So those pipes were just left there?

11 A. Yes, sir.

12 Q. You said this bedroom that's in the house did you take
13 pictures of it?

14 A. There was no evidence there so that I wouldn't have
15 taken any photographs.

16 Q. So this is not the bedroom, the master bedroom, right?

17 A. No, sir.

18 Q. This is like a spare bedroom?

19 A. I guess it would have been yes, sir.

20 Q. And there was a bed in there?

21 A. Yes, sir.

22 Q. And this spare bedroom, when you walk out of it would
23 you be near where this front door is, this closet area?

24 A. When you refer to?

25 Q. Its hard to explain I know. So the front door of the

1 residence.

2 A. Yes, sir.

3 Q. And I might grab -- the picture may help. Where the
4 armoire is and all the clothes, but its not in a bedroom,
5 it's where it's blocking the front door.

6 A. Kind of -- Yes, sir. When you come out -- If you're
7 coming out of the bedroom, that one we were just referring
8 to, you would take a right, there's a short hallway and it
9 would run you into that area?

10 Q. That area? Because it's like a foyer area for the
11 house?

12 A. Right. It had been converted into like a closet of
13 some kind.

14 Q. But it's like the open part of the house that you
15 can walk through. It's not walled off, right?

16 A. Not by walls, no. There was clothes hanging that
17 would keep ---

18 Q. Yeah, from the front door.

19 A. --- people from seeing through.

20 Q. But if you're in the house, I mean that's just an
21 open part of the house. It's not contained in a bedroom?

22 A. Correct.

23 Q. And you didn't take any pictures of that spare
24 bedroom?

25 A. No, sir.

1 Q. So there's no documented evidence that we can see
2 what that bedroom looked like?

3 A. There was no evidence to document from it.

4 MR. PHILLIPS: No further questions, your Honor.

5 THE COURT: Thank you, sir. You can step down and
6 you're free to leave.

7 Did you have any other questions? I'm sorry,
8 Solicitor

9 SOLICITOR HAYES: Just a vew briefly.

10 THE COURT: Oh. Okay. I'm sorry.

11 REDIRECT EXAMINATION

12 INVESTIGATOR CHRIS ROWE BY SOLICITOR HAYES:

13 Q. Investigator Rowe, you didn't submit any pipes that
14 you saw for DNA testing did you?

15 A. No, sir.

16 Q. In your experience as an officer investigating cases,
17 if somebody claims an item is there a need to DNA test it?

18 A. No, sir.

19 Q. Thank you.

20 SOLICITOR HAYES: No further questions.

21 MR. PHILLIPS: Real brief, your Honor.

22 THE COURT: All right.

23 RE-CROSS EXAMINATION

24 INVESTIGATOR CHRIS ROWE BY MR. PHILLIPS:

25 Q. One question.

1 A. Yes, sir.
2 Q. When you collected that item, or when you were there
3 and you had the opportunity to collect those items and
4 you left it there, did you have any knowledge as to who
5 owned those glass pipes? I mean had somebody claimed
6 ownership of those pipes?

7 A. Not at the time, no.

8 MR. PHILLIPS: No further questions.

9 THE COURT: All right. Thank you, sir.

10 (WITNESS LEAVES WITNESS STAND.)

11 THE COURT: Call your next witness.

12 SOLICITOR HAYES: Your Honor, the State calls Judge
13 Doug Sexton.

14 (WHEREUPON, STATE'S EXHIBIT NUMBER 49 PREMARKED
15 FOR IDENTIFICATION.)

16 (WHEREUPON, DOUG SEXTON,
17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 DIRECT EXAMINATION

19 JUDGE DOUG SEXTON BY SOLICITOR HAYES:

20 Q. Judge Sexton, could you tell us your full name for
21 the record, please?

22 A. I'm Douglas W. Sexton.

23 Q. And what is -- Who is your current employer?

24 A. I work for York County Government. I'm a Summary
25 Court judge, a Magistrate.

1 Q. Is part of your job duties taking biographical
2 information from people who've been recently arrested?

3 A. Yes.

4 Q. How long have you been a bond judge here in York
5 County?

6 A. Approximately five and a half years.

7 Q. Does that generate a standard set of paperwork when
8 you go through that process with someone?

9 A. Yes. There are a number of forms that are generated
10 that we deal with when we do a bond hearing or a release.

11 Q. Judge, I'm handing you what's been marked for
12 identification as State's Exhibit 49. If you could take
13 a look at that and let me know if you recognize the
14 signatures on that document?

15 A. These are my signatures.

16 Q. Is that a true and accurate copy of a York County
17 Bond Court paperwork?

18 A. Yes, it appears to be.

19 SOLICITOR HAYES: Your Honor, at this time I would
20 move into evidence what's been marked as State's Exhibit 9
21 -- 49 as State's Exhibit 49.

22 MR. PHILLIPS: No objection.

23 THE COURT: All right. Without objection introduced.

24 (WHEREUPON, STATE'S EXHIBIT NO. 49, PREVIOUSLY
25 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

1 BY SOLICITOR HAYES:

2 Q. And, Judge Sexton, if you could flip to the second
3 page of that. Can you tell the jury what the listed
4 address is of the person who you were dealing with that
5 day?

6 A. It states 1-6-2 Bailey Avenue in Rock Hill, South
7 Carolina.

8 Q. Is that a preprinted address on that form?

9 A. It is.

10 Q. How does that address get on that form?

11 A. It could be a couple of different ways. When an
12 arrest warrant is generated initially the police officer
13 would provide an address for the defendant, so that's one
14 possible way. It can be changed if a defendant is arrested
15 on the warrant and they come into jail our clerk's in our
16 office will compare the address on the warrant to the
17 information that would be in the jail software and they can
18 make that change if there's a discrepancy.

19 Q. Do you have the person that you're dealing with sign
20 next to that biographical information?

21 A. At the time of the release. which is when this form
22 is signed by myself and also by the defendant. the
23 defendant is directly in front of me.

24 Q. Is it your habit to ask them to check the information
25 on it?

1 A. Yes, every time. I'll ask the defendant to take a
2 look at the information that's printed on the form, and I
3 will point this out to them, and I ask them to verify that
4 it's all correct. If its correct I'll ask them to sign the
5 information; that if there are any changes that need to be
6 made I'll ask them to make any changes.

7 Q. Thank you, Judge. If you wouldn't mind, hand that
8 back to me.

9 A. Yes, sir.

10 SOLICITOR HAYES: Your Honor, permission to publish?

11 THE COURT: Yes, sir.

12 (COURTROOM LIGHTS TURNED DOWN.)

13 (WHEREUPON, STATE'S EXHIBIT NO.49 PUBLISHED TO
14 THE JURY AT 02:16 P.M.)

15 BY SOLICITOR HAYES:

16 Q. Is this the document you were just looking at? For
17 the record that's State's Exhibit 49.

18 A. Yes.

19 Q. This is the preprinted biographical information?

20 A. Yes, that's correct.

21 Q. And this would be where you have the person in front
22 of you sign and date?

23 A. Yes. Well the date may not be. The date may have
24 been printed by the Clerk but the signature would be the
25 Defendant who would be standing before me.

1 Q. Okay.

2 SOLICITOR HAYES: Thank you, Judge. I don't have any
3 further questions.

4 THE COURT: Mr. Phillips.

5 CROSS-EXAMINATION

6 JUDGE DOUG SEXTON BY MR. PHILLIPS:

7 Q. Having that form you wouldn't know -- I mean you don't
8 have any other additional information about this case do
9 you?

10 A. No.

11 Q. So you wouldn't know about who else might of been in
12 1 -- was a resident, or a visitor, or stop by, or you don't
13 know anything about 162 Bailey Avenue?

14 A. No, sir, I do not.

15 Q. The only thing you can say is that you have that form
16 and you were the one who provided it?

17 A. Yes.

18 Q. So no other background information?

19 MR. PHILLIPS: No further questions.

20 A. No.

21 THE COURT: Thank you, sir, you may step down and
22 you are free to leave.

23 (WITNESS LEAVES WITNESS STAND.)

24 THE COURT: The State may call it's next witness.

25 (PAUSE.)

1 SOLICITOR HAYES: Your Honor, I realized I forgot to
2 call the witness. The State's next witness is Jimmy
3 Stiles.

4 THE COURT: Okay.

5 (WHEREUPON, JIMMY STILES,
6 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

7 THE COURT: Sir, just make sure you talk loud, the
8 microphone don't work real good.

9 MR. STILES: Okay.

10 DIRECT EXAMINATION

11 JIMMY STILES BY SOLICITOR HAYES:

12 Q. Mr. Stiles, can you tell us your full name?

13 A. Jimmy Floyd Stiles.

14 Q. Who is your current employer?

15 A. York County Sheriff's Office.

16 Q. What are your responsibilities at the Sheriff's
17 office?

18 A. To collect and store evidence.

19 Q. Okay. I'm showing you what's been marked for
20 identification as State's Exhibit 3. If you wouldn't mind
21 taking a look at that document, or that item for me.

22 (WITNESS COMPLIES.)

23 A. Okay.

24 Q. Did you come into custody of that item at any point
25 in your duties?

1 A. Yes. I picked it up at the Rock Hill Police
2 Department, our evidence drop, on January 30, 2017 at 09:35
3 hours.

4 Q. And where did you take it?

5 A. Back here to Moss Justice Center, evidence storage.

6 Q. Okay. So when you picked it up what did you pick it
7 up from?

8 A. It's stored in a secure steel locked box that has
9 locks on it.

10 Q. And you opened that with a key?

11 A. That's correct.

12 Q. And then you take it back to your room at the
13 Sheriff's office?

14 A. That's correct.

15 Q. Who has access to your room at the Sheriff's office?

16 A. I have supervisor Pete Mitchum and a co-worker Barbie
17 Traylor.

18 Q. Only evidence personnel?

19 A. Yes.

20 Q. From the time that you took custody of that item
21 until you locked it into evidence, did you alter it or
22 tamper with it in any way?

23 A. No, sir.

24 Q. Does that item appear in substantially the same
25 condition as it did when you picked it up and today?

1 A. Yes. It has a seal across the top of it inside of
2 this inner bag which is the drug. The chemist does the
3 outer bag here.

4 Q. To whom did you give custody of that item after you
5 initially logged it into your evidence room?

6 A. After I give it to drug chemist Dee Ann Johnson.

7 Q. Okay. And where is she located?

8 A. She's near us in the chemist lab at the Moss Justice.

9 Q. On the same floor of your building?

10 A. That's correct.

11 Q. And did you ultimately receive the bag and was stored
12 until today?

13 A. Yes. She returned it back August 15th, 2017.

14 Q. Okay. And if you could put that item down.

15 I'm showing you what's been marked for identification
16 as State's Exhibit 11 and I'm gonna ask you many of the
17 same questions.

18 A. Okay.

19 Q. Did you ever come into custody of that item?

20 A. Yes. This item was also picked up at the Rock Hill
21 Police Department.

22 Q. On what date?

23 A. January 30th, 2017 at 09:35 hours.

24 Q. From where?

25 A. Rock Hill Police Department.

1 Q. And what did you do with that item?

2 A. Brought it back here to Moss Justice Center.

3 Q. And the same procedure applied to the other item you
4 just looked at?

5 A. Yes.

6 Q. Did you ever give up custody of that item to anybody?

7 A. When I turned it over to the drug chemist Dee Ann
8 Johnson.

9 Q. Okay. Did you do that at the same time as you did
10 with the other item you just looked at?

11 A. Yes. May the 11th, 2017 at 13:40 hours.

12 Q. Does that item appear in substantially the same
13 condition as it did at the time you picked it up?

14 A. Yes. The seal is still intact inside this plastic
15 bag here.

16 Q. While it was in your custody did you alter it or
17 tamper with it in any way?

18 A. No, sir.

19 Q. Thank you. If you could hand those back to the court
20 reporter, please.

21 SOLICITOR HAYES: The Court's indulgence, your Honor.

22 THE COURT: All right.

23 SOLICITOR HAYES: No further questions from Mr.
24 Stiles.

25 Please answer any Mr. Phillips may have for you, Mr.

1 Stiles.

2 THE COURT: All right. Mr. Phillips.

3 CROSS-EXAMINATION

4 JIMMY STILES BY MR. PHILLIPS:

5 Q. You don't have any other background about this case
6 as the evidence custodian do you?

7 A. No.

8 Q. Your job is just to preserve the evidence as it comes
9 in?

10 A. That's correct.

11 MR. PHILLIPS: No further questions, your Honor.

12 THE COURT: All right. Thank you, sir, you may step
13 down. You're free to leave.

14 The State can call it's next witness.

15 (WITNESS LEAVES WITNESS STAND.)

16 MR. PHILLIPS: Your Honor, may we -- scheduling?

17 THE COURT: Yeah. How we doing, ladies and gentlemen.
18 Y'all okay, you need a break?

19 Madam Forelady, you need a break? You all right?

20 Anybody? Y'all, okay? All right. Good.

21 Yeah, come on up.

22 MR. PHILLIPS: Real quick.

23 (BENCH CONFERENCE HELD OFF THE RECORD OUT OF THE
24 HEARING OF THE JURY AT 02:24 P.M.)

25 THE COURT: Thank you, ladies and gentlemen. We're

1 discussing schedules, what we're gonna do, so.

2 SOLICITOR HAYES: Your Honor, the State calls Dee Ann
3 Johnson.

4 THE COURT: All right. ladies and gentlemen, we're
5 gonna have, what I understand, two more witnesses' today?

6 SOLICITOR HAYES: Your Honor, actually there is a
7 third. I apologize, but a very short documentary witness.

8 THE COURT: Short witness. Three more witnesses
9 today, okay. And there's a witness who's under subpoena
10 for tomorrow so that's why we're doing that. So, we'll
11 pick up in the morning so that's good. Yeah, I like to see
12 smiles. That's good.

13 (WHEREUPON, DEE ANN JOHNSON,
14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 THE COURT: That microphone really don't work real
16 well so just make sure you talk loud, okay.

17 DIRECT EXAMINATION

18 DEE ANN JOHNSON BY SOLICITOR HAYES:

19 Q. Ms. Johnson, could you tell us your full name for the
20 record, please?

21 A. Dee Ann Johnson.

22 Q. Who is your current employer?

23 A. I'm currently employed with the York County Sheriff's
24 Office.

25 Q. What is your role at the sheriff's office?

1 A. I'm a forensic chemist there in the Drug Analysis
2 Laboratory.

3 Q. Okay. Can you tell us the educational background
4 that you had to get that job?

5 A. I have a Bachelor of Science degree in Criminal
6 Justice from 1989 and also a Bachelor of Chemistry degree
7 from 1993 from the University of South Carolina in
8 Columbia.

9 Q. Okay. Can you tell us what training's that you have
10 received that relate specifically to drug testing in a
11 criminal context?

12 A. Predominately my training is from the State Law
13 Enforcement Division in Columbia also known as SLED. An I
14 also attended the Forensic Chemist Seminars sponsored by
15 the Drug Enforcement Administration.

16 Q. Of what on going education do you receive to keep
17 your skills current?

18 A. We do periodic literature researches and attend
19 forensic science meetings on a regular basis.

20 Q. And how long have you been a drug chemist for the
21 sheriff's office?

22 A. I been here about three and a half years.

23 Q. Did you have any other experience before that related
24 to drug testing?

25 A. I did. I was employed with Charlotte Mecklenburg

1 Police and also I developed and operated the Drug Analysis
2 Laboratory for the Columbia Police Department in Columbia.

3 Q. And is your lab certified and licensed?

4 A. We're not an accredited lab but we adhere to standard
5 operation procedures as SLED would.

6 Q. Do you have an operating license?

7 A. We have a license from the DEA and also from the State
8 of South Carolina, yes, sir.

9 Q. Okay. Are those licenses current?

10 A. They are.

11 Q. Can you tell the jury briefly how someone in your
12 field goes about testing a substance to determine if it's
13 methamphetamine?

14 A. Methamphetamine is typically subjected to a wet
15 chemical test also referred to as a color test in our
16 laboratory. And then it is subjected to a instrumental
17 test for confirmation.

18 Q. And how is the methamphetamine in your lab weighed?

19 A. We each have an analytical balance at our stations
20 and we weigh them on those.

21 Q. Forgive me if I'm using the wrong term, but are those
22 scales checked and calibrated?

23 A. They are.

24 Q. How do you do that?

25 A. Once a month we check those with weights that we have

1 in our laboratory, and twice a year we have somebody come
2 in from the State to calibrate those instruments for us.

3 Q. Now when it comes to the testing and the weighing
4 procedures that you just described, are those standard
5 practice in the drug analysis field?

6 A. Yes, they are.

7 Q. In your opinion are they a reliable method to do so?

8 A. Yes, sir.

9 Q. Do you apply those methods you just described to
10 all of the methamphetamine that you test?

11 A. Depending on the presentation of the physical exhibit
12 they're pretty similar yes, sir.

13 Q. Okay. How often would you say you test
14 methamphetamine, or items believed to be methamphetamine?

15 A. We don't see it as often anymore, maybe fifty to
16 twenty percent of the time.

17 Q. So fifteen to twenty percent of the drugs you handle
18 are suspicioned of methamphetamine?

19 A. Yes, sir.

20 Q. Okay. It's a substantial part of what you do?

21 A. That's correct.

22 Q. What quality control method do you use to assure there
23 is no contamination with the substances that you're
24 handling?

25 A. We only have one case open at a time and prior to each

1 sample that's run on an instrument there's a blank or a
2 controlled run. And then after each sample there is also a
3 blank or controlled run so that we can determine any
4 contamination.

5 Q. Okay. Is that standard practice in the drug testing
6 field?

7 A. Yes, sir.

8 SOLICITOR HAYES: Your Honor, at this time, based on
9 the testimony of this witness, we move to qualify her as an
10 expert in methamphetamine analysis identification and
11 weight.

12 THE COURT: All right. Any further voir dire on
13 qualifications?

14 MR. PHILLIPS: No further voir dire.

15 THE COURT: All right, she's so qualified.

16 Ladies and gentlemen of this jury, I have just
17 qualified this witness as what's called an expert witness.
18 Like I told you yesterday, I think, normally when a witness
19 testifies they can only testify about what they saw, heard,
20 or smelled, or something like that. However when a witness
21 is qualified as an expert because of his or her knowledge,
22 training or skill, they can testify in the form of
23 opinions. Now just because an expert gives an opinion
24 doesn't mean you have to accept the opinion. You will
25 simply weigh that opinion along with all the other evidence

1 when you get the case to start to deliberate. Okay.

2 SOLICITOR HAYES: Thank you, your Honor.

3 Q. Ms. Johnson, did you test two items of methamphetamine
4 attached to the case of *State versus Jonathan Ostrowski*?

5 A. Yes, sir, I did.

6 Q. I'm showing you what's been marked for identification
7 as State's Exhibit 3. If you could take a look at that and
8 let me know if you recognize that item.

9 A. Yes, sir, I do.

10 Q. From whom did you receive that item?

11 A. This item was received from Jimmy Stiles.

12 Q. And to whom did you return that item?

13 A. It was returned back to Jimmy Stiles I believe. Yes.

14 Q. Other than the work you needed to do to test it, did
15 you alter with, or did you alter or tamper with that item
16 in any way?

17 A. No, sir.

18 Q. Did you weigh that item on your calibrated scales?

19 A. Yes, sir, I did.

20 Q. What did that item weigh?

21 A. State's Exhibit 3 was determined to weigh 31.66 grams.

22 Q. In your expert opinion, what is that substance in Item
23 3?

24 A. State's Exhibit 3 was determined to contain
25 methamphetamine.

1 SOLICITOR HAYES: Your Honor, at this time the State
2 would move into evidence what has been marked as State's
3 Exhibit 3 as State's Exhibit 3.

4 MR. PHILLIPS: Subject to prior objection.

5 THE COURT: All right. Objection over ruled, admitted
6 into evidence.

7 (WHEREUPON, STATE'S EXHIBIT NO. 3, PREVIOUSLY
8 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

9 BY SOLICITOR HAYES:

10 Q. So, Ms. Johnson, just to summarize, in your expert
11 opinion Item - Exhibit 3 is 31.66 grams of methamphetamine?

12 A. That is correct.

13 Q. If you could hand that back to the court reporter
14 please and pick up Item 11.

15 (WITNESS COMPLIES.)

16 Q. Do you recognize that item?

17 A. Yes, sir, I do.

18 Q. Did you test that item?

19 A. Yes, sir, I did.

20 Q. From whom did you receive that item?

21 A. Same evidence custodian Jimmy Stiles.

22 Q. And to whom did you return that item when you were
23 done?

24 A. Jimmy Stiles.

25 Q. Other than the work you needed to do to test that

1 item, did you alter it or tamper with it in any way?

2 A. No, sir.

3 Q. Does it appear the same way -- substantially the same
4 way as it did when you first received it?

5 A. Yes, sir.

6 Q. Did you weigh that item?

7 A. I did, yes, sir.

8 Q. I know there's tin foil in there as well, but did you
9 weigh the crystal like substance in there separate from
10 the tin foil?

11 A. Yes, sir, I did.

12 Q. In your opinion what was the weight on that?

13 A. State's Exhibit 11 weighs 0.03 grams.

14 Q. Okay. Did you test that item and determine what it
15 was? The crystal substance within.

16 A. Yes, sir, I did.

17 Q. Do you have an expert opinion as to what that
18 substance is?

19 A. Yes, sir, I do.

20 Q. What is that substance?

21 A. State's Exhibit 11 was determined to contain
22 methamphetamine.

23 Q. Okay.

24 SOLICITOR HAYES: Your Honor, at this time I move
25 into evidence what's been premarked as State's Exhibit 11

1 as State's Exhibit 11.

2 THE COURT: All right.

3 MR. PHILLIPS: Subject to prior objection.

4 THE COURT: Yes, sir. Over ruled, admitted into
5 evidence.

6 (WHEREUPON, STATE'S EXHIBIT NO. 11, IDENTIFIED AND
7 MARKED, RECEIVED INTO EVIDENCE.)

8 BY SOLICITOR HAYES:

9 Q. Thank you, Ms. Johnson. Please hand that back to
10 the court reporter.

11 A. Okay.

12 (WITNESS COMPLIES.)

13 Q. And in your day to day duties as a drug chemist are
14 you required to be familiar with South Carolina law as to
15 what substance qualifies as methamphetamine versus what
16 substances don't qualify as methamphetamine?

17 A. Yes, sir.

18 Q. And in your opinion that is methamphetamine as we
19 define it in the State of South Carolina?

20 A. Yes, sir.

21 Q. Do you typically do a written report of your finding?

22 A. Yes, sir, we do.

23 Q. If you'll excuse me one moment.

24 SOLICITOR HAYES: Madam Court Reporter, could you mark
25 that for me?

1 (WHEREUPON, STATE'S EXHIBIT NO. 50, PREEMARKED FOR
2 IDENTIFICATION.)

3 SOLICITOR HAYES: Thank you, ma'am.

4 Q. Ms. Johnson, I'm handing you what's been marked for
5 identification as State's Exhibit 50. Could you look at
6 that Exhibit and let me know if it's an accurate summary of
7 your findings with respect to the Jonathan Ostrowski case?

8 A. Yes, sir, it is.

9 Q. Is that a document you keep in the ordinary course
10 of your business as a drug chemist?

11 A. Yes, sir, it is.

12 SOLICITOR HAYES: Your Honor, at this time I would
13 move into evidence what's been marked as State's Exhibit 50
14 as State's Exhibit 50.

15 MR. PHILLIPS: Subject to prior objection.

16 THE COURT: Yes, sir. Over ruled, admitted into
17 evidence.

18 (WHEREUPON, STATE'S EXHIBIT NO. 50, PREVIOUSLY
19 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

20 BY SOLICITOR HAYES:

21 Q. Ms. Johnson, if you could hand that to me, please.

22 Thank you.

23 A. Uh-huh.

24 SOLICITOR HAYES: Permission to publish, your Honor?

25 THE COURT: Yes, sir.

1 (WHEREUPON, STATE'S EXHIBIT NUMBER 50, PUBLISHED TO
2 THE JURY AT 02:39 P.M.)

3 BY SOLICITOR HAYES:

4 Q. So, Ms. Johnson, for the -- for those of us that don't
5 look at these everyday, this would be the summary of your
6 finding with respect to Exhibit 3?

7 And please step down if you can't see. I know the
8 projector comes at a weird angle from there.

9 A. Yes, sir, it is.

10 Q. And the item above that is that smaller amount of
11 methamphetamine?

12 A. Correct, yes, sir.

13 SOLICITOR HAYES: Thank you, Ms. Johnson. I don't
14 have any further questions. Please answer any that Mr.
15 Phillips may have.

16 THE COURT: Mr. Phillips, your witness.

17 MR. PHILLIPS: Thank you, your Honor.

18 CROSS-EXAMINATION

19 DEE ANN JOHNSON BY MR. PHILLIPS:

20 Q. Good afternoon, Ms. Johnson, how are you?

21 A. Hello.

22 Q. In your job of testing drug evidence you don't know
23 the back story regarding the evidence do you?

24 A. I do not. No, sir, I don't.

25 Q. I mean no other information is submitted to you. Your

1 job is to test the drugs and that's it?

2 A. That's correct.

3 Q. So you don't know who possessed the drugs before you.
4 You're not looking for fingerprints or DNA. Your job is
5 just to test to see whether it test positive for whatever
6 drugs they're looking for?

7 A. That is correct.

8 Q. As far as the small amounts, I know you had the one
9 big bag that's State's Exhibit 3, and then the small
10 amounts, what were the items that were tested for that?

11 A. Are you referring to the description of the item?

12 Okay. The larger bag was a zip-lock bag containing
13 a crystal substance.

14 Q. And it's about -- a little bit smaller than your hand?

15 A. Correct.

16 Q. What you just had?

17 A. Correct.

18 Q. And then the other items?

19 A. Other item was a folded piece of charred tin foil and
20 a zip-lock bag containing the crystal substance and debris.

21 Q. So kind of a crumbled up piece of tin foil?

22 A. Correct.

23 Q. As far as the lab not being accredited, can we talk
24 about that for just a quick second. What is -- When you
25 say you're not accredited?

1 A. We're basically not governed by an outside independent
2 laboratory accreditation agency. It's not uncommon for a
3 small laboratory not to be. There's an expense related to
4 it and its not up to the chemist whether we become
5 accredited or not, it's up to the individual agency.

6 Q. Like the FBI? Is that an accreditation agency?

7 A. I believe they are yes, sir.

8 Q. And they have their own standards for -- To be
9 accredited you would have to comply with what they tell you
10 to do?

11 A. Correct.

12 Q. And you don't do that?

13 A. We are not accredited so we don't have certain
14 requirements, that's correct.

15 Q. Right. I mean if you had those requirements you would
16 be accredited by the FBI?

17 A. Accreditations are not through the FBI ---

18 Q. What --

19 A. --- typically.

20 Q. What other agency would give you the accreditation
21 that you don't have if you were to meet the requirements
22 you would be accredited?

23 A. Well you must apply and pay a fee and then they come
24 in and examine your processes and such.

25 Q. To see whether it's done properly?

1 A. Correct.

2 Q. Make sure it's accurate?

3 A. So it's not an automatic thing. Its something you
4 have to apply for.

5 Q. Got it. And you talked about contamination. How
6 many cases have you had contamination on?

7 A. None that I'm aware of.

8 Q. But again, you don't have any other knowledge, your
9 job's just to test the evidence?

10 A. That's correct.

11 MR. PHILLIPS: Thank you so much.

12 A. You're welcome.

13 THE COURT: Anything further, Solicitor?

14 SOLICITOR HAYES: Nothing further for this witness,
15 your Honor.

16 THE COURT: Thank you, ma'am. You can step down,
17 you're free to leave.

18 MS. JOHNSON: Thank you, your Honor.

19 THE COURT: All right.

20 (WITNESS LEAVES WITNESS STAND.)

21 THE COURT: Call your next witness.

22 SOLICITOR HAYES: The State calls Teresa Scoggins.

23 THE COURT: Ladies and gentlemen, we'll take a break
24 after this witness, okay. Some of y'all need some coffee.

25 SOLICITOR HAYES: Your Honor, the next witness is from

1 the Clerk of Court's office. She's presently on duty so
2 I've ask Madam Clerk in the courtroom to call.

3 THE COURT: Let's go ahead and take a break right now,
4 okay. Don't talk about the case.

5 (JURY EXITS COURTROOM ON RECESS AT 02:44 P.M.)

6 THE COURT: We got a juror whose got a hearing tomorrow
7 in front of a Master In Equity. I don't know what it's
8 about or anything but I don't know how long it takes to get
9 in front of the Master on a case but it's one of those
10 deals but we need to find out -- Huh?

11 SOLICITOR HAYES: Well, your Honor, I don't want to -
12 I know it's not my place, but I do recall Judge Hocker
13 saying something to that particular juror along the lines
14 of we'll get you out of it and I think he meant out of
15 Master court.

16 MR. PHILLIPS: Actually he brought 'em didn't he and
17 said that we could send something to that court giving you
18 protection.

19 THE COURT: Oh. So the juror didn't say anything
20 about needing to go to that hearing or anything?

21 SOLICITOR HAYES: No.

22 MR. PHILLIPS: Well he said he wanted to.

23 SOLICITOR HAYES: Judge Hocker was saying was along
24 the lines of General Sessions trumps Master In Equity.

25 THE COURT: Correct.

1 MR. PHILLIPS: Yeah, he gave him that kind of we can
2 take care it. You tell us when and where and we'll -
3 that's how he explained it to the juror.

4 THE COURT: Okay.

5 MR. PHILLIPS: Is that right? Aaron, is that how he -

6 SOLICITOR HAYES: No, I'm thinking he was gonna send a
7 letter to the Master saying you stuck on GS jury duty.

8 MR. PHILLIPS: Right. Judge Hocker was telling him

9 ---

10 SOLICITOR HAYES: Yeah.

11 MR. PHILLIPS: --- you tell us when and where and
12 we'll take care of it.

13 SOLICITOR HAYES: Right.

14 THE COURT: All right. Well, just say he's on a trial
15 jury right now in General Sessions Court. As result he
16 won't be there tomorrow. Thank you for understanding.

17 Thank you.

18 (COURT IN RECESS AT 02:46 P.M.)

19 (COURT BACK IN SESSION AT 03:02 P.M.)

20 THE COURT: Thank you very much. Y'all can be seated.

21 (DEFENDANT JONATHAN OSTROWSKI REENTERS COURTROOM.)

22 THE COURT: Okay. Any other issues before we bring
23 the jury in?

24 SOLICITOR HAYES: Not from the State, your Honor.

25 MR. PHILLIPS: Not from the Defense, your Honor.

1 THE COURT: Great. All right. Let's bring the jury
2 in.

3 (JURY REENTERS COURTROOM AT 03:04 P.M.)

4 THE COURT: All right, all members of the jury are
5 present.

6 Solicitor, you may call your next witness.

7 SOLICITOR HAYES: The State calls Teresa Scoggins.

8 (WHEREUPON, TERESA SCOGGINS,
9 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

10 THE COURT: The microphone don't work, talk loud.

11 DIRECT EXAMINATION

12 TERESA SCOGGINS BY SOLICITOR HAYES:

13 Q. Ms. Scoggins, can you tell us your full name?

14 A. Teresa Scoggins.

15 Q. Who is your current employer?

16 A. David Hamilton, York County Clerk of Court.

17 Q. And what are your -- what is your job description with
18 the Clerk of Court's Office?

19 A. I am the Deputy Clerk or office manager for the
20 General Sessions Division of the Clerk's office.

21 Q. And what is General Sessions, just for the record?

22 A. Criminal court.

23 Q. Does your office keep records of convictions that
24 take place here in York County?

25 A. Yes, we do.

1 Q. I'm showing you what's been premarked as State's
2 Exhibit 51. If you could take a look at this and let me
3 know if you recognize that type of document.

4 A. Yes, sir, I do.

5 Q. Is that a copy of an assault and battery of a high
6 and aggravated nature conviction?

7 A. Yes.

8 Q. Who is the defendant that is the subject of that
9 conviction?

10 A. Jonathan Ostrowski.

11 Q. And what is the date of birth?

12 A. May 15, 1972.

13 Q. And can you read from the back page of that conviction
14 what the nature of the offense was?

15 A. Assault and battery of a high and aggravated nature.

16 Q. Can you read the text of the indictment?

17 MR. PHILLIPS: Your Honor.

18 THE COURT: I'm sorry.

19 MR. PHILLIPS: May we approach?

20 THE COURT: Yeah. Your objection? You object to that
21 question?

22 MR. PHILLIPS: Just I thought we --

23 THE COURT: No, sir.

24 MR. PHILLIPS: I apologize.

25 THE COURT: Okay.

1 MR. PHILLIPS: May we approach real quick?

2 THE COURT: Yeah.

3 MR. PHILLIPS: I just have one question.

4 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
5 OF THE JURY AT 03:07 P.M.)

6 BY SOLICITOR HAYES:

7 Q. Mrs. Scoggins, is that document a true and accurate
8 copy of the records of the York County Clerk of Court?

9 A. Yes, it is.

10 SOLICITOR HAYES: Your Honor, at this time I would
11 move that document into evidence as State's Exhibit 51.

12 MR. PHILLIPS: No objection, your Honor.

13 THE COURT: All right. Without objection introduced
14 into evidence.

15 (WHEREUPON, STATE'S EXHIBIT NO. 51, PREVIOUSLY
16 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

17 SOLICITOR HAYES: Thank you, Mrs. Scoggins. I have no
18 further questions. If you could please hand that back to
19 the court reporter and answer any questions Mr. Phillips
20 may have.

21 MR. PHILLIPS: One brief question, your Honor.

22 THE COURT: All right.

23 CROSS-EXAMINATION

24 TERESA SCOGGINS BY MR. PHILLIPS:

25 Q. That was over twenty years ago; is that right?

TERESA SCOGGINS: CROSS BY MR. PHILLIPS
INVESTIGATOR RYAN KING: DIRECT BY SOLICITOR HAYES

-376-

1 A. Yes, sir. It was in 1995.

2 Q. Thank you.

3 MR. PHILLIPS: No further questions.

4 THE COURT: Thank you, ma'am, you may return to your
5 duties.

6 MRS. SCOGGINS: Thank you.

7 (WITNESS LEAVES WITNESS STAND.)

8 THE COURT: You may call your next witness.

9 SOLICITOR HAYES: The State calls Investigator Ryan
10 King.

11 (WHEREUPON, RYAN KING, BEING
12 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 THE COURT: Thank you, sir. Just make sure you speak
14 loud, that microphone doesn't really work.

15 INVESTIGATOR KING: Yes, sir.

16 THE COURT: Thank you.

17 DIRECT EXAMINATION

18 INVESTIGATOR RYAN KING BY SOLICITOR HAYES:

19 Q. Investigator King, can you tell us your full name
20 for the record, please?

21 A. Michael Ryan King.

22 Q. Who is your current employer?

23 A. York County Sheriff's Office.

24 Q. To what Unit are you currently assigned?

25 A. The York County Multi-Jurisdictional Drug Enforcement

1 Unit.

2 Q. Did you participate in the investigation of 162
3 Bailey Avenue that took place on January 27th, 2017?

4 A. I did. I was not there at the time of the arrest and
5 search warrant but I did download the cell phone.

6 Q. Okay. Did you also observe the pictures of the face
7 of the cell phone that your Unit -- that your team took?

8 A. I'm sorry, say that one more time.

9 Q. Did you also observe the pictures of the face of the
10 cell phone that were taken by other members of your team?

11 A. Picture of the faces?

12 Q. I'll show you what I'm talking about, I apologize,
13 for my in-awkward worded question.

14 I'm showing you what's been marked for identification
15 as State's Exhibit 13 through 26, pictures of the face of
16 the phone.

17 A. Yes. Yes, sir.

18 Q. So you're familiar with those?

19 A. Yes.

20 Q. And you also performed a download of the phone?

21 A. I did.

22 Q. Can you tell us what that process -- Well first of
23 all, what program do you use to do that?

24 A. We use Mobilize. Its by the program created by
25 BlackBag Technologies. It allows us to recover the

1 majority of the data from a cell phone. Text messages,
2 photos, contacts, phone numbers. We can -- If they have
3 internet open we can see what pages they had open on the
4 internet. We can see what kind of Apps they had. Pretty
5 much we can get all the information from a cell phones.

6 Q. And who trained you how to use that program?

7 A. It was actually a class taught by an instructor from
8 BlackBag Technologies.

9 Q. Let me show you what's been entered in evidence as
10 State's Exhibit -- Make sure I got my number right here --
11 State's Exhibit 12. Would you mind taking a look at that
12 and let me know if you recognize it?

13 A. Yes, sir, I do.

14 Q. Is that the phone that you performed a BlackBag
15 analysis on in this case?

16 A. It is.

17 Q. If you could put that back in the bag for me?

18 (WITNESS COMPLIES.)

19 Q. I'm showing you what's been marked for identification
20 as State's Exhibit 13, and by way of example, when you are
21 looking at the screen of this phone, based on your training
22 and experience, which side of the screen does the sender's
23 -- the person who is holding this phone and sending
24 messages -- which side does his messages appear on?

25 A. On the right.

1 Q. Okay. I'm showing you what's been marked for
2 identification purposes as State's Exhibit 27 through 48 by
3 the red stickers. Could you take a look through those real
4 quick and let me know if you recognize those items?

5 (WITNESS REVIEWS STATE'S EXHIBITS 27 THROUGH 48.)

6 A. Yes, sir, I do. These are all photos of text
7 messages, or text conversations, that were taken of the
8 phone download.

9 Q. And just for the record purposes to put your math
10 skills on the spot, that is one picture and twenty-two text
11 message exchanges from your download of the cell phone?

12 A. I can count 'em real fast.

13 Q. Would those Exhibit numbers run from -- on the text
14 message exchanges do those run from 28 to 48?

15 A. Correct.

16 Q. And then there's a picture at Item 27?

17 A. Yes, sir.

18 SOLICITOR HAYES: Your Honor, at this time the State
19 moves to admit State's Exhibit -- what's been marked for
20 identification as State's 13 through 26, and then also 27
21 through 48.

22 MR. PHILLIPS: A matter of law, your Honor.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, I do need to take up a brief matter of law with the
25 lawyers. If you'll please step back to your jury room.

1 Thank you.

2 (JURY EXITS COURTROOM AT 03:17 P.M.)

3 THE COURT: Mr. Phillips.

4 MR. PHILLIPS: Thank you, your Honor.

5 The Defendant objects to the admission of the
6 photographs of depicting the text messages as well as the
7 phone -- for lack of a better word dump, extraction --
8 phone extraction to say it properly, your Honor.

9 THE COURT: Yes, sir.

10 MR. PHILLIPS: We object to the photographs depicting
11 of the text messages as well as the phone extraction. And
12 specifically argue for exclusion of those for not being
13 properly authenticated under Rule 901 of the *South Carolina*
14 *Rules of Evidence*. And that the text messages themselves
15 contain inadmissible hearsay under the *Sixth and Fourteenth*
16 *Amendments* to the *United State's Constitution*, and *Article*
17 *1, Section 14* of the *South Carolina Constitution*.

18 And as to the text messages with -- that are of
19 pictures of the phone, we would argue there would be a
20 foundational element as well.

21 Pointing you to as persuasive authority, it's not
22 South Carolina authority so it's not controlling, but
23 persuasive authority from other jurisdictions, the Supreme
24 Court in North Dakota in *State v. Thompson* that's 777 N.W.
25 2d 617, 2010 case, stated that authentication involved more

1 than just confirmation that the number or address belonged
2 to a particular person, and that it was important that
3 there be evidence that there's emails, instant messages or
4 text messages themselves contain factual information or
5 references to unique parties involved. I think there is
6 one text message that has his name in it. That would
7 encompass under this Supreme Court case where a lot of them
8 do not.

9 Also, pointing your Honor to *State v. Taylor*, that's
10 178, it's a North Carolina Court of Appeals case, 178 N.C.
11 APP 395 and this is a better cite, 632, S.E. 2d 218, it's a
12 2006 case. Essentially going through that case it talks
13 about having the cell phone provider -- a custodian of the
14 records for the cell phone provider being here to
15 authenticate the records as properly and true that has been
16 contained in the, you know, essentially through the cell
17 phone provider since they are the one's who hold the
18 records.

19 The Court noted that the Appellate's physical
20 proximity to the telephone to be of no approbative value in
21 determining whether someone offers the text messages days
22 or weeks before and essentially that the -- they found
23 merit in the position that the text messages constituted
24 inadmissible hearsay.

25 With that being said, your Honor, there is another

1 party who's made statements. It would be the same as a
2 written form that has -- if they were writing letters back
3 and forth, or writing on the same piece of paper, there
4 would be statements that would be included from a third
5 party that I don't get to cross-examine which implicates
6 that the *Confrontation Clause* issue with hearsay.

7 Specifically we still would renew our prior objections
8 under 404(B) and Rule 403 that the probative value is
9 substantially outweighed by the prejudicial effect.

10 There is another case out of the Superior Court of
11 Pennsylvania, *Commonwealth v. Koch*, that's 39 A.3d 996,
12 it's a 2011 case, and they address essentially the same
13 issues as far as the Court finding that the text messages
14 on a defendant's cell phone were not properly authenticated
15 and would constitute inadmissible hearsay, where author of
16 text messages couldn't be ascertained to know. In one it's
17 got his name but many of them it does not. I think one
18 does have John, but many of the text messages do not have
19 any reference as to the author.

20 Those are the three issues that I think we need to
21 have addressed in admitting this evidence, your Honor.

22 THE COURT: Thank you.

23 MR. PHILLIPS: Thank you.

24 THE COURT: Solicitor.

25 SOLICITOR HAYES: Your Honor, as to authentication I

1 will read Rule 901, we all know it but just for the record.

2 "The requirement of authentication or identification
3 as a condition precedent to admissibility is satisfied by
4 evidence ... to support a finding that the matter in
5 question is what its proponent claims."

6 That is a very very low standard which is why we went
7 through the pains of establishing a chain of custody on
8 this phone. We had the officer testify who took it off of
9 his person within a few hours after the search warrant.
10 The officer took it from Jonathan Ostrowski. The officer
11 gave it to Leland Harrelson and Leland Harrelson and Ryan
12 Newkirk -- or excuse me -- Ryan King of the same unit rips
13 that phone. That phone came from the Defendant's body,
14 That was on his person. That is the testimony that is
15 before the Court.

16 Your Honor, as to the hearsay on the other half of the
17 -- Well, as to the hearsay on the right side of the screen,
18 the State admits -- asserts there is no hearsay because
19 that is arguably the Defendant's statement. They can say
20 it's not, of course, as a matter of cross-examination or
21 closing argument, but the authentication on that rolls
22 right into the clearing up the hearsay problem because it's
23 arguably the Defendant's statement not subject to the
24 hearsay rule at all.

25 As to the hearsay on the left side of the screen, as

1 the people who are talking to the defendant, the State is
2 not offering those items for the truth of the matter
3 asserted. We don't care what in the world random people on
4 the phone say, do, think or feel, and we're not gonna argue
5 that to the jury because we're not arguing that for the
6 truth of the matter asserted.

7 The question is, how does Jonathan Ostrowski respond?
8 What does he say, what does he do, what does he offer, how
9 does he interact in this world? What are his statements
10 coming out onto this phone? So, the right side of the
11 phone is not hearsay because it's the Defendant. The left
12 side of the phone is not hearsay because of we don't care;
13 not offered for the truth of the matter asserted.

14 It's contextual, it shows the Defendant in his daily
15 virtual life, but we're not trying to prove that Tater
16 wants a gram of meth. We're trying to prove that Jonathan
17 Ostrowski has a gram of meth and will travel, and that is
18 the approbative value of this phone that takes care of
19 their evidentiary objections.

20 There is no authentication problem because of the
21 chain of custody that was established on the phone.
22 There's no hearsay problem because of the nature of these
23 statements and what they're being offered for. So, the
24 State would assert that they are all properly admitted into
25 evidence and we ask that you over rule the Defendant's

1 objection.

2 THE COURT: Thank you. Coming back at you, Mr.
3 Phillips, briefly?

4 MR. PHILLIPS: Yes, your Honor. Definitely having the
5 cell phone provides, custodian of records, clears up this
6 issue. The State has a duty to get that person under these
7 arguments to clear up this issue as far as authentication.
8 It's their duty, they have the burden of proof in this
9 case. If they want to present the evidence that's the way
10 they would have to do it.

11 As far as the hearsay argument that it's or the
12 State's position that it's not hearsay, because it would be
13 not entered in to prove the truth of the matter asserted,
14 the counter argument would be essentially that its to prove
15 the intent, again going into under their 404(B) argument,
16 the common plan of scheme or the intent, all these things;
17 they very much well want to have that proof that he was
18 involved in distribution and having this back and forth
19 certainly goes directly to the prejudicial nature of it.

20 Going through other jurisdictions, case law, they're
21 certainly concerned about authentication, certainly
22 concerned about hearsay and the fact that addressing the
23 issue of just because someone is arrested, and they have a
24 cell phone on their person, doesn't make them the author of
25 the text message in and of itself. That's just a

1 conceptual issue that you have to deal with. You know it's
2 kind of the same argument as mere presence.

3 There is a Fourth Circuit case that came out of South
4 Carolina on mere presence where a man is sitting at the
5 table and there is literally drugs everywhere and the
6 Fourth Circuit agreed that there was no other evidence to
7 prove in that case, I mean allowed the mere presence. In a
8 way its the same type of argument about just because the
9 cell phone was on him doesn't make him automatically the
10 author of those text messages.

11 And not to belabor, I've already made the other
12 arguments and I don't want to take any more time on that.
13 I think we've presented it.

14 THE COURT: All right. Yes, sir, one last thing on
15 it?

16 SOLICITOR HAYES: Yes, sir. As to the cell carrier,
17 that evidence is not as good as what we have here because
18 the cell carrier is not gonna be able to testify where the
19 phone came from. As far as the cell carrier is concerned
20 they don't know who's carrying it around.

21 York County Multi-Jurisdictional Drug Enforcement
22 knows who's carrying this phone around because they pulled
23 it off of him - excuse me, in Chester -- because they
24 pulled it off of him and transferred him to York County.
25 That's even stronger than what the cell carrier could offer

1 as far as ownership of the phone.

2 Your Honor, authenticity is an incredibly low
3 standard. The State asserts we have put a chain of custody
4 on this phone, and we have explained to the jury the
5 process through which this phone was accessed through this
6 program that this officer's trained to use. We think that
7 the Defendant has a lot of good cross-examination points on
8 what this phone's aboutd who wrote what, but for
9 authenticity purposes and hearsay purposes, we assert that
10 its admissible. Thank you.

11 THE COURT: One last thing.

12 MR. PHILLIPS: One last thing would be that we're not
13 arguing that the cell phone provider's custodian of records
14 supplements that this witness -- We would say this witness
15 would be necessary as well, and so would the cell phone
16 provider for authentication. As the State said, they're
17 building a chain. That person would be one of the people
18 that lays the foundation. And again we also have a
19 foundational issue of the photographs of the phone. But as
20 far as that the cell phone provider's custodian of records
21 would be just one of the necessary witnesses in providing
22 true authentication of these records.

23 THE COURT: Thank you. I respectfully disagree with
24 you, Mr. Phillips. Excellent argument, however, I am gonna
25 over rule your authentication objection as well as over

1 rule your hearsay objection. I've already ruled on the
2 404(B) and 403 analysis, so that's over ruled as well.

3 Bring the jury back in.

4 (JURY REENTERS COURTROOM AT 03:30 P.M.)

5 THE COURT: All members of the jury are present.

6 Solicitor, you may resume your questioning.

7 SOLICITOR HAYES: Yes, your Honor. I believe I had
8 moved into evidence State's Exhibit 13 through 48.

9 THE COURT: All right. Objection noted, objection
10 over ruled.

11 SOLICITOR HAYES: Thank you, your Honor. Those items
12 are in evidence, 13 through 48?

13 THE COURT: Admitted into evidence.

14 (WHEREUPON, STATE'S EXHIBIT NUMBERS 13 THROUGH 48,
15 PREVIOUSLY IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

16 SOLICITOR HAYES: Permission to publish, your Honor?

17 THE COURT: Permission granted.

18 (WHEREUPON, STATE'S EXHIBIT 13 THROUGH 48 PUBLISHED TO
19 THE JURY AT 03:31 P.M.)

20 BY SOLICITOR HAYES:

21 Q. Investigator King, this is State's Exhibit 13.

22 A. Yes, sir.

23 Q. Since we have a few of these I'm gonna spend a moment
24 just looking at this as an example that will apply to the
25 rest of them. Based on your training and experience in

1 review of cell phones, whose side is the right side?

2 A. That's gonna be the sender, the person that has the
3 phone.

4 Q. Left side is whoever they're talking to?

5 A. Correct.

6 Q. On this particular message how did the sender respond
7 to an inquiry for a gram?

8 A. He said, okay, I gotcha, which means I got some, come
9 and get it.

10 Q. In this particular exchange how did the sender
11 respond to the request for a gram in 5?

12 A. He said he didn't have any weed right now which is
13 slang for marijuana.

14 Q. Is there a significance for you as a drug investigator
15 when you see a differentiation between the type of weights
16 that are put into text messages?

17 A Is there a significance? I mean, yeah, obviously if
18 someone is asking for more --

19 MR. PHILLIPS: Objection, your Honor.

20 THE COURT: Sustain.

21 SOLICITOR HAYES: Move on, your Honor.

22 Q. This is State's Exhibit 16. What does -- In your
23 experience what does clear mean?

24 MR. PHILLIPS: Objection. He's the cell extractor.

25 SOLICITOR HAYES: Your Honor, he's a member of the

1 York County Multi-Jurisdictional Drug Enforcement Unit.

2 THE COURT: State the objection and I'll make a
3 ruling. Objection over ruled.

4 BY SOLICITOR HAYES:

5 Q. In your experience what does clear mean?

6 A. Methamphetamine.

7 Q. What side of the phone is clear, or what side of the
8 phone does clear here?

9 A. On the right side which would be coming from whoever
10 has the phone.

11 SOLICITOR HAYES: Your Honor, for the record, we're
12 not publishing all of these at this time, but they are all
13 into evidence.

14 THE COURT: Thank you for that.

15 SOLICITOR HAYES: Yes, sir.

16 Q. Investigator King, whose side of the phone is this
17 message on?

18 A. The right side, whoever has the phone.

19 Q. Investigator King, whose side of the phone is this
20 message on?

21 A. On the right side again.

22 Q. What's the date on that message if you can see it from
23 there?

24 A. January 24th, 2017.

25 Q. Whose side of the phone is this exchange on?

1 A. On the right, whoever has possession of the phone.

2 Q. In your experience what does a G mean?

3 A. Gram.

4 MR. PHILLIPS: Objection.

5 THE COURT: Over ruled.

6 MR. PHILLIPS: Renew prior objection.

7 THE COURT: Yes, sir. Over ruled.

8 BY SOLICITOR HAYES:

9 Q. Investigator King, is this a copy of a picture that
10 was found on the hard drive of that cell phone?

11 A. It is.

12 MR. PHILLIPS: And can we state the number, the --

13 SOLICITOR HAYES: It was State's Exhibit 27.

14 THE COURT: State's Exhibit 27 objected to and over
15 ruled.

16 BY SOLICITOR HAYES:

17 Q. Investigator King, can you tell us the difference
18 between this type of message that we're looking at now,
19 State's Exhibit 28, and the one's we had just looked at
20 that were photographs of the face of the phone?

21 A. Yes. These are photos from the actual phone down
22 load, or phone rip, so you won't see left and right, you'll
23 see incoming and outgoing. So obviously outgoing is going
24 to be messages that are sent from the person that has the
25 phone. Incoming are the messages that are coming in from

1 other people.

2 Q. Okay.

3 A. Also the times are gonna be different because this
4 is gonna be in what's called UTC time. So it's kind of
5 like when how everyone knows like California is three hours
6 behind us, so we are five hours behind UTC time. So that's
7 where the time zones start so that's zero -- the zero clock
8 right there. So you have to subtract five hours to get to
9 our current time.

10 Q. Gotcha. So that could have the -- for like a midnight
11 texts that could possibly change the date, but generally
12 that's an exact time for when that text message was sent
13 on a global scale?

14 A. Correct. And also with these messages, the most
15 recent message is gonna be on top, so you have to read it
16 from the bottom up to get the conversation.

17 Q. Okay. I gotcha. So, this side is the sender?

18 A. Correct.

19 Q. Well what -- Excuse me. When I say with outgoing
20 would be the sender?

21 A. Yes.

22 Q. Did we look at a picture of this particular text
23 message earlier in your testimony?

24 A. Yes, we did.

25 Q. So this would illustrate what a text looks like from

1 your BlackBag rip versus what a text looks like if you take
2 a picture of the face of the phone?

3 A. Correct.

4 Q. But the same -- same text?

5 A. Yes, sir.

6 Q. What's the address listed in that top outgoing
7 message?

8 A. 162 Bailey Avenue.

9 Q. What's the address listed in that outgoing message?

10 A. 162 Bailey Avenue.

11 Q. Investigator King, in your experience, what does this
12 word refer to?

13 MR. PHILLIPS: Objection, your Honor.

14 THE COURT: Over ruled.

15 A. Dope refers to drugs.

16 Q. Okay. I think this is another example of a text we
17 looked at on the screen as a photograph, but this is from
18 the BlackBag rip?

19 A. Yes, sir.

20 Q. Investigator King, what does this word mean in your
21 experience?

22 A. A bowl. Something they use to -- could be marijuana,
23 could be meth, something you smoke drugs out of.

24 Q. And this would be another example of the BlackBag
25 rip confirming the photograph that y'all took.

1 A. Correct.

2 Q. In your experience as a drug investigator, what does
3 that outgoing message mean?

4 MR. PHILLIPS: Renewed objection.

5 THE COURT: Hang on. Over ruled.

6 A. It means the person who has the phone. No green means
7 no marijuana, just clear, which means I don't have any
8 marijuana, all I have is meth.

9 Q. Investigator King, this top outgoing message here,
10 cash or front, what does that mean to you in your capacity
11 as a drug investigator?

12 A. A lot of times drug dealers will front out their
13 drugs. If it's somebody they trust they will give 'em the
14 drugs, and then once that person sells those drugs, then
15 they'll bring the money back to the person they got it
16 from. Just kind of like a loan.

17 Q. Investigator King, what is this outgoing message mean
18 to you as a drug investigator?

19 MR. PHILLIPS: Renew prior objection.

20 THE COURT: Over ruled.

21 A. Re-up means to get more drugs. So if someone is low
22 or out of drugs that they're sell then they'll say I need
23 to re-up. It means they need to go get more of what
24 they're trying to sell.

25 Q. What is the date on that message?

1 A. It looks like January 19th, 2017.

2 Q. Would you need to do a date adjustment for UTC time
3 or do you think it stays on the same date?

4 A. Does that say zero one hundred hours? Or zero one
5 forty? So, yeah, you would subtract five hours from that
6 so that would technically be January 18th at roughly --

7 Q. Late on January 18th despite to say?

8 A. Yes. 10:00 pm., 9:00 pm.

9 Q. On this particular exchange at the outgoing message
10 at the bottom, what's the date on that?

11 A. January 24th, 2017.

12 Q. And even adjusted for UTC time would that still be
13 January 24th?

14 A. It would be.

15 Q. Investigator King, are you familiar with emoji's?

16 A. I am.

17 Q. What is an emoji?

18 A. And emoji is like an animated drawing that symbolizes
19 a word or a phrase.

20 MR. PHILLIPS: Your Honor, may we approach real quick?

21 THE COURT: Yeah.

22 (BENCH CONFERENCE HELD OFF THE RECORD OUT OF THE
23 HEARING OF THE JURY AT 03:45 P.M.)

24 THE COURT: Solicitor, are you publishing every single
25 one of 'em? You said you weren't.

1 SOLICITOR HAYES: No, your Honor, we're not.

2 THE COURT: Okay. Thank you.

3 BY SOLICITOR HAYES:

4 Q. In this text message exchange how does the sender
5 respond to a request for a gram?

6 A. With thumbs up. Everybody knows what thumbs up means.

7 Q. Okay. I think this is another example of the
8 BlackBag rip, catching a copy of what was also a
9 photograph?

10 A. Correct.

11 Q. In this text message exchange does the sender tell us
12 where he is?

13 A. Stated that he's in Great Falls.

14 Q. What is the date that that message was sent?

15 A. January 25th, 2017.

16 Q. Adjusted for -- To adjust the UTC times to East
17 coast time, about what time was that message sent?

18 A. That would be about 12:50 p.m.

19 SOLICITOR HAYES: Thank you, Investigator King.

20 No further questions.

21 THE COURT: All right, Mr. Phillips, your witness.

22 MR. PHILLIPS: Thank you, your Honor.

23 CROSS-EXAMINATION

24 INVESTIGATOR RYAN KING BY MR. PHILLIPS:

25 Q. Good afternoon, Investigator King.

1 A. Good afternoon.

2 Q. How are you?

3 A. Doing good.

4 Q. Your role in this case was limited; is that right?

5 A. Correct.

6 Q. Phone extraction?

7 A. Yes, sir.

8 Q. You didn't do any additional investigation?

9 A. No, sir.

10 Q. You didn't investigate the home?

11 A. No, sir.

12 Q. You didn't investigate Mr. Ostrowski?

13 A. No, sir.

14 Q. You didn't investigate Alexandra Peters?

15 A. No, sir.

16 Q. You don't know anything about Heather Westerfield?

17 A. No, sir.

18 Q. So, you were solely contained to just taking the
19 information off a phone and that is it?

20 A. Correct.

21 Q. In this house you don't know who had been in the
22 house, who had come and gone, you don't know any of that?

23 A. That's right.

24 Q. As far as the physical evidence in this case, as far
25 as lack of DNA, lack of fingerprints, you don't know

1 anything about any of that in here?

2 A. No, sir.

3 Q. And the talk since you kind of went into opinion
4 evidence as far as being part of drug investigations, it
5 talks about weight of drugs, grams that you and different
6 definitions, a gram is the size of, say a packet of sugar
7 or Splenda for your coffee. Is that about right? I think
8 it's a gram.

9 A. That's probably pretty close.

10 Q. I think that's actually about how -- that's a gram
11 itself right?

12 A. Correct. I mean it's probably pretty close. I can't
13 say its exactly a gram but.

14 Q. And I think -- I think so.

15 THE COURT: Oh, I'm sorry. Sweet and Low for my
16 coffee. Go ahead.

17 MR. PHILLIPS: I think that's about a gram.

18 THE COURT: It's exactly a gram. The Court takes
19 judicial notice that it's a gram.

20 BY MR. PHILLIPS:

21 Q. So, as weight wise when somebody writes on there that
22 they want a gram, it's about what would be in the size of a
23 pack of Splenda or Sweet and Low, right?

24 A. It depends on the drugs but correct.

25 Q. Well, as far as if it was loose.

1 A. Yes.

2 Q. As far as the weight.

3 A. Yes.

4 Q. And other than that you can't say anything about who
5 possessed drugs in this case?

6 A. Correct, I cannot.

7 Q. You can't say about who was an occupant and who
8 wasn't an occupant of the home? As far as if there were
9 ten people living there you wouldn't know?

10 A. Correct.

11 Q. You wouldn't know who came and went?

12 A. Correct.

13 Q. You don't know anything about any of the physical
14 evidence. Bottom line is limited solely to that phone?

15 A. Yes, sir.

16 MR. PHILLIPS: I don't have any other further
17 questions. Definitely thank you for being here.

18 THE COURT: Thank you, sir.

19 Thank you, sir, you may step down. You're free to
20 leave.

21 (WITNESS LEAVES WITNESS STAND.)

22 THE COURT: Do you have another witness for the day?

23 SOLICITOR HAYES: Your Honor, the State's next witness
24 needs to testify tomorrow morning.

25 THE COURT: All right. Ladies and gentlemen, now is a

1 very good time then to break for the afternoon and evening.
2 I want you back in your jury room tomorrow morning at 9:30
3 a.m. and we will recommence with the case.

4 And where is Juror Number 4. You're taken care of for
5 tomorrow. Okay. Thank you. Thank you for your civic duty
6 as a juror. All right, y'all are free to leave. Remember,
7 let me give you a charge before you leave.

8 Ladies and gentlemen, remember, your sole role in this
9 case is to be the judge's of the facts and the evidence as
10 presented in this courtroom and in this courtroom only.
11 You are to do no independent research, don't go on social
12 media looking for information about this case. Okay. If
13 you do so you'll be violating your juror's oath.

14 Y'all have a great evening and see you tomorrow
15 morning. Thank you.

16 Madam Forelady, you have a question?

17 MADAM FORELADY: I do have a question. For scheduling
18 purposes do you anticipate us meeting on Friday?

19 THE COURT: At this point in time I do not. Okay.

20 That's the best I can tell you, probably not.

21 MADAM FORELADY: Thank you.

22 THE COURT: Okay. Thank you.

23 (JURY EXITS COURTROOM ON EVENING RECESS AT 03:52 P.M.)

24 THE COURT: Gentlemen, I don't have -- Well, my
25 clerk's working upon working up a charge as we speak.

1 That's what he's been working on. Can y'all get any
2 request to charge to me tomorrow morning?

3 MR. PHILLIPS: Yes, your Honor, I'll work on that
4 tonight,

5 SOLICITOR HAYES: Yes, sir.

6 THE COURT: All right. Y'all can email 'em straight
7 to my law clerk and we'll go from there, okay. And then
8 we'll have a charge conference sometime tomorrow obviously.

9 MR. PHILLIPS: And one housekeeping matter. At the
10 end of yesterday you said you were holding Mr. Ostrowski on
11 the bench warrant; since we hadn't had the hearing on that
12 as far as due process could you have them revoke the bond.

13 Certainly we would request at this time that your
14 Honor make a decision about whether he could go back out on
15 bond.

16 THE COURT: Okay. I'm gonna vacate the bench warrant.

17 And let's talk to me about him bring out on bond,
18 Solicitor.

19 SOLICITOR HAYES: Your Honor, we're close to the
20 finish line. This is a serious charge with a serious
21 penalty and we would have ask for a bond revocation at the
22 start of the trial even if Mr. Ostrowski had been here just
23 based on the nature of this offense. The evidence has come
24 in, this case will be over tomorrow or Friday, it's just I
25 think for the purposes of justice there's just -- I think

1 when you weigh all that against Mr. Ostrowski being out
2 tonight and possibly tomorrow night, it's just way in favor
3 of keeping him in as the bond has been satisfied. The
4 bondsman got him here albeit a little bit late, and I don't
5 know if it was directly or indirectly, but in the eyes of
6 the law the bondsman has done what he's supposed to do.
7 Mr. Ostrowski is here. Again, I'm not saying the bondsman
8 laid hands on him or even talked to him, I'm just saying in
9 the eyes of the law, the legal framework. We are here
10 we're almost done with this trial, this is a big case a big
11 offense.

12 Your Honor has seen the text messages, the nature of
13 this business, you know, it's not a pretty thing. I ask
14 that your Honor consider all of that, and ask that your
15 Honor hold that his bond has been satisfied and that he
16 needs to stay here until we're done with this case.

17 If this case is over on Friday, one way or another,
18 that will answer the question. Its just such a short
19 amount of time in the scheme of things between now and when
20 this case will be over, we just wouldn't want to see a
21 bigger repeat of Tuesday morning.

22 THE COURT: Thank you. Mr. Phillips.

23 MR. PHILLIPS: Respectfully, your Honor, he is
24 presumed innocent at this point. Regardless of text
25 message, regardless of any evidence that's been presented

1 before this court, he has not been convicted, he is
2 presumed innocent, and he was voluntarily here for jury
3 qualification the day before on Monday. And then as soon
4 on Tuesday -- I mean what we admitted to the Court and
5 candidly that he over slept. He called my phone, he was in
6 a panic, he came directly there voluntarily. The police
7 officers didn't have to go get him, the bondsman didn't go
8 get him. He voluntarily came on his own. He desperately
9 -- And just, I can tell you something that's weighed heavy
10 on him because the outcome of this case you never know what
11 a jury is gonna do, is a conversation that any lawyer has
12 with their client, he wants to see his son before the end
13 of this case, what's to have that contact.

14 If he doesn't show up tomorrow, and we most likely
15 will finish this case tomorrow, it's one of those things
16 where his presence not being here will be more prejudicial
17 to him to have been here and the jury has seen him and then
18 toward the conclusion of this case he just disappeared.
19 The likelihood that that would be prejudicial and would
20 hurt him and possibly could further the likelihood of a
21 conviction would be something that he would have to weigh
22 on his mind by not showing up. The jury would take that
23 into consideration. He's presumed innocent, he's been here
24 voluntarily on every -- every time he was late --

25 THE COURT: What about GPS?

1 MR. PHILLIPS: The problem is by the time we could get
2 somebody to set it up on him, I don't know if they can set
3 it up tonight, and definitely it would be at some point
4 tomorrow and he would still spend the night. If we could
5 find a way to get GPS on him that quick but my experiences
6 with bonds it's impossible or pretty close to it.

7 THE COURT: Thank you.

8 MR. PHILLIPS: But if that is an option he's all for
9 it. He wants to see --

10 THE COURT: Well the original bond didn't require GPS
11 monitoring?

12 MR. PHILLIPS: No, your Honor.

13 THE COURT: And what was the amount of the bond?

14 MR. PHILLIPS: Off the top of my head I'd have to go
15 get the paperwork.

16 SOLICITOR HAYES: Thirty thousand.

17 THE COURT: Who's the bondsman?

18 SOLICITOR HAYES: Jay Adams.

19 MR. PHILLIPS: Co-counsel made a great point. If we
20 could reach out to Jay and see his feelings. If that's a
21 concern of your Honor, it that's giving you heartburn as
22 far as him keeping a close eye for the next twenty-four
23 hours or so.

24 THE COURT: I'll be here fifteen more minutes. See
25 what you can find out. All right.

1 MR. PHILLIPS: Thank you, your Honor.

2 SOLICITOR HAYES: Your Honor, we are calling Mr. Jay
3 Adams right now.

4 THE COURT: Okay. Good.

5 SOLICITOR HAYES: And we will put him on speaker phone
6 with the defense.

7 THE COURT: All right. I'll let y'all and I'm getting
8 out of here then.

9 SOLICITOR HAYES: Yes, sir.

10 THE COURT: All right.

11 (COURT IN EVENING RECESS AT 04:00 P.M.)

12 (COURT BACK IN SESSION THURSDAY, MARCH 1, 2018 AT
13 09:48 A.M.)

14 (DEFENDANT REENTERS COURTROOM AT 09:51 A.M.)

15 MR. PHILLIPS: Your Honor, may we approach on a quick
16 matter?

17 THE COURT: Yeah.

18 (BENCH CONFERENCE HELD OFF THE RECORD.)

19 THE COURT: All right. Let's go ahead before we start
20 then -- Well, you ready to start?

21 SOLICITOR HAYES: Your Honor, the State has a motion.

22 THE COURT: Okay. Yes, sir.

23 SOLICITOR HAYES: Your Honor, the State moves to add
24 to our witness list. The State moves to add Forensic
25 Examiner George Weeks and Forensic Examiner Curtis Cousins.

1 They did a fingerprint analysis on the drug bag and
2 the gun respectfully and those results were negative. We
3 would like to present that to the jury because we believe
4 that the inference was created yesterday that the State
5 didn't try to fingerprint these items.

6 Their testimony will be short. The jury's already
7 been voir dired on whether they know any law enforcement so
8 there shouldn't be any issues. Their testimony is simply
9 gonna be, we printed these items didn't find 'em.

10 Investigator Weeks might testify a little bit more
11 about how that's not real surprising in this type of case,
12 but I think the State should be allowed to do that to rebut
13 the inference created yesterday that we didn't try.

14 THE COURT: All right. Any objection to that?

15 MR. PHILLIPS: I don't have any objection as far as
16 the witnesses. I would like the jury voir dired on those
17 specific witnesses as far as their names.

18 THE COURT: Yeah.

19 MR. PHILLIPS: And then I might have a motion about
20 obviously limiting that scope of opinion testimony given
21 about fingerprints.

22 THE COURT: Okay. All right. We can deal with that
23 and contemporaneously then. What is - What is the name of
24 the witness?

25 SOLICITOR HAYES: George Weeks with the York County

1 Forensic Services Unit.

2 THE COURT: Okay.

3 SOLICITOR HAYES: And Curtis Cousins also with the
4 York County Forensic Services Unit.

5 THE COURT: That's with the Sheriff's Department?

6 SOLICITOR HAYES: Yes. Well that's all, that's an
7 amalgamation of agencies like our DEU.

8 THE COURT: York County Forensic, York County
9 Forensics. Okay. Y'all want to go ahead and talk about if
10 there is a lesser offense to be charged or not?

11 SOLICITOR HAYES: One more motion, your Honor, I
12 apologize.

13 THE COURT: Yeah.

14 SOLICITOR HAYES: The State also moves to recall
15 Leland Harrelson for one question.

16 THE COURT: Okay. Any objection to that?

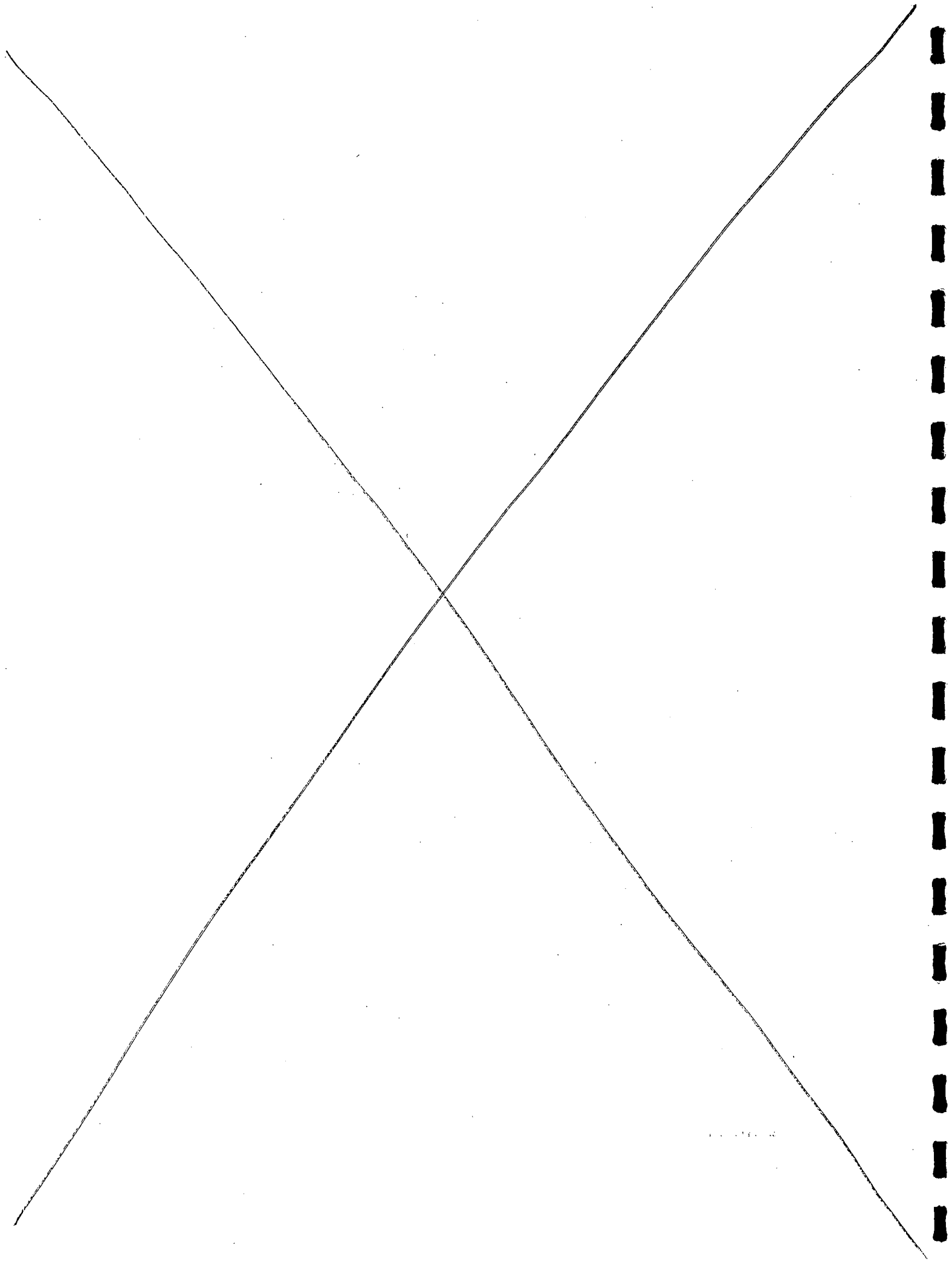
17 MR. PHILLIPS: We need to know what the one question
18 is.

19 THE COURT: What's the one question?

20 SOLICITOR HAYES: We are gonna ask Leland Harrelson
21 if the, lack of a better word, the selfie picture that is
22 already in evidence substantially resembles the defendant
23 circa January 2017.

24 THE COURT: All right.

25 MR. PHILLIPS: I'm gonna strongly object since I --



1 THE COURT: Sustain. I ain't gonna let you do that.

2 I mean I think it ain't no question.

3 SOLICITOR HAYES: Yeah.

4 THE COURT: I think it's a pretty, you know, good -- I
5 mean the jury can look -- I've looked at the photo. I mean
6 you can clearly see him in the photo and just with longer
7 hair and that's all it is.

8 SOLICITOR HAYES: Yes, sir.

9 THE COURT: Okay. All right, I think there's enough
10 evidence in the record now at this point in time.

11 Are you calling either one of those witnesses I talk
12 to you yesterday, Mr. Phillips?

13 MR. PHILLIPS: As of right now it appears not based on
14 --

15 THE COURT: Okay.

16 MR. PHILLIPS: I mean for the record I can say based
17 on information, and belief and things that have occurred
18 this morning, I believe -- I'd have ot make the strategic
19 decision not to call those witnesses.

20 THE COURT: Okay. Gotcha. All right, and so I think
21 there's evidence in the record then for me - unless y'all
22 disagree - to make a determination as to whether or not
23 there's gonna be any lesser offense charge other than
24 trafficking. All right. So tell me why I shouldn't charge
25 any lesser offense, Solicitor.

1 SOLICITOR HAYES: Your Honor, there are two cases
2 directly on point, *Matthews v. State* 300 S.C. 238 and *State*
3 *v. Granding* 306 S.C. 224. Those cases stand for the very
4 straightforward proposition that in a trafficking case if
5 there is no dispute as to the weight then there is no
6 lesser included charge on a PWID or a distribution.

7 THE COURT: Hand 'em up.

8 SOLICITOR HAYES: I am handing those cases up, your
9 Honor, and I will read their holdings into the record.

10 THE COURT: All right.

11 SOLICITOR HAYES: Your Honor, the only competent
12 evidence in the record about the weight came from Dee Ann
13 Johnson who is qualified as an expert in weighing drugs.
14 She testified that these drugs weighed in excess of 31
15 grams which is in excess of the 28 gram threshold for this
16 particular offense. And so, just reading from the holding
17 of *State versus Granding* at Headnote 2 -- and this was a
18 cocaine case but it think the analogy in the statutes are
19 on point.

20 "Possession with intent is a lesser included offense
21 of trafficking in cocaine. In *Matthews* we held that where
22 there is conflicting evidence as to whether the amount of
23 marijuana involved is sufficient to invoke the trafficking
24 statute, both charges should be submitted to the jury.
25 Where, however, the undisputed evidence is that the amount

1 involved exceeds the minimum trafficking amount then only
2 the trafficking charge" --

3 THE COURT: Where are you? Stop.

4 SOLICITOR HAYES: I'm at Headnote 2 of *State versus*
5 *Granding*.

6 THE COURT: Appellate asserts further that the trial
7 court erred in refusing to charge lesser included offenses?

8 SOLICITOR HAYES: Yes, sir, and I started in the
9 middle of that next paragraph.

10 THE COURT: Okay. I got it. I'm following you.

11 All right, PWID is defined as possession of a
12 controlled substance with intent to distribute it.

13 All right, go ahead.

14 SOLICITOR HAYES: "Possession with intent is a lesser
15 included offense of trafficking in cocaine. In *Matthews* we
16 held that when there is conflicting evidence as to whether
17 the amount of marijuana involved is sufficient to invoke
18 the trafficking statute, both charges should be submitted
19 to the jury. Where, however, the undisputed evidence is
20 that the amount involved exceeds the minimum trafficking
21 amount then only the trafficking charge should be submitted
22 to the jury."

23 THE COURT: All right. So there's no dispute. You're
24 alleging there is no dispute in this case as to the amount,
25 or the weight, and so therefore the only thing I should

1 charge is trafficking?

2 SOLICITOR HAYES: Yes, your Honor. They think its
3 his, he's guilty of trafficking. If they think it's not
4 his, he's not guilty of anything.

5 THE COURT: Gotcha. All right, Mr. Phillips.

6 MR. PHILLIPS: In -- Jury instructions is a very
7 minimal standard of any evidence. I believe that the jury
8 having the decision as to -- the jury has to make the
9 decision as to whether the amount, the weight was over 28
10 grams so that is a jury decision. That is an issue of fact
11 that's before the jury. Any evidence standard that's
12 before the Court, because the jury has to make that
13 determination, the defense would argue that it invades the
14 providence of the jury not to give them the lesser
15 included's to decide what they believe is the appropriate
16 amount of weight. And so we would argue that it invades
17 the providence of the jury that under any evidence standard
18 they should be allowed to make the determination based on
19 the weight.

20 THE COURT: Are you presenting any evidence in your
21 case of any expert testimony to allege that the weight is
22 not what it is?

23 MR. PHILLIPS: No, your Honor.

24 THE COURT: All right. Then I respectfully disagree.
25 I do not intend on charging any lesser offense of

1 trafficking then.

2 SOLICITOR HAYES: Yes, your Honor.

3 THE COURT: At this point in time, of course, and I'll
4 make my final decision after hearing your case obviously.

5 Yes, sir.

6 SOLICITOR HAYES: And, your Honor, that would be 28
7 grams or more.

8 THE COURT: Right.

9 SOLICITOR HAYES: Not even the other, the lower
10 trafficking threshold.

11 THE COURT: Right. I'm charging the State must also
12 prove beyond a reasonable doubt that the amount of
13 methamphetamine was 28 grams or more but less than a
14 hundred grams.

15 SOLICITOR HAYES: Thank you, your Honor.

16 THE COURT: All right. That's what the weight does.

17 All right, we'll go over all my charges again at the
18 appropriate time before we actually do it. While I got you
19 here and before we bring the jury out, in looking at the
20 State's request to charge that was sent to me, I'm gonna
21 charge about the redacted evidence. I think that's well
22 worded due to the rules of court and that decision was made
23 by me. Please don't speculate. I mean that's consistent.

24 Any problem with that?

25 MR. PHILLIPS: I just think, your Honor, from the

1 Defense standpoint, just highlights necessarily that
2 another charge that's already in the standard charges that
3 you've made all legal rulings as far as the evidence that's
4 before them.

5 THE COURT: And that's true.

6 SOLICITOR HAYES: But, your Honor, if I may respond?

7 THE COURT: Yeah.

8 SOLICITOR HAYES: In particular it's geared for it's
9 documentary evidence which has obvious blackouts for
10 important things, and I don't want anybody thinking
11 anything about that one way or another. It's not like
12 these are subtle. I mean these are pretty obvious.

13 THE COURT: Okay. All right, I'm gonna charge it.
14 You're protected in the record.

15 MR. PHILLIPS: Thank you.

16 THE COURT: All right, the remainder of the State's
17 request are pretty much contained in my charges that I'm
18 gonna charge, so I don't need to -- I mean I don't think
19 anything's unique about those. I am charging mere presence
20 because I understand that's a defense in this case.

21 On the mere presence charge under my possession charge
22 where I talk about constructive possession, here's my mere
23 presence charge. Constructive possession means that the
24 Defendant had dominion and control, or the right to
25 exercise dominion and control, over either the

1 methamphetamine itself or the property on which the meth
2 was found. Mere presence at the scene where the drugs were
3 found is not enough to prove possession.

4 All right, and then it goes on, so that's the extent
5 of my mere presence charge.

6 All right, Mr. Phillips.

7 MR. PHILLIPS: Yes, your Honor. In looking at the
8 full charge it's the mere presence and mere association, I
9 can find -- I have reviewed a case that included where that
10 was a complete harmless error but we're not including the
11 mere association. A defendant's presence where a crime is
12 being committed, or mere association with a person who
13 commits a crime, does not make a defendant, you know, an
14 accomplice, or aider and abetter of the person committing a
15 crime, kind of the full mere presence jury charge that also
16 includes mere association since there's evidence that more
17 than one person lived in the residence from the State's
18 point of view, the State's argument that essentially there
19 was the State's witnesses' that testified they believe at
20 least two people were there. There was evidence that there
21 was five cars on the yard and that there was this unknown
22 individual who left the residence and came back and pulled
23 into the --

24 THE COURT: All right. Let me stop you. I mean I
25 don't have a problem with your mere presence charge other

1 than talking about accomplice or aider and abetter. I mean
2 I don't want to confuse the jury. I mean we can just say
3 mere presence at the scene is not sufficient to prove
4 someone guilty of a crime. The burden is on the State to
5 prove every element, and go into all that, but just leave
6 out the aider and abetter because he's not charged with
7 accessory. Nobody is charged with accomplice liability or
8 anything like that.

9 SOLICITOR HAYES: And, your Honor, ---

10 THE COURT: Yes, sir.

11 SOLICITOR HAYES: --- also, I think we have an issue
12 on third party guilt. There would be a threshold for third
13 party guilt.

14 THE COURT: I hadn't gotten to that yet.

15 MR. PHILLIPS: And I can quickly say --

16 THE COURT: I'm talking about the mere presence charge
17 right now.

18 MR. PHILLIPS: I believe in saying unless we present
19 the evidence it's not appropriate. I mean I do understand
20 that.

21 THE COURT: Right. You with me on that one then?

22 MR. PHILLIPS: Absolutely.

23 THE COURT: Okay. All right, so we're gonna
24 incorporate, Cyrus, that mere presence into this one right
25 here.

1 All right, so the rest of my possession is, the
2 Defendant's knowledge and possession may be inferred when a
3 substance is found on the property under the Defendant's
4 control, however, this inference is simply an evidentiary
5 fact to be taken into consideration by you and given the
6 weight you decide it should have. Two or more persons may
7 have joint possession of a drug. Okay?

8 MR. PHILLIPS: Yes, your Honor. And the reason I ask
9 for the mere association language is because of that two or
10 more persons.

11 THE COURT: Correct. You got it. I agree with you
12 that that's an appropriate charge.

13 MR. PHILLIPS: Thank you, your Honor.

14 THE COURT: Okay. Now looking at Defendant's No. 2.
15 All right, I talk about suspicion. I give the long
16 reasonable doubt charge, so I talk about that. So I've
17 incorporated instruction number 2 and instruction number 3
18 in my normal charges.

19 Construction No. 4 circumstantial, I do the long one.
20 I already do the long circumstantial. That's what I call
21 the Logan charge, the long circumstantial.

22 Defendant's No. 5, third party guilt. Hang on.

23 All right, Solicitor, you want to be heard on that?

24 That's the defense in this case.

25 SOLICITOR HAYES: I understand, your Honor, but I

1 think it has to be more than just whispers from the stand
2 from Defense counsel so I think maybe this one is not ripe
3 at this time.

4 THE COURT: Well, I would agree with you unless he
5 testifies. And if he testifies and says -- and if he says
6 that then ---

7 SOLICITOR HAYES: Right.

8 THE COURT: --- I don't think there's enough evidence
9 the record at this point in time to sustain the charge.

10 I agree with you.

11 SOLICITOR HAYES: Yes, sir.

12 THE COURT: However if the Defendant chooses to
13 testify and says that, or, if Ms. Peters testifies and says
14 that, do you have any argument against that?

15 SOLICITOR HAYES: I think our position would change.

16 THE COURT: Right. There you go. All right,
17 beautiful. All right, so that's it for the Defense request
18 to charge. All right, I think that's it. I'll give you
19 another opportunity. I'm gonna have my law clerk, while
20 we're going through the trial, he's gonna be working on the
21 jury charge and so when we take a break here after when we
22 take a break after the State rest, we'll have the charge
23 actually printed up and y'all can review it and then we'll
24 go from there.

25 MR. PHILLIPS: Thank you.

1 SOLICITOR HAYES: Thank you.

2 THE COURT: All right. Let's bring the jury in.

3 (JURY REENTERS COURTROOM AT 10:10 A.M..)

4 THE COURT: Good morning, ladies and gentlemen, Sorry
5 for the slight delay, we were taking care of some
6 housekeeping matters so we could move right into everything
7 and try to get the trial moving, okay.

8 Solicitor, you may call your next witness.

9 SOLICITOR HAYES: The State calls Investigator Ray
10 Barnwell.

11 (WHEREUPON, RAYMOND BARNWELL,
12 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 DIRECT EXAMINATION

14 INVESTIGATOR RAYMOND BARNWELL BY SOLICITOR HAYES:

15 Q. Investigator Barnwell, can you tell us your full name
16 for the record please?

17 A. Raymond Martin Barnwell.

18 Q. Who is your current employer?

19 A. York County Sheriff's Office

20 Q. What do you do at the York County Sheriff's Office?

21 A. I'm a forensic firearm's examiner.

22 Q. Can you tell us your educational background with
23 respect to that field?

24 A. Well its over a fourteen hundred course, it takes
25 two years to complete and we're taught by -- to -- to the

1 advocacy standards which is the Association of Tool Marks
2 and Firearm Examiners. It's a industry standard that they
3 -- that I'm taught through a company in Atlanta. Fourteen
4 hundred hours, took two years.

5 Q. How long ago did you complete that course?

6 A. 2015.

7 Q. How long have you been a firearm's examiner for the
8 sheriff's office?

9 A. Since then.

10 Q. Okay. How long have you been a police officer in
11 general?

12 A. Twenty-three years.

13 SOLICITOR HAYES: Your Honor, at this time, oh, excuse
14 me.

15 Q. Did you examine a gun in the case of *State versus*
16 *Jonathan Ostrowski*?

17 A. Yes.

18 Q. How did you analyze that gun?

19 A. I originally received a request to try to recover
20 serial numbers which is part of my training. You learn how
21 to do chemical and magnetic reconstruction of the serial
22 number itself. And I was requested to try to recover the
23 serial number that had been removed.

24 Q. The process that you used to examine this gun, is
25 that standard practice in the field of firearm's examining?

1 A. Yes, sir. And it's also in our policy and protocols
2 that I have a standards, a set step that we go down and try
3 to recover 'em. They're not always recoverable but
4 sometimes more than fifty percent of the time.

5 SOLICITOR HAYES: Your Honor, at this time I would
6 move to qualify Investigator Barnwell as an expert in
7 firearm's examination.

8 MR. PHILLIPS: No further voir dire.

9 THE COURT: Without objection, so qualified.

10 BY SOLICITOR HAYES:

11 Q. Investigator Barnwell, I'm handing you what is in the
12 record as State's Exhibit 10. If you could take a look at
13 that and let me know if you recognize it?

14 A. Yes. This is the firearm in question that I was
15 requested to try to recover the serial number. It's got
16 the lab number of report I did, my signature where I
17 received from evidence, and then in the very end returned
18 it back to evidence.

19 Q. Okay. Were you able to recover a serial number on
20 that gun?

21 A. I was able to recover the make, the model, the
22 caliber, which we already knew the caliber from the size of
23 the barrel, but was not able to recover the serial number.

24 Q. In your expert opinion what is the make and model on
25 that gun?

1 A. Well it is a Davis Industry arms made in California.

2 The company was from 1982 to 1998 is when this
3 firearm was made. That company is off now but during that
4 time they made several thousand of these into the hundreds
5 of thousands.

6 Q. On a -- I believe it says Davis Arms or Davis
7 Industries?

8 A. Davis Industries.

9 Q. Davis Industries. On a Davis Industries .32 caliber
10 firearm, where should the serial number be?

11 A. On the model of the P-32, which that's what this model
12 is, it was on the frame down on the front hand guard where
13 your fingers would be if you would hold it.

14 Q. Okay. Have you examined that part of this gun?

15 A. Yes.

16 Q. Is there a serial number there?

17 A. There was one at one time. You can see where it's
18 been ground off because it's flatter than the rest of the
19 gun, so you can see its not a natural curve. It's got a
20 flat spot so there was one there at one time that's been
21 ground off. Just like the sides. The gun had been
22 actually painted and everything to make it look like it
23 didn't have any markings on it. And it had a thick coat of
24 paint on the outside.

25 SOLICITOR HAYES: The Court's indulgence, your Honor.

1 THE COURT: Yes, sir.

2 BY SOLICITOR HAYES:

3 Q. Investigator Barnwell, can you take a pair of scissors
4 and open the bag in the presence of all of us, please?

5 Excuse me, Investigator Barnwell, I'm gonna hand you
6 some gloves.

7 A. One glove might be enough. All right.

8 Q. Can you hold that for the jury and just demonstrate
9 where that serial number should be?

10 A. And I'm -- As your finger is on the back side right
11 here, its where it would be covered by the palm on the
12 back. And you can see its not a round surface. Its very
13 likely stamped. I have several in my firearms collection
14 downstairs that are used and I looked at those to make sure
15 that serial number was there on the same models that's down
16 stairs, and we have for that purpose called a firearms
17 reference library. And we have them just so we can -- if
18 we need parts off of another gun to make it work we use to
19 actually that gun. So the serial number is on the back.

20 Q. Now that discoloration on the back where the serial
21 number should be, is that part of your testing or is that
22 how you originally got the gun?

23 A. Well originally the gun was solid black.

24 Q. Okay.

25 A. It is as I said it's been painted. If this gun

1 actually came in a nickel color or silver and we took off
2 some of the paint and then we tried to recover the serial
3 number. The paint is where it was removed but the silver
4 part, the oxidation here, is from the acid used to try to
5 cover it. I used several different kinds of acid, a
6 Turner's Reagent and a Fry's Reagent to tried to -- that's
7 the name of the chemical mixed together -- and tried to
8 recover it. And I did. I was able to recover one on each
9 sides here where the make and model are.

10 SOLICITOR HAYES: Thank you, Investigator Barnwell.

11 I have no further questions. Please answer Mr.
12 Phillips may have.

13 THE COURT: Mr. Phillips.

14 MR. PHILLIPS: Thank you, your Honor.

15 CROSS-EXAMINATION

16 INVESTIGATOR RAYMONE BARNWELL BY MR. PHILLIPS:

17 Q. Good morning, Investigator Barnwell.

18 A. Good morning, sir.

19 Q. As a firearms examiner did you test that for
20 fingerprints?

21 A. I did not, okay. I originally received the package
22 and put it in storage waiting for the case to wait it's
23 time to in line. When it was time we fingerprinted it. I
24 signed it over to a crimes scene person, he fingerprinted
25 it and then signed it back to me.

1 Q. And when was that?

2 A. It was 10/18 -- No, excuse me. January 10th, '18, I
3 think.

4 Q. So it was fingerprinted just a few -- recently, just
5 recently?

6 A. Yes. It would a been in storage in a secure locker
7 before then. It's still in the plastic bag sealed.

8 Q. And other than your job as far as examining this
9 weapon was just to look at and try to recover the serial
10 numbers?

11 A. Yes, that's my job.

12 Q. That's it?

13 A. Yes, sir.

14 MR. PHILLIPS: No further questions. Thank you.

15 SOLICITOR HAYES: Your Honor, I do have one brief
16 redirect line.

17 THE COURT: Okay.

18 REDIRECT EXAMINATION

19 INVESTIGATOR RAYMOND BARNWELL BY SOLICITOR HAYES:

20 Q. In your expert opinion in firearm's examining, is it
21 common or uncommon for fingerprints to be on guns?

22 MR. PHILLIPS: Objection, your Honor.

23 THE COURT: Over ruled.

24 A. Most of the time we do find some type of ridge
25 impression. Not always. A lot of times I receive 'em and

1 I'll notice they're on there and I'll tell somebody to --
2 that ask the question, the detective, did you have this
3 processed already, or I'll look at the bag and see if it
4 had been processed by someone else. Most of the time by
5 the time I get it its already processed.

6 Q. Okay.

7 SOLICITOR HAYES: Thank you, Investigator.

8 No further questions.

9 MR. PHILLIPS: We do have a few followup.

10 THE COURT: All right.

11 RECROSS-EXAMINATION

12 INVESTIGATOR RAYMOND BARNWELL BY MR. PHILLIPS:

13 Q. Your training with fingerprints?

14 A. Yes.

15 Q. Okay.

16 A. I testified as an expert.

17 Q. At -- in fingerprints?

18 A. Yes.

19 Q. And when you say that generally you can't get
20 fingerprints off a gun, what percentage would you put on
21 that?

22 A. Generally I think it's about --

23 Q. You're an expert.

24 A. Yeah, fifty fifty chance.

25 Q. So when the Prosecutor says generally it's not gonna

1 happen, and it's actually half the time you find
2 fingerprints, it's a little misleading to say that you
3 generally don't find fingerprints when you find it half the
4 time; is that fair to say?

5 A. I would say it's a fifty fifty chance.

6 Q. So, it's likely that you could find it if it's fifty
7 fifty?

8 A. Its likely not too also so, yes, you could say it
9 is or it isn't.

10 Q. Right. And just a second ago you testified under
11 oath that it was not likely to find fingerprints.

12 A. No, that's not what I said.

13 Q. So half the time you can find fingerprints?

14 A. Half the time you can, half the time you can't.

15 MR. PHILLIPS: That's all we need to know.

16 Thank you.

17 THE COURT: All right, thank you, sir, you can step
18 down, you're free to leave.

19 (WITNESS LEAVES WITNESS STAND.)

20 THE COURT: Ladies and gentlemen of the jury, I've
21 been advised this morning the State has two more witnesses
22 and they -- I haven't ask you about those witnesses. The
23 witnesses are George Weeks with the York County Forensic's
24 Unit and Curtis Cousins with the York County Forensic's
25 Unit.

1 Does any member of the jury recognize those names as
2 being related to by blood or marriage, or have any close
3 personal or social relationship with either one of those
4 witnesses?

5 The jury indicates no. All right, you may call your
6 next witness.

7 SOLICITOR HAYES: Your Honor, the State calls
8 Investigator Curtis Cousins.

9 (WHEREUPON, CURTIS COUSINS,
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 DIRECT EXAMINATION

12 INVESTIGATOR CURTIS COUSINS BY SOLICITOR HAYES:

13 Q. Investigator Cousins, can you tell us your full name
14 for the record please?

15 A. Its Curtis Cousins.

16 Q. And who is your current employer?

17 A. The Clover Police Department.

18 Q. And to what Unit are you assigned?

19 A. The York County Multi-Jurisdictional Forensic Services
20 Unit.

21 Q. How long have you been with the Forensic Service's
22 Unit?

23 A. About six months.

24 Q. How long have you been a police officer?

25 A. Three years.

1 Q. Do your duties as a Forensic Service's officer include
2 examining items for fingerprints?

3 A. Yes, sir.

4 Q. I'm handing you what's been admitted into evidence
5 as State's Exhibit 10. If you could take a look and let
6 me know if you recognize that item.

7 A. Yes, sir.

8 Q. Did you perform a fingerprint analysis on that gun?

9 A. Yes, sir.

10 Q. Did you locate any fingerprint analysis on that gun?

11 A. There's no friction ridge detail upon the gun.

12 Q. What does that mean to a lay person?

13 A. There are no fingerprints on there.

14 SOLICITOR HAYES: Thank you, Investigator Cousins.

15 THE COURT: Any questions?

16 MR. PHILLIPS: I'll be real brief.

17 THE COURT: All right.

18 CROSS-EXAMINATION

19 INVESTIGATOR CURTIS COUSINS BY MR. PHILLIPS:

20 Q. And you tested this just recently?

21 A. It was in January yes, sir.

22 Q. Was it January 10th?

23 A. Sounds right.

24 Q. And that was in preparation for this trial?

25 A. Yes, sir.

1 Q. And you didn't find any fingerprints?

2 A. There was no fingerprints on the gun.

3 Q. And if somebody would have what they call
4 contamination in handling the gun, if they didn't follow
5 the proper protocol that could have removed fingerprints
6 from the gun?

7 A. There's many reasons there might not be fingerprints
8 on a gun.

9 Q. Would that be one of 'em?

10 A. Possible.

11 Q. That if something wasn't handled right?

12 A. Possible.

13 MR. PHILLIPS: Thank you.

14 THE COURT: Thank you, sir, you can step down. You're
15 free to leave.

16 (WITNESS LEAVES WITNESS STAND.)

17 THE COURT: Call your next witness.

18 SOLICITOR HAYES: Your Honor, the State calls
19 Investigator George Weeks.

20 (WHEREUPON, GEORGE WEEKS,
21 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 THE COURT: All right.

23 DIRECT EXAMINATION

24 INVESTIGATOR GEORGE WEEKS BY SOLICITOR HAYES:

25 Q. Investigator Weeks, can you tell us your full name

1 for the record, please?

2 A. George Henry Weeks.

3 Q. Who is your current employer?

4 A. I'm employed with the Sixteenth Circuit Solicitor's
5 Office as the Director of the Forensic Unit.

6 Q. Can you describe the Forensic Unit briefly for those
7 of us who may not know?

8 A. Its basically a multi-jurisdictional unit that's
9 comprised of different units. The Crime Scene Unit; we
10 have an AFIS Unit, and we have members from around the
11 county from various organizations, departments. Right now
12 we have York County, York City and Clover, and the
13 Sheriff's office as part of it -- the Forensic Unit.

14 Q. Do those agencies contribute officers to your unit?

15 A. That's correct. They are assigned to our unit.

16 Q. And Investigator Cousins is one of those officers
17 who's assigned to you?

18 A. Excuse me.

19 Q. Investigator Cousins ---

20 A. Yes, sir.

21 Q. --- is one of those officers?

22 A. Yes, sir.

23 Q. In the course of your job duties do you process items
24 and look for fingerprints?

25 A. I do.

1 Q. I'm showing you what's been admitted into evidence
2 as State's Exhibit No. 3. Could you take a look at that
3 item and let me know if you recognize it?

4 A. Yes, sir.

5 Q. Did you process that item for fingerprints?

6 A. Yes, sir, I did. The actual item that's -- this
7 particular bag, not the bag with the powder substance that
8 it was taken out of this bag, the interior bag here is the
9 one I processed, yes, sir.

10 Q. Okay. So you took it out of the original bag so that
11 you could test that bag for prints?

12 A. I actually had the lab analyst Dee Ann Johnson removed
13 it from the bag which it was originally in so that I could
14 properly process this. We submitted this to several
15 different chemical analysis and I did not want the powder
16 substance in the bag at the time.

17 Q. I gotcha.

18 A. So, yes, that particular bag there. Not this one or
19 not this one, but the one inside, yes, sir.

20 Q. Okay. Did you locate any fingerprints on that bag?

21 A. It was absolutely no friction ridge detail at all on
22 the bag. Nothing that would resemble a fingerprint or
23 impression or anything else.

24 Q. What type of surface was it that you tested? Just for
25 the jury's information, what type of material was it that

1 you were looking at, the metal, plastic?

2 A. This is a non-porous plastic zip-lock bag. Just a
3 common zip-lock bag and it's non-porous which depending on
4 whether the item is porous or non-porous, something that is
5 paper or non-porous like plastic, or metal, or wood, we use
6 various chemicals depending on what the surface is.

7 Q. Okay. How would you describe that surface as far as
8 finding fingerprints?

9 A. It is a excellent surface for fingerprints normally.
10 But its very dependent on how much it's been handled. It
11 is my understanding that this has already been submitted to
12 the drug lab prior to me handling it. And I think there
13 were several people that it had been transferred to over a
14 period of time before I was able to actually process it.

15 The surface itself, it typically reveals good
16 impressions provided we get to it in a period of time
17 without any delay.

18 Q. But you found no fingerprints on that item?

19 A. No, sir, none whatsoever.

20 SOLICITOR HAYES: Thank you, Investigator Weeks.

21 THE COURT: Mr. Phillips.

22 SOLICITOR HAYES: Please answer any questions Mr.
23 Phillips may have.

24 MR. PHILLIPS: Thank you, your Honor.

25 CROSS-EXAMINATION

1 INVESTIGATOR GEORGE WEEKS BY MR. PHILLIPS:

2 Q. Good morning.

3 A. Good morning, sir.

4 Q. You doing all right?

5 A. I'm doing great, thank you.

6 Q. So, you said that's an excellent surface.

7 A. Typically it is yes, sir.

8 Q. And you brought up a couple of issues that one, when
9 did you test it?

10 A. I believe it was -- it was sometime in January,
11 January 8th of 9th if I'm not mistaken here.

12 Q. Just a few weeks ago?

13 A. Yes, sir. I apologize. It's on the 2nd of January.

14 Q. And when was it submitted? Does it say on the tag
15 there?

16 A. Date and time of recovery was January 25th of '17.

17 Q. So again --

18 A. A year later, short of a year, yes, sir.

19 Q. So you tested it a year later and it had already been
20 through multiple hands, all those signatures?

21 A. Yes, sir.

22 Q. Is that right?

23 A. Yes, sir.

24 Q. And it had already been to the Drug Lab and processed?

25 A. Yes, sir.

1 Q. And those could -- during all that process and time
2 the fingerprints either could have been, you know,
3 destroyed, removed, evaporated, you know, all that?

4 A. Yes, sir. Fingerprint ridge detail typically is made
5 up of fingerprint residue, water content and sebaceous
6 material and some other organic and inorganic stuff and
7 when it's handled with gloves, you know, it's - All of this
8 stuff is always handled with gloves on, it tends to wipe
9 it. It could, I'm not saying it did but ---

10 Q. So if somebody --

11 A. --- it could a not had anything on it ordinarily.

12 Q. So if somebody handled it without gloves that could
13 have removed the fingerprints?

14 A. No, I'm saying with the gloves.

15 Q. That could have done it as well?

16 A. Yes, sir.

17 Q. And if they would've a tested it a year ago, the
18 likelihood of recovering a fingerprint would be higher?

19 The likelihood if they were there?

20 A. No, the sebaceous material and water content evaporate
21 over a period of time ---

22 Q. Right.

23 A. --- and so there wouldn't have been. If we'd a got to
24 it a year ago, possibly yes.

25 Q. And so if we had tested it right when you got it ---

1 A. Exactly.

2 Q. --- if the fingerprint was there that would have been
3 the best time to test it?

4 A. Yes, sir, it will.

5 Q. Before you had all the hands go through it, before it
6 went to the Drug Lab?

7 A. That's correct.

8 Q. And that would be the same for another piece of
9 evidence like a gun, a metal, a piece of metal?

10 A. Anytime you can get to something quickly you're
11 better off.

12 Q. So if say a gun was sent to a lab that had acid
13 poured on it and somebody was tooling on it, that would
14 remove fingerprints?

15 A. Yes, sir.

16 Q. And if that would happen before the fingerprints
17 testing was conducted ---

18 A. If it was after ---

19 Q. --- that would be a problem?

20 A. --- without a doubt that's a problem.

21 THE COURT: All right. Thank you, sir.

22 SOLICITOR HAYES: One brief followup, your Honor.

23 REDIRECT EXAMINATION

24 INVESTIGATOR GEORGE WEEKS BY SOLICITOR HAYES:

25 Q. Investigator Weeks, have you been to many crime

1 scenes?

2 A. Yes, sir. This coming November will be forty years
3 I been doing it so, yes, sir, I have.

4 Q. In the ordinary course of processing a crime scene is
5 it a necessary evil for officers to handle evidence with or
6 without gloves?

7 Q. Yes, sir, it is. And to collect it and we try to be
8 protective as much as we can.

9 Q. But it has to be done?

10 A. It has to be done.

11 SOLICITOR HAYES: Thank you, Investigator Weeks.

12 THE COURT: And, Mr. Phillips.

13 MR. PHILLIPS: Thank you, your Honor. Everybody's
14 patience.

15 RE CROSS-EXAMINATION

16 INVESTIGATOR GEORGE WEEKS BY MR. PHILLIPS:

17 Q. So I'm not trying to beat the dead horse or state the
18 obvious, through the training that you receive as an
19 investigator in your forty years experience, it would be
20 common knowledge for an investigator that the best time to
21 get those fingerprints if they were there would have been
22 when the evidence was collected properly and handled in the
23 manner that you are trained?

24 A. Yes, sir, I'll agree with that.

25 Q. Because --

1 A. The sooner we can get to something the better off it
2 is.

3 Q. Because it could possibly exonerate a person?

4 A. It could.

5 Q. It could possibly implicate a person?

6 A. Sure.

7 Q. But you'll never know once the fingerprint's missing?

8 A. That's correct.

9 Q. And if you follow the proper training and protocol
10 it would have been to get those fingerprints from day one?

11 A. That decision is made up or is somebody else's
12 entirely. We just receive the evidence and -- but I agree
13 with you yes, sir.

14 MR. PHILLIPS: Thank you.

15 THE COURT: Thank you, sir, you may step down and
16 you're free to leave.

17 (WITNESS LEAVES WITNESS STAND.)

18 THE COURT: The State can call it's next witness.

19 SOLICITOR HAYES: Your Honor, the State rest it's
20 case.

21 THE COURT: The State rest. Ladies and gentlemen of
22 the jury, the law requires me to take a break at this point
23 in time. We do have some matters of law to take up with
24 the lawyers, so please head back to your jury room. Don't
25 talk about the case.

1 (JURY EXITS COURTROOM AT 10:36 A.M.)

2 THE COURT: Mr. Phillips.

3 MR. PHILLIPS: Thank you, your Honor. I have had the
4 pertinent discussion with Mr. Ostrowski about whether he
5 intends to testify and if your Honor would if you could
6 give him that colloquy.

7 THE COURT: I will. Before I do that I was gonna hear
8 your motion.

9 MR. PHILLIPS: Oh, of course. I was so busy thinking
10 about ready to start my case. Thank you, your Honor.

11 THE COURT: Yes, sir.

12 MR. PHILLIPS: I would renew all prior motions and
13 objections throughout the trial. And certainly
14 specifically highlighting as far as highlighting my prior
15 motions and objections, the discovery motion that was
16 argued, the Motion to Compel in pretrial, the motion
17 regarding the search warrant in pretrial and renewed
18 objections throughout on the admission of the evidence.

19 And again, all motions and evidence. And the other
20 would be the improper lay opinion and testimony that have
21 been presented as accumulative error, we would renew all
22 those objections.

23 THE COURT: Thank you. As well as for a directed
24 verdict?

25 MR. PHILLIPS: And that would have been the next thing

1 I ask for, your Honor. Yes, sir.

2 THE COURT: All right. Thank you. You're protected
3 in the record. I believe you made an excellent record for
4 any appellate review, and the Court is not swayed to change
5 any of it's prior decisions or rulings on objections, so
6 those objections shall continue to remain over ruled. As
7 well as I'm not gonna revisit any previous decisions on
8 motions I may have made during this trial. You are
9 protected, and I respectfully deny your motion for a
10 directed verdict. I do find there's enough evidence in the
11 record to go to the jury on all three of these indictments.
12 Two counts on the first indictment and the other two as
13 well.

14 MR. PHILLIPS: Thank you, your Honor.

15 THE COURT: All right. Mr. Ostrowski, if you'll
16 please stand sir, and raise your right hand.

17 ((WHEREUPON, JONATHAN
18 OSTROWSKI, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
19 FOLLOWS:))

20 THE COURT: Thank you. You can be seated. Just talk
21 loud so my court reporter can pick up your testimony.

22 And Mr. Ostrowski, I know you talked to your lawyer
23 about this, but at this time I'm gonna explain certain
24 rights you have, or that you do have, excuse me. And if
25 you don't understand anything I tell you please let me

1 know and I'll be glad to repeat it and I'll give you
2 certainly enough time to talk with your lawyer about it.

3 Okay?

4 MR. OSTROWSKI: Yes, sir.

5 THE COURT: All right. We've now reached the stage of
6 the trial where you can present your defense. Now in doing
7 that you have the right to claim the protections given to
8 you by the *Fifth Amendment* to the our *United State's*
9 *Constitution* which states in pertinent part that no person
10 shall be compelled in any criminal case to be a witness
11 against themselves. What this means is that you cannot be
12 made, or required, to testify in this case if you don't
13 want to. Okay. You have the right to testify in your own
14 defense if you want to but nobody can make you do that.

15 Do you understand?

16 MR. OSTROWSKI: Yes, sir.

17 THE COURT: Now if you do decide to testify, you will
18 be subject to the same rules that have governed other
19 witnesses in this case. That is, you'll be able to be
20 cross-examined on any relevant issue in this case. And,
21 you know, by the lawyer or by the Solicitor's Office just
22 like your lawyer's cross-examined the witnesses for the
23 State. And of course during the course of cross-
24 examination that goes to your credibility just like it does
25 in the credibility of any other witness. Do you understand

1 that?

2 MR. OSTROWSKI: Yes, sir.

3 THE COURT: Now I've been advised by the State that
4 there are no impeachable testimony -- peachable crime
5 testimony y'all gonna seek?

6 SOLICITOR HAYES: That is correct.

7 THE COURT: Okay. So I just want to make sure you
8 understand that if you do testify the State's gonna try to
9 make you look not believable through cross-examine
10 techniques -- cross-examination techniques just like your
11 lawyer has artfully done with other witnesses. Do you
12 understand that?

13 MR. OSTROWSKI: Yes, sir.

14 THE COURT: Okay. Now if you do decide to testify
15 this decision must have been freely voluntarily and
16 knowingly made with your understanding of your *Fifth*
17 *Amendment* right not to have to testify. So, if you don't
18 decide to testify I will specifically instruct the jury and
19 they can't consider that one way or the other. They can't
20 even bring it up in the jury room because you have that
21 personal right to remain silent and it cannot be used
22 against you. Now do you understand what I've explained to
23 you?

24 MR. OSTROWSKI: Yes, sir.

25 THE COURT: Do you have any questions to me about what

1 I've explained to you?

2 MR. OSTROWSKI: No, sir.

3 THE COURT: Have you talked with your lawyer about
4 whether or not you should testify?

5 MR. OSTROWSKI: Yes, sir.

6 THE COURT: And do you wish to testify?

7 MR. OSTROWSKI: Yes, Sir.

8 THE COURT: All right. And, Mr. Phillips, do you
9 concur?

10 MR. PHILLIPS: I have advised him of those rights and
11 I do agree with his decision.

12 THE COURT: All right. Thank you very much.

13 Let's take a brief recess before we commence with the
14 Defense case, okay.

15 MR. PHILLIPS: Thank you, your Honor.

16 THE COURT: Thank you.

17 (COURT IN RECESS AT 10:41 A.M.)

18 (COURT BACK IN SESSION AT 10:57 A.M.)

19 THE COURT: Thank you very much. Y'all can be seated.

20 SOLICITOR HAYES: Mr. Phillips is in the hallway, your
21 Honor.

22 THE COURT: Okay. Sure.

23 (DEFENDANT REENTERS COURTROOM.)

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

25 MR. PHILLIPS: Your Honor.

1 THE COURT: Yes, sir.

2 MR. PHILLIPS: One moment.

3 THE COURT: You got it.

4 MR. PHILLIPS: The first witness the Defense would
5 like to call is Alexandra Peters. Her attorney Jim Boyd is
6 present.

7 THE COURT: Okay.

8 MR. PHILLIPS: He just spoke to her and said she's
9 like five or ten minutes away. I would respectfully ask if
10 we could have that time to see if she ---

11 THE COURT: Okay.

12 MR. PHILLIPS: --- if she can get here first.

13 THE COURT: We'll just continue to be in recess.

14 MR. PHILLIPS: I do appreciate it.

15 THE COURT: No problem.

16 (PAUSE. AT 10:58 A.M.)

17 (BACK ON THE RECORD AT 11:17 A.M.)

18 THE COURT: All right. Mr. Boyd, do you need to
19 question your client outside the presence of the jury
20 before she testifies?

21 MR. BOYD: You might, your Honor. She does have some
22 --

23 THE COURT: All right. Hold on just for a second.
24 Are they in the hallway?

25 THE BAILIFF: No, sir.

1 THE COURT: They're in their room?

2 THE BAILIFF: Yes, sir.

3 THE COURT: Okay. All right, thank you.

4 Ma'am, if you'll please stand. Just talk real loud
5 where you are so my court reporter can pick you up. Raise
6 your right hand.

7 (WHEREUPON, ALEXANDRA PETERS,
8 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 THE COURT: All right, state your name, ma'am.

10 A. Alexandra Peters, sir.

11 THE COURT: You can lower your hand. All right, and
12 ma'am, you understand why you're here today?

13 MS. PETERS: Yes, sir.

14 THE COURT: It's my understanding you're being called
15 by the Defense as a witness. Do you understand that?

16 MS. PETERS: Yes, sir.

17 THE COURT: And of course I understand you currently
18 have pending charges in this court, correct?

19 MS. PETERS: Yes, sir.

20 THE COURT: All right. And have you been over all
21 your rights with your lawyer?

22 MS. PETERS: Yes, sir.

23 THE COURT: Do you understand those rights?

24 MS. PETERS: Yes, sir.

25 THE COURT: Do you understand your right to remain

1 silent?

2 MS. PETERS: Yes, sir.

3 THE COURT: Do you understand that anything you say
4 can and will be used against you in a court of law?

5 MS. PETERS: Yes, sir.

6 THE COURT: That's what this is.

7 MS. PETERS: Yes, sir.

8 THE COURT: So you understand that if and when you're
9 testifying that if the State wanted to if you say something
10 incriminating against yourself they can get a copy of this
11 transcript and use it against you in court.

12 MS. PETERS: Yes, your Honor.

13 THE COURT: Do you understand that?

14 MS. PETERS: Yes.

15 THE COURT: All right. And do you still plan on
16 testifying in this case?

17 MS. PETERS: Yes, sir.

18 THE COURT: Thank you. Mr. Boyd, do you wish for me
19 to go over anything further with your client?

20 MR. BOYD: No, your Honor. I'd just like to put on
21 the record that I have advised my client the *Fifth*
22 *Amendment* to any questions and she has chosen to testify.

23 THE COURT: And you understand that as well, ma'am?

24 MS. PETERS: Yes, sir.

25 THE COURT: And that's correct?

1 MS. PETERS: Yes, your Honor.

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

3 (JURY REENTERS COURTROOM AT 11:23 A.M..)

4 THE COURT: Thank you again for your patience, ladies
5 and gentlemen. I promise you we just ain't sitting out
6 here twiddling our thumbs. We got things lined up for you
7 to make this hopefully a seamless transition as we go
8 forward with the trial.

9 The State has rested, we will now proceed with the
10 Defense. Mr. Phillips.

11 MR. PHILLIPS: Thank you, your Honor. The Defense
12 calls Alexandra Peters to the stand.

13 THE COURT: Ma'am.

14 MADAM CLERK: Raise your right hand. Raise your other
15 hand.

16 (WHEREUPON, ALEXANDRA PETERS,
17 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

18 MADAM CLERK: Have a seat right there.

19 DIRECT EXAMINATION

20 ALEXANDRA PETERS BY MR. PHILLIPS:

21 Q. Good morning, Ms. Peters.

22 A. Good morning.

23 Q. Please state your full name?

24 A. Alexandra Lydia Busser.

25 Q. Your relation --

1 A. It's changed. Sorry.

2 Q. And we'll just kind of get right to it.

3 A. Okay.

4 Q. What's your relationship with Mr. Ostrowski?

5 A. He is my ex-boyfriend.

6 Q. And when you say ex-boyfriend, that means at one
7 point you used to visit his home a lot?

8 A. Yes.

9 Q. Was some of your stuff in his home?

10 A. No. I had my own residence but I did work from -- of
11 course my medication that I needed for everyday. I worked
12 long hours selling things for him on Author's Of and stuff
13 like that so.

14 Q. Could you explain that? What's the web site?

15 A. Authors Of and Let it Go which is a web site to buy
16 and sell used items. We got a lot of stuff, you know, from
17 his business like lawn care stuff so I helped him sell it.
18 But he no longer needed it, but business stuff.

19 Q. Could you elaborate? So when you say you helped, how
20 did you do that?

21 A. He worked a job full time and I did the -- I posted
22 them on the web site and when the people wanted to buy them
23 I would meet with them and do the, you know, the
24 transaction . . .

25 MADAM COURT REPORTER: I'm sorry, the door slammed and

1 I could not hear that last statement, ma'am.

2 THE COURT: Let me take this opportunity. That
3 microphone doesn't work.

4 A. Okay.

5 THE COURT: So please try to be as loud as possible so
6 everybody can hear you.

7 A. Basically he works a full time job. He's working a
8 full time job. I stay there, posted the items that he no
9 longer needed. When someone wanted to purchase them I
10 would handle that for him. So I would have several people
11 at certain times, just depending, that would come to pick
12 up the item and that's how I was there most of the time
13 doing that.

14 Q. What type of items?

15 A. Anything from weed eaters to leaf blowers. Just
16 things from his old business that he used that he no longer
17 needed. I also have my own things on line for sale as well
18 so those items were with me because there's no point in me
19 driving -- I lived in Fort Mill at the time so I brought
20 what I needed of my own that I was selling so that I
21 wouldn't have to go back to Fort Mill. It was all right
22 there to be sold if it were to sell so.

23 Q. I'm just gonna be straightforward with you, okay?

24 A. Yeah. Uh-huh.

25 Q. And you're under oath.

1 A. Okay.

2 Q. You struggle with drug addition?

3 A. Now, or?

4 Q. In the past in your life?

5 A. Yes, sir, I did. And that's been many years and I'm
6 very proud of my sobriety so.

7 Q. So now you're sober?

8 A. Yeah, absolutely a hundred percent.

9 Q. But in the past you had struggled with drugs?

10 A. In the past, a very long past, before I even met Mr.
11 Ostrowski and that's the truth so.

12 Q. Methamphetamine was one of those drugs?

13 A. No.

14 Q. Never?

15 A. Absolutely not. And to be honest with you it was
16 heroin, opiates from surgeries, and I got clean and I've
17 been clean for over four years now and I'm proud of that.
18 I am.

19 Q. Yes, and congratulations.

20 A. Yeah.

21 Q. Now you're here as a witness for the Defense?

22 A. Yes.

23 Q. So we're gonna get straight to it and not waste any
24 time.

25 A. Absolutely.

1 Q. Now you said you used to be in his home at that time
2 period. I mean are you -- How about this? Are you
3 familiar with why we're here today?

4 A. Yes.

5 Q. All right.

6 A. I'm aware of it, yeah.

7 Q. Why are we here?

8 A. Well they apparently went into his home and allegedly
9 found some things. I don't know the whole history. Like I
10 said I am not here to testify to drugs. I don't know
11 anything about how that proceeded or how it came about
12 because I wasn't there and I don't live there. About the
13 only thing I was there for was strictly to sell and work
14 for him.

15 Q. Did Mr. Ostrowski at one point struggle as an
16 addict?

17 A. We separated and broke up. He -- I will be honest,
18 I'm under oath, he used personally. That's all I knew. I
19 as a recovering addict don't want to be around it. We
20 split. I live in my own house. I was in the process of
21 getting my children back and it's didn't seem like a good
22 environment. You see what I'm saying? I have no problem
23 working for him but relationship wise it's not a good idea
24 for someone like me who's recovering. The only reason I'm
25 working for him is because he's -- his full time job and

1 we're not around each other, if I'm working for him and
2 he's at work. Do you see what I'm saying?

3 Q. When you say personal, what does that mean?

4 A. Like at one point, yes, he did use as far as -- not
5 around me, but I mean of course that's not a secret.

6 Q. So as far as what you're saying --

7 A. In his past he used to use.

8 Q. You knew a personal use of drugs?

9 A. No, in the past.

10 Q. Okay.

11 A. Not at that time. In his past I was aware of that,
12 yes.

13 Q. Had you ever seen him with a larger amount of drugs?

14 A. No, absolutely did not. Like I said I was there from
15 like normal morning hours 9:00 to 5:00 while he was at his
16 job. That was my job, I considered that my job to work for
17 Mr. Ostrowski and help him. We were no longer dating.
18 When like I said I lived in Fort Mill.

19 That's all there is to that because I was in the
20 process of trying to get my children back because I was
21 clean and sober and a new place in my life.

22 Q. And in working and having this relationship with Mr.
23 -- a former relationship ---

24 A. Right.

25 Q. --- with Mr. Ostrowski and then working for him, you

1 knew kind of association wise, was it uncommon for people
2 to be in and out of his home?

3 A. Yeah. I mean I know that people -- I mean he has a lot
4 of friends of course. People would come over work on his
5 vehicles and stuff but I was there for one reason. I kept
6 to myself into my job. Anybody who has a job they're there
7 for their job. That's what I was there for. I'm not --
8 There were obviously people in his home. That's his
9 business and I don't want to know nor do I ever want to
10 know or ask because it wasn't my place. I was there for
11 business and that was it.

12 Q. So specifically there were a good bit of people in
13 and out at the time?

14 A. Oh, no, no, people but friends, yeah. I mean like I
15 said --

16 Q. Spend the night?

17 A. I don't know. Like I said I can't say that because
18 I didn't spend the night. I was there as an employee. Now
19 I been there long hours. Potentially yeah they might have
20 spent the night. I don't -- I can't say for sure. That is
21 not a question I can answer yes or no to.

22 Q. The easy way to describe it is its not one where he
23 didn't have people in and out of his house?

24 A. Yeah, he had his niece come in. Well his niece stayed
25 with him for a while.

1 Q. I don't know --

2 A. That's one I can say lived there at a certain point.

3 Q. There's a picture in the home of you, him, and another
4 young man maybe in his late teens early twenties.

5 A. That's just his son.

6 Q. Okay.

7 A. Yes.

8 Q. Who's been in the home?

9 A. Yes. He has custody, or you know, I guess, or
10 whatever custody is because his long weekends or I don't
11 know what their arrangements are but that's how they --
12 that's how sometimes his dad is not in his life.

13 Q. Right.

14 A. Right.

15 Q. And as far as you know when his friends were over at
16 his house you were just there for business hours and
17 that's it?

18 A. Right. And I am an acquaintance with some of his
19 friends from being there and meeting them yes. But I
20 wasn't there to hang out and party and stuff but like I
21 said I was there for business Monday through Friday. Now
22 when we dated, I knew these people, but like I said I'm a
23 recovering addict who wants to get my children back.
24 That's why I live in Fort Mill. I mean it's not a good
25 idea to live with someone whose got a lot of people going

1 in and out when you're trying to get your kids home.

2 Q. And I'm gonna remind you you're under oath.

3 A. Yes. That's fine.

4 Q. Had you been spending the night sometimes ---

5 A. Yeah.

6 Q. --- at his house at this time?

7 A. Yes.

8 Q. You're under oath.

9 A. Yes.

10 Q. So, that was --

11 A. We were boyfriend and girlfriend at one point, yes.

12 Q. Okay.

13 A. And what time I don't know what time frame you're
14 talking about.

15 Q. And even around January of 2017?

16 A. No.

17 Q. You're saying never?

18 A. No, no. Not ever. I have no longer been the same
19 there when the officers ask me and I told them I was
20 represented by an attorney they don't wait for an attorney.
21 They know that I have an address that I live at.

22 Q. And your attorneys present in this courtroom?

23 A. Yes, yes. Yes, yes. Because at the time I was
24 approached at the bank I was under the impression I was
25 being picked up for outstanding warrants that had nothing

1 to do with Mr. Ostrowski at all. That was what I was told
2 after twenty minutes of no addressing who they were.

3 Q. That's because they had nothing to do with Mr.
4 Ostrowski?

5 A. Exactly. So when they picked me up nothing -- Like I
6 said it had nothing to do with him and it did not. They
7 said you're under arrest after me begging for them to
8 please explain what's going on. And its on footage at the
9 bank. They proceeded to tell me you have outstanding
10 warrants from September. I said okay. They said can we
11 search your vehicle? I said absolutely. I let them search
12 it and they found nothing. But like I said, I've not been
13 on drugs for many many years and I'm proud of that. They
14 been --

15 Q. Now they found controlled substances?

16 A. No, they did not. Not in my car they did not. They
17 found my medication. To be clear on that, my own
18 prescription.

19 Q. And to clarify for the jury, these arrest warrants
20 had nothing to do with Mr. Ostrowski?

21 A. Nothing at all.

22 Q. Or the residence?

23 A. Nothing to do with his residence or him at all. So
24 that's why I don't understand how I have anything or he has
25 anything to do with my charges. I don't know how he got

1 brought into this. Like I said for that day I was under
2 arrest for two outstanding warrants that pertain to him at
3 no cost, at none. He had nothing to do with it.

4 Q. At a different residence?

5 A. In Fort Mill. And when they served me the expert
6 affidavits they had the Fort Mill address on it which is
7 where I live so that's correct.

8 Q. And in your time because you said you were there often
9 working there.

10 A. Right.

11 Q. And the relationship, had you ever seen a large
12 amount of drugs?

13 A. Never.

14 Q. And you only knew of his personal use?

15 A. No. And that's -- I've never witnessed that either.
16 That's the truth, the personal use. Now like I said I knew
17 he had in the past had personal use that he did, but as a
18 recovering addict I would hope that he wouldn't do that in
19 front of if he was still using. I can't say he was still
20 using because I never witnessed it and that's the truth.
21 Just like he wouldn't do it front of his son, he wouldn't
22 do it in front of a recovering addict. So I can't say he
23 was or was not. I don't think he was. In the past I knew
24 he struggled with it. The past. But we all have a past.
25 I mean that's the honest to God truth. And -- But I will

1 say that when they did pick me up on the outstanding
2 warrants on September, which is initially why they said
3 they approached me, they were not happy to find that they
4 did not find any drugs in my car. They took me to City and
5 did a -- what was it? A search -- They searched me I guess
6 several times in hopes of finding something. They did not
7 find anything on me because I do not do drugs and I told
8 them that. And I was more than happy to cooperate as far
9 as the search but I made it very clear I have an attorney.
10 Jim Boyd contacted them from the moment they told me I was
11 under arrest, okay.

12 Q. And just to be clear, this is where we'll end it.

13 That had nothing to do with ---

14 A. Nothing. I knew nothing.

15 Q. --- Mr. Ostrowski or that residence?

16 A. No. That had not even been brought to my attention at
17 all. But with one last statement on that, the search. The
18 comment made to me by the Drug Enforcement in front of me
19 was we found nothing in her car and nothing on her. What
20 are we going to do? Is she still under arrest? I was a
21 little confused at the time why would you say that. If you
22 told me you were picking me up on outstanding warrants why
23 would you question what you are going to arrest -- They
24 then all stepped out of the room and left me with a female
25 officer in a room who had just done the cavity search and

1 everything. They came back in and then told me I was under
2 arrest for possession of alpraxolam or -- you knwo it was
3 my medicine.

4 Q. It was Zanax?

5 A. Right, and my own prescription. And I said I'm sorry
6 I don't understand. I thought I was being picked up on
7 outstanding warrants. You guys just point blank ask in
8 front of me well is she still under arrest and what are we
9 charging her with.

10 Q. And the police interrogated you?

11 A. No. I had already lawyered up. I mean they tried
12 talking but I didn't say anything.

13 Q. So --

14 A. I mean they just heard like -- one officer like I
15 don't know these people. One of 'em said well just - was
16 kind of mouthy, you know, he didn't really say much but he
17 said a few things --

18 Q. Do you dispute that you told the police that you
19 thought there was marijuana in the home?

20 A. Yes I do dispute that because --

21 SOLICITOR HAYES: Objection, your Honor, relevance?

22 THE COURT: Over ruled.

23 A. I do dispute that because like I said I was under
24 arrest for outstanding warrants and they're exact words
25 from September at the residence at Fort Mill that why would

1 anything come up about Mr. Ostrowski, or his residence,
2 when I'm under arrest supposedly, in their words, for
3 outstanding warrants? Why would that come up and how would
4 that come up? I don't understand why that how they can
5 even try and say I said something like that.

6 Q. So other than that you have nothing ---

7 A. I haven't.

8 Q. No other knowledge?

9 A. None.

10 Q. And you saw no other activity of large drugs in that
11 home?

12 A. Absolutely not.

13 MR. PHILLIPS: No further questions, your Honor.

14 THE COURT: All right. Solicitor, your witness.

15 CROSS-EXAMINATION

16 ALEXANDRA PETERS BY SOLICITOR HAYES:

17 Q. Ms. Peters, the outstanding warrants that you were
18 arrested on from September of 2016, you were arrested on
19 those on January 25th, 2017?

20 A. Yes, sir.

21 Q. What did the police say you did in September of 2016?

22 A. They didn't say. I kept asking but they wouldn't tell
23 me for quite some time. They were in unmarked vehicles and
24 not dressed out. As a female in a bank who had just made a
25 deposit it startled me. They did not address it. I ask

1 several times.

2 Q. Have you read your charges --

3 A. Finally they did address it though eventually.

4 Q. So what did they say that you did in September of
5 2016?

6 A. They said I had outstanding warrants for selling to
7 an uncover CI or something like that. And I ask what are
8 you talking about.

9 Q. Okay.

10 A. That's all I knew. That's all I was told.

11 Q. And so in January of 2017 you are at 162 Bailey
12 Avenue just to work for John?

13 A. No, I was not at that residence that day at all.

14 Q. No, no, no. I'm saying ---

15 A. Oh.

16 Q. --- if you had been in and out of 162 Bailey Avenue
17 in the time period of January 2017, that would just be
18 because you were working with John but y'all weren't
19 together any more?

20 A. If I had been but I had slowly like let him go
21 working for him at all because like I said I was focused on
22 trying to get my children back ---

23 Q. Okay.

24 A. --- and he was fine with that.

25 Q. So January 2017 you're only relationship with John

1 is ---

2 A. Finishing up ---

3 Q. --- business?

4 A. --- and selling. Yeah, business.

5 Q. Business stuff?

6 A. Just wrapping it up, yep.

7 Q. Okay.

8 A. And then that was it.

9 Q. So you don't know what is inside of his personal
10 belongings inside 162 Bailey Avenue in January of 2017
11 because y'all just had a business relationship?

12 A. Do what now?

13 Q. You don't know what's inside his personal belongings
14 in that house?

15 A. Absolutely not.

16 Q. Because y'all just had a business relationship at
17 that point?

18 A. At that point I was wrapping up a business
19 relationship and ending the -- even working for him because
20 as I repeated, my children were now my number one priority
21 and I was working with Jane Randall who represents me in
22 getting my children back, and he was fully aware and
23 understood that so. I mean I wasn't staying there. I was
24 very very minimal there at that point. I was just trying
25 to finish what I had agreed business wise.

1 Q. Gotcha.

2 A. That's all.

3 Q. Gotcha. And you and John are not together any more?

4 A. No. That's all.

5 SOLICITOR HAYES: Thank you. No further questions.

6 THE COURT: All right, thank you, ma'am, you may step
7 down. You are free to leave.

8 MS. PETERS: Thank you.

9 (WITNESS LEAVES WITNESS STAND.)

10 THE COURT: Defense can call it's next witness.

11 MR. PHILLIPS: Thank you, your Honor. The Defense
12 calls Jonathan Ostrowski.

13 (WHEREUPON, JONATHAN OSTROWSKI,
14 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 THE COURT: Sir, as you heard me say on numerous
16 occasions that microphone don't work real good so make sure
17 you speak loud, okay?

18 MR. OSTROWSKI: Yes, your Honor.

19 DIRECT EXAMINATION

20 JONATHAN OSTROWSKI BY MR. PHILLIPS:

21 Q. Hey, John.

22 A. How's it going?

23 Q. Its your day in court, you're under oath sworn. We're
24 gonna cut to the chase, okay? I'm gonna get right to it
25 what they want to hear. Were the bag of drugs that you

1 been sitting in this trial what you've been accused of
2 ownership wise is that your bag of drugs?

3 A. No. No, sir.

4 Q. How do you know that's not your bag of drugs?

5 A. Because they're not mine. I don't whose they are.

6 Q. Now, again, you're under oath. You struggle with drug
7 addiction?

8 A. Yes, I do.

9 Q. You just heard Ms. Peters' testimony, you've been
10 struggling with drug addiction for quite some time?

11 A. Yes, sir.

12 Q. From day one when the officer, when you were arrested,
13 you denied ownership of the drugs?

14 A. Yes, sir, I did deny it.

15 Q. From day one?

16 A. From day one.

17 Q. But he first ask you whether the methamphetamine
18 pipes were found in the home were technically yours and you
19 admitted to that?

20 A. Yes.

21 Q. And you admitted to it because you're a drug addict?

22 A. Yes, sir.

23 Q. So you do not dispute that you're a drug addict?

24 A. No, I do not.

25 Q. What I want us to walk through from that point of

1 view is your life style in that home. Talk about -- I mean
2 I can't tell you what to say here, John.

3 A. I mean --

4 Q. Tell me what happened in that home.

5 A. Well, I mean I always had people coming in and out,
6 several friends, you know. And then my niece, she's twenty
7 some years old, she has her friends coming through. And I
8 mean it's just a bunch of good people that comes through in
9 and out there all the time.

10 Q. When you say comes in and out of there, specifically
11 when Ms. Peters referenced people, friends coming to your
12 house, who stays over, that kind of thing?

13 A. Well, I mean I have my friends that stays over there.
14 My nieces's friends. Its just a lot of different people
15 that comes through there. I mean my friends and their
16 friends. And sometimes I wouldn't even stay there and
17 there would be people staying there. I mean --

18 Q. Specifics. You heard testimony there was five
19 different cars at your house. A BMW, three pickup
20 trucks, Chevy Blazer. You have these people, do they stay
21 over at your house?

22 A. Occasionally, yes.

23 Q. What do you do for a living?

24 A. I do drywall and paint.

25 Q. And --

1 A. And I also, you know, buy pallets every once in a
2 while and that's what Alex she'd do, she would sell the
3 items off the pallets.

4 Q. When you say pallets, like wholesale items?

5 A. Yes, sir.

6 Q. And they sell 'em on the internet?

7 A. Yes, sir.

8 Q. So, these wholesale items -- but your main job, your
9 full-time job, is primarily drywall and painting?

10 A. Yes, sir.

11 Q. And how long have you done that?

12 A. Several years, probably maybe seven, eight years
13 maybe.

14 Q. And you've done some landscaping and like off and on?

15 A. Landscaping, yes, sir.

16 Q. So that's been your two primary sources of income is
17 landscaping and drywall?

18 A. Yes, sir.

19 Q. Going into that life style, your self employed,
20 essentially you're as work -- as you have worked you work,
21 correct?

22 A. Yes, sir.

23 Q. When you get a contract you go to work. You're a
24 subcontractor?

25 A. Yes, sir.

1 Q. In that life style, and the people you run with, you
2 said you had a drug addition, do many of your friends have
3 drug addictions?

4 A. Yes, sir.

5 Q. And how many people do you have stay in your home?

6 A. Off and on, I mean it's been probably at least eight
7 to twelve people. So, I mean --

8 Q. That day when there's a BMW, three trucks, a Chevy
9 Blazer, there's five total cars, would that be your friends
10 coming in and out of your house?

11 A. Yes, sir.

12 Q. So, again, why we're here, the whole reason we're
13 here, is that bag of drugs yours?

14 A. No, sir. No, absolutely not.

15 Q. And why are they in your hands?

16 A. I have no idea. I have no idea. It could a been
17 somebody coming through maybe one of my friends leaving
18 their stuff there which people has done. But absolutely
19 not, they were not mine.

20 Q. Now, let's talk about this part of the house. Where
21 that armoire is, is that open to the house?

22 A. It's an open area, yes, sir. I mean you can get to
23 there from the kitchen. You can go around to it, the
24 living room you can go right by it. I mean you come from
25 the very rooms you can go right by it.

1 Q. And what I mean is it's not locked in a bedroom, it's
2 not enclosed in a bedroom?

3 A. No, sir, it's not.

4 Q. It's a makeshift closet in the hallway?

5 A. Yes, sir.

6 Q. And let's also be hones. The people you are with
7 that do drywall, painting, they're involved in activities
8 as well?

9 A. Yes, sir.

10 Q. With that drug addiction would you classify your house
11 as a party house?

12 A. Yes, sir.

13 Q. You heard Ms. Peters describe very few people. Is
14 that accurate as far as the amount of people that come to
15 your house?

16 A. No, sir. There's usually quite a few people who come
17 in my house that did come to my house.

18 Q. And were drugs done in your house?

19 A. Yes, sir.

20 Q. Is that why there's so many pipes in your house?

21 A. Yes, sir.

22 Q. I'm gonna ask it one last time. Is that your drugs?

23 A. No, sir.

24 Q. Put your hand on this Bible, sworn an oath.

25 A. They were not my drugs.

1 Q. Not only tell me, they're the ones that's getting to
2 sit here and --

3 A. The drugs that was found in my house was not mine.

4 Q. And the reason you requested this trial is because
5 from day one you denied --

6 A. From day one I denied 'em and I still deny it. They
7 was not mine.

8 Q. And you admitted to those methamphetamine pipes?

9 A. Yes, sir.

10 Q. And that was the first question you were ask?

11 A. Yes, sir.

12 Q. So, the first question that's ask by police is an
13 incriminating question about drug paraphernalia and you
14 say yes, that's mine?

15 A. Yeah, because it was mine.

16 Q. And then the next question they ask is well what
17 about all these drugs, this big bag of drugs?

18 A. I had no clue. Didn't even know they were there.

19 Q. You denied it from day one?

20 A. Yes, sir.

21 Q. You wanted a trial from day one?

22 A. Yes, sir.

23 Q. You wanted a trial from day one because you're
24 innocent?

25 A. That's right. Right.

1 MR. PHILLIPS: No further questions.

2 THE COURT: All right. Thank you.

3 Solicitor.

4 CROSS-EXAMINATION

5 JONATHAN OSTROWSKI BY SOLICITOR HAYES:

6 Q. Mr. Ostrowski, so in your own words your house was
7 a party house for people that do methamphetamine?

8 A. Yes, sir.

9 Q. And that would be 162 Bailey Avenue here in York
10 County?

11 A. Yeah.

12 Q. And you are a drug addict?

13 A. Yes, sir.

14 Q. And your drug of choice is methamphetamine is it not?

15 A. Yes, sir.

16 Q. Were you arrested in Great Falls, South Carolina on
17 January 25th, 2017?

18 A. I was.

19 Q. And I know that that closet was in an open area.
20 Those would your clothes, right?

21 A. Well, not necessarily.

22 Q. Okay. How about men's pants in that armoire?

23 A. There's men's pants, women's pants.

24 Q. But your clothes would be in there, maybe other
25 people's clothes, but your clothes would be in there

1 because that is your house?

2 A. Just because my clothes in there don't mean my drugs
3 are in there.

4 Q. I understand. I understand.

5 SOLICITOR HAYES: No further questions, Mr. Ostrowski.

6 THE COURT: All right.

7 MR. PHILLIPS: Real brief.

8 REDIRECT EXAMINATION

9 JONATHAN OSTROWSKI BY MR. PHILLIPS:

10 Q. When they talk about other drugs, you already said
11 you admitted to the paraphernalia in the house?

12 A. Yes, sir.

13 Q. Let's talk to the tin foil and all that, the use of
14 drugs, the small little baggies of drugs. That's your
15 personal use methamphetamine?

16 A. Right.

17 Q. Are you a drug trafficker?

18 A. No, I am not.

19 MR. PHILLIPS: No further questions.

20 THE COURT: Thank you, sir.

21 SOLICITOR HAYES: Your Honor, just one.

22 THE COURT: Yeah.

23 SOLICITOR HAYES: Sorry.

24 THE COURT: All right.

25 RECROSS-EXAMINATION

1 JONATHAN OSTROWSKI BY SOLICITOR HAYES:

2 Q. So if your house is a meth party house for your
3 personal use and the use of your friends, doesn't that mean
4 your friends know where to go?

5 A. What do you mean?

6 Q. Why are they coming to your house?

7 A. Because that's where they hang out. That's where we
8 hang out.

9 Q. Gotcha. Thank you.

10 THE COURT: All right. Thank you, sir, you can step
11 down.

12 (WITNESS LEAVES WITNESS STAND.)

13 THE COURT: The Defense can call it's next witness.

14 MR. PHILLIPS: Defense rest, your Honor.

15 THE COURT: Defense rest. Anything in reply?

16 SOLICITOR HAYES: The State has no reply case, your
17 Honor.

18 THE COURT: No reply. Ladies and gentlemen, we have
19 completed the testimony and evidence phase of the trial.

20 We will now move into closing arguments. Now this is
21 an opportunity, as I told you at the outset of the trial
22 Tuesday, where the lawyers get to address you directly and
23 try to convince you as to what their version of the facts
24 they believe is, okay.

25 Now again, as I stated at the outset, when lawyers

1 speak directly to you in the form of either opening
2 statements or closing arguments, it's not evidence. The
3 evidence is the testimony that came from this witness stand
4 and the evidence that you will be able to see and touch
5 whenever you go back in the jury room. But please give
6 your utmost attention and listen to the lawyers as they
7 address you.

8 Mr. Phillips.

9 CLOSING STATEMENTS BY MR. PHILLIPS:

10 MR. PHILLIPS: Thank you, your Honor.

11 Credibility, responsibility, duty, that's the three
12 themes in this case. And we talk about credibility and we
13 talk about why the first time the Defense hears about Mr.
14 Ostrowski leaving the residence that morning, that's not
15 contained in any report, is when you heard from the witness
16 stand it was done through trial preparation; that the
17 Commander of the Drug Enforcement Unit is employed by the
18 Solicitor's office.

19 You start to go and you look, the fact that the
20 evidence was never tested for touch DNA, was not tested for
21 fingerprints until a year later, just a few weeks ago in
22 preparation for trial, and that there is no fingerprints in
23 this case. And you heard from their witness that if there
24 was fingerprints to be tested in this case on the bag of
25 drugs, on the gun, that that would have been the time to do

1 it at the very beginning.

2 You heard it from their witness that there could have
3 been evidence there and now there's not.

4 Potentially because of the delay evidence that could
5 absolutely exonerate Jonathan Ostrowski, or, and for the
6 State's argument could have been the solid-rock case for
7 them. Fingerprints, DNA. They didn't even test for DNA in
8 this case. Touch DNA is common. I'm not gonna go into --

9 SOLICITOR HAYES: Objection, your Honor. Facts not in
10 evidence.

11 THE COURT: Just stay within the record.

12 MR. PHILLIPS: Yes, your Honor.

13 So let's talk again about the investigation, about
14 credibility. You heard that there were multiple cars at
15 that house during their surveillance. On one specific day
16 the DEA agent said that there was a BMW, three pickup
17 trucks, a Chevy Blazer and another vehicle. There were
18 five different cars there that day, and there was an
19 unknown individual that was there, that wasn't the
20 Defendant who had left the residence, who had came back to
21 the residence, and that's when they stopped watching the
22 home. They didn't see what that individual was doing at
23 the residence or what they did.

24 You saw that they started their investigation the
25 morning of the execution of the search warrant but they had

1 not seen who had come and went from the residence at any
2 point that night. That's important because in this case
3 it's all about constructive possession. The State's burden
4 to prove that he had the knowledge that those drugs were in
5 his house and whether he intended to use them in some
6 fashion.

7 Now, in this case the one thing I can tell you that
8 you saw was that when he was arrested the first question
9 ask was an incriminating type question. Is those
10 methamphetamine pipes yours? He said, yes. He admitted to
11 it. And from day one the next question, well what about
12 this bag of drugs? He adamantly denied it. Why would he
13 admit to all this drug paraphernalia if he knew drugs were
14 gonna be found in his house that would be automatically
15 connected to him?

16 There is no rational or logical thought as to why he
17 would admit to methamphetamine pipes in his house, that
18 they were his, if he knew that there's a big bag of drugs
19 in his house that would make it illogical for him to admit
20 one thing and deny the other. It doesn't make sense.

21 Now, as to responsibility, a full and complete
22 investigation -- I know I feel like I've beat a dead horse
23 through cross-examination of asking the same questions, and
24 I appreciate your patience in listening to the same ones,
25 but when we look again, they could have requested the

1 fingerprints a year ago. It was not done. And then once
2 it was done a few weeks ago for trial, there are no
3 fingerprints linking Mr. Ostrowski to any physical evidence
4 in this case.

5 There's no fingerprints on the gun, there's no
6 fingerprints on the ammo box, there's no fingerprints on
7 any of the bags of drugs. And that's important because in
8 this case if they gotta prove constructive possession, that
9 he knew the drugs were there and that he intended to use
10 'em, that he possessed those drugs.

11 Because there's two types. It's actual possession
12 which is easy. It's on your person its easy to decide.
13 And constructive possession is the one that obviously is
14 the burden before you today, and the burden before the
15 State to have to prove beyond a reasonable doubt that he
16 knew those drugs were there and that he intended to use
17 'em; that they were his drugs.

18 Now, through this there was no pictures of a spare
19 bedroom in the home. There was no pictures for you to see
20 the true layout of the home as to the armoire in an open
21 access. Obviously we got that out from cross-examination.
22 And I hope you've seen throughout this trial that through
23 direct you would get one picture, and then on cross-
24 examination you would get the full picture that well I
25 would ask obviously on cross -- or direct -- you would hear

1 a piece of information that sounded very conclusive. This
2 is the way it is.

3 And then on cross I would ask it and they go well,
4 yeah, there's also this other piece of information that's
5 not favorable to us. Because there's two ways any piece of
6 information can go and there's one truth in life, so either
7 it's X or it's Y. Either it's the full truth or it's not.
8 And you saw through cross-examination that I had to elicit
9 this information. They didn't automatically tell you all
10 the bad things about their case. They could of just said
11 we're very confident about our case. We know we did a full
12 and complete investigation. We know we got the right guy,
13 so we're just gonna tell it all to you from day one. But
14 instead, I had to chip away at it and show all the things
15 that they were missing. And that's their burden here that
16 they have to carry beyond a reasonable doubt.

17 You're gonna hear from the judge that mere suspicion
18 is not enough to carry the day. Not in this courtroom.
19 You swore under oath before God to hold the State to that
20 burden that mere suspicion, that circumstantial evidence
21 that just leads to very suspicious activity is not enough.
22 You'll hear from the Judge that his mere presence in the
23 home if he would have been in the home at the time it
24 wouldn't have made a difference if you believe he didn't
25 know the drugs were in there and they're not his to use.

1 You will hear the Judge say that a valid defense is
2 mere presence. He could have even been in the home at the
3 time and that his mere association with other people who
4 had drugs doesn't make him simply guilty of the crime.
5 That they have to prove beyond a reasonable doubt that he
6 wasn't just merely present in the home; that it wasn't just
7 a party house; that it wasn't somebody else's drugs. They
8 have to prove that. They have to prove that it wasn't some
9 other third party who had the drugs. And you've heard no
10 other evidence to the contrary.

11 There are a lot of holes in this case. And I know you
12 watch -- you know in watching TV they say as far as the
13 Defense poking holes. Its not poking holes, it's shedding
14 the light on the fact of the weaknesses of the State's
15 case.

16 These Constitutional protections are not
17 technicalities. What I said in opening statement about
18 blood sweat and tears through our armed forces to have
19 these constitutional rights is what makes us different than
20 the other countries. And it's the reason we have to hold
21 them to that burden and it means something. Because if
22 you're going to find someone guilty, if you're going to
23 take it to that next level and find them beyond a
24 reasonable doubt you got to do it right and you got make
25 sure you know for a fact beyond a reasonable doubt that

1 that person's guilty of the drugs.

2 He has maintained from day one that he is innocent.
3 He has not wavered. He ask for a trial from day one and he
4 told that officer when he was arrested that those drugs
5 were not his.

6 Now in talking about duty, when you go back into the
7 jury room and you're asking yourself whether you
8 fulfilled that sworn oath, I want to impress upon you a
9 couple of questions. One is, one big thing, there are no
10 do overs. Fear is temporary, regret is forever. You need
11 to sit down and really think this is the one time I get to
12 decide this case.

13 SOLICITOR HAYES: Objection, your Honor.

14 THE COURT: Over ruled.

15 MR. PHILLIPS: Tomorrow -- If you come back with a
16 verdict today, or you come back with a verdict tomorrow,
17 whenever it may be, after that verdict's done there is no
18 do over. You'll be sitting there the next day drinking
19 your coffee and getting some breakfast, at the water cooler
20 talking with --

21 SOLICITOR HAYES: Objection, your Honor.

22 THE COURT: I'll sustain that.

23 MR. PHILLIPS: At any point after your verdict you
24 will not have a chance if you regret your decision.

25 SOLICITOR HAYES: Objection, your Honor. May I

1 approach?

2 THE COURT: Yeah, y'all come on.

3 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF
4 THE JURY AT 12:02 P.M.)

5 THE COURT: Thank you.

6 MR. PHILLIPS: You gonna have doubts, have 'em today;
7 have 'em in that jury room.

8 In asking these questions I said the big questions you
9 have to ask yourself is does it matter? Did it matter to
10 the police that they didn't ask to have those bags tested
11 for fingerprints a year ago when they got 'em? Did it
12 matter to the government to request touch DNA? Did it
13 matter for them to do a complete investigation to find out
14 who these other people are; to disclose the identity of
15 this unknown individual or the other people that were there
16 in that home?

17 You saw through this trial it didn't matter. But it's
18 got to matter to you. I press upon you that its your role
19 to hold the State to their burden of proof. Its your sworn
20 duty.

21 John, would you please step up?

22 (DEFENDANT JONATHAN OSTROWSKI COMES AND STANDS BEFORE
23 THE JURY AT 12:04 P.M.)

24 MR. PHILLIPS: Ladies and gentlemen, I know in a trial
25 it gets to be a little bit a disconnect between you and the

1 defendant. They're sitting on the opposite side of the bar
2 at this point from you in the courtroom, and I always bring
3 the Defendant up because you have the awesome power of
4 sitting in judgment of another citizen, another human
5 being, a resident of this county. And that awesome power
6 is one not to be taken lightly, so I always bring 'em up
7 and I say, here's the man that I want you to look into his
8 eyes, you assessed his credibility, he testified in his own
9 defense you heard him, and he's adamantly denied from day
10 one possession of those drugs. And he admitted from day
11 one to the paraphernalia, and it's not logical that he
12 would admit to drug evidence knowing that there's a big bag
13 of drugs that would automatically tie him to that other
14 evidence.

15 Ladies and gentlemen, take a moment. He's standing
16 here before you, he had a right not to testify, instead he
17 got up there and he told you his side. You got to hear all
18 the evidence in this case, and at the end of the day I told
19 you at the very beginning that when somebody request a jury
20 trial it's based on faith. It's having faith in the
21 evidence, having faith in their innocence, and having faith
22 in your verdict. And based on that, based on the evidence
23 that's presented to you, and based on his adamant denial of
24 guilt in this case, we respectfully request a verdict of
25 not guilty. Thank you.

1 THE COURT: Thank you, Mr. Phillips.

2 (ATTORNEY PHILLIPS AND DEFENDANT OSTROWSKI RETAKE
3 THEIR SEATS AT DEFENSE TABLE.)

4 SOLICITOR HAYES: May it please the Court, your Honor.

5 THE COURT: Yes, sir.

6 SOLICITOR HAYES: Counsel.

7 CLOSING STATEMENTS BY SOLICITOR HAYES:

8 SOLICITOR HAYES: Madam Clerk, may we have the lights?

9 (COURTROOM LIGHTS TURNED DOWN.)

10 SOLICITOR HAYES: When I addressed you a few days ago
11 in my opening I wanted to give y'all a road map of where we
12 were gonna go with this case. The facts and the law and
13 the evidence that now you have to put together. And I told
14 you that that road map takes us to one very specific
15 destination. And I would like to spend a few minutes with
16 you talking about where we are and where this case
17 ultimately needs to wind up.

18 Your job as the jury is to find the facts of the case
19 and then to match the facts to the law. And if the facts
20 match up with the law as the Judge gives it to you, you
21 have your verdict.

22 In a criminal case the State has to prove it to you
23 beyond a reasonable doubt, and Mr. Phillips said that and
24 the Judge will charge you that, and that's very important.
25 I can't hide from that and I wouldn't try. That is a

1 foundational principle of American law. But it's equally
2 important for a jury to understand what reasonable doubt is
3 because it is not an impossible standard to over come.
4 Cases are proven beyond a reasonable doubt every day. And
5 at the end of this presentation I'm gonna submit to you
6 that this case has been proven beyond a reasonable doubt.

7 A reasonable doubt is the type of person or the type
8 of doubt that would cause a person to hesitate to act. The
9 other side of that coin, another way to think of it, is
10 when a case has been proven beyond a reasonable doubt when
11 you are firmly convinced of the Defendant's guilt. So you
12 have two definitions there that are really two sides of the
13 same coin. I like the firmly convinced one because I think
14 it's a little bit easier to get your head around as far as
15 legal ease, but they're both important and they stand for
16 the proposition that the State can prove a criminal case to
17 a jury. It's not impossible. Its very doable. If you are
18 firmly convinced then the Defendant is guilty beyond a
19 reasonable doubt.

20 And the judge will charge you that there are many
21 types of certainty in this world and the State is not
22 required to reach absolutely certainty. We're required to
23 prove the case beyond a reasonable doubt. Not beyond all
24 doubt, not to a scientific certainty or absolute certainty,
25 beyond a reasonable doubt.

1 And another thing I want you to think of because Mr.
2 Phillips kind of touched on this, don't confuse
3 deliberation with hesitation. You're supposed to
4 deliberate. There is a lot of evidence in this case; I
5 think there are almost eighty exhibits on this table. And
6 you heard from over fifteen witnesses. This is a big case,
7 you've got a lot to talk about. It doesn't mean you're
8 hesitating, it means you're doing your job.

9 So please don't confuse deliberation with hesitation.
10 The fact that y'all go back there and you get to talk about
11 this case freely for the first time, and y'all have
12 questions and you need to look at things, doesn't mean
13 anything is wrong with the case. It doesn't mean that it's
14 an automatic verdict of not guilty. It means you're being
15 thorough. So please do that, please take your time. That
16 is not a problem.

17 And the judge is gonna charge you that there are two
18 types of evidence in criminal cases. There is direct
19 evidence which is just like it sounds. Somebody testifies
20 I saw this. That is direct evidence because it came from a
21 witness who has knowledge.

22 But there is also circumstantial evidence which kind
23 of gets a bad reputation if you watch TV or movies and
24 courtroom proceedings. That's circumstantial, your Honor,
25 and it's thrown out as a bad thing. But the judge is gonna

1 charge you it's actually not. The law makes no difference
2 between the weight that you should give direct versus
3 circumstantial evidence. That's up to you. So the State
4 uses circumstantial evidence all the time.

5 And what is circumstantial evidence? It is a proof of
6 a chain of facts and circumstances indicating the existence
7 of another fact. Now that's a little bit cumbersome but it
8 has everyday applications that you apply in your mind
9 without even knowing it. Because this happened to me
10 yesterday, I don't know if this happened to anybody else.

11 How do you know if its rained if you've been inside
12 all day? Maybe you work in a office that doesn't have a
13 window, if it's a long day you're there for a long time and
14 you stop out of the building and you wonder has it rained
15 today. Well, its not currently raining, you have to use
16 circumstantial evidence to figure it out. And your brain
17 does it automatically. The pavements wet, the grass is
18 wet, cars are wet, the sky's a little bit dark, ii rained
19 that day. When your significant other calls you on the way
20 home and says, did it rain where you were? You're not
21 gonna hesitate, you'll go, yeah, it rained where I was,
22 because the circumstantial evidence was clear. The chain
23 of facts that you saw with your own eyes that led you to
24 another fact beyond a reasonable doubt.

25 Circumstantial evidence and direct evidence neither is

1 worse than the other. They are the same in the eyes of the
2 law. The weight is up to you. And the judge will also
3 charge you that the State relies on circumstantial
4 evidence. All the circumstances have to line up with each
5 other to prove -- to conclusively point to the guilt of the
6 defendant beyond a reasonable doubt.

7 Now this is deserves a little bit further explanation
8 because, you know, circumstantial evidence does require
9 application of logic. And so that's really what this slide
10 is saying. But the facts have to line up together. And we
11 go back to our rainy day example, if you walk outside and
12 you wonder if it's rained today, and then your co-worker
13 who got out of the door a little bit before you, and
14 they're soaking wet, all of those facts are consistent and
15 line up to one conclusion that your co-worker got rained on
16 because it rained that day. So all the facts lined up to
17 point to that conclusion beyond a reasonable doubt. All
18 the facts are consistent and lead you to that conclusion.

19 And that's the reasonable conclusion. In fact it's the
20 only reasonable conclusion. And just because there's
21 another possible explanation doesn't mean your original
22 conclusion was wrong because it was the most reasonable and
23 the most consistent.

24 I give you the example of a fire truck. It is
25 possible that while you are inside, and your co-worker was

1 outside, they were having the worst day ever, and a fire
2 truck drove up and sprayed water all over the parking lot,
3 all over the cars, all over the grass, all over the
4 pavement, and all over them, that is possible, that is not
5 reasonable. Fire trucks don't drive around spraying
6 unsuspecting people for no reason. So you're original
7 conclusion was perfectly fine.

8 The alternate explanation is not reasonable and would
9 be totally thrown out of your mind before you even gave it
10 a second thought. When your spouse called you and said did
11 it rain there, did anybody get hit by it, you would say
12 yeah, my co-worker got caught out in the rain. You
13 wouldn't have even worried about a fire truck.

14 And the judge is also gonna charge you that common
15 sense is what you need to bring into the jury room. Don't
16 check it at the door. It's your number one tool as a
17 member of the jury. We're not asking you to check it at
18 the door. There is no special hat that we ask you to put
19 on; no special legal ease that you need to use. Just your
20 common sense. Look at the evidence and remember the
21 witness testimony and apply your common sense. It is your
22 best tool.

23 The reason we're all here, what is trafficking
24 methamphetamine? And I gave y'all this road map in my
25 opening statement but I want to put it on the screen for

1 you because you're gonna hear it from the judge and it does
2 have some legal terms in there that I want to talk about.

3 The top bullet point: "Knowingly sold, manufactured,
4 cultivated, delivered, purchased, brought into this state,
5 provided financial assistance, or, otherwise aided,
6 abetted, attempted, or conspired to do the same."

7 That's an eye full. I call that TV trafficking just
8 in my mind. That's what I told you in opening. You see on
9 the news we stop an eighteen wheeler coming over from North
10 Carolina into South Carolina and we open it up and kilo's
11 and kilo's and kilo's. That would be that top bullet
12 point. And that certainly counts as trafficking in South
13 Carolina.

14 But look at that second bullet point, what I call for
15 lack of a better word, normal trafficking, mundane
16 trafficking. People who are in actual or constructive
17 possession of large amounts of drugs. That's all. So you
18 don't need both of those bullet points. You need one of
19 those type two bullets.

20 And then of course the final element that applies to
21 any case, any trafficking methamphetamine case, the weight
22 of the methamphetamine has to be between 28 and 100 grams.

23 What does possession mean in the eyes of the law
24 because the Defendant has to have possession of it. And we
25 call that the power and intent to control the disposition

1 or use of the drugs. And that possession can be either
2 actual or constructive. Neither is worse than the other.
3 The judge will charge you that we can prove it with actual
4 possession or we can prove through constructive possession.
5 That is a fact for you to consider and neither is worse
6 than the other.

7 And just some examples, difference between actual
8 possession and constructive possession, actual possession
9 means you have it on your person. Everybody knows that.
10 Constructive possession means that the Defendant had
11 dominion and control, or the right to exercise dominion or
12 control, over the drugs itself, or the property on which
13 the drugs were found. That is constructive possession.

14 The Defendant's knowledge and possession can be
15 inferred when the substance is found on property under the
16 Defendant's control. What that means is --

17 MR. PHILLIPS: Your Honor, may we approach?

18 THE COURT: Yes.

19 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING
20 OF THE JURY AT 12:17 P.M.)

21 SOLICITOR HAYES: In talking about the inference that
22 you can draw from drugs being found on the property under
23 the Defendant's control, you can as the jury choose to
24 assign those drugs to the Defendant just because they were
25 found in his house. That's what the law says in South

1 Carolina.

2 MR. PHILLIPS: Objection.

3 THE COURT: Just stay within the record, Solicitor.

4 MR. PHILLIPS: Your Honor, at the appropriate time I
5 have a matter of law.

6 THE COURT: Okay.

7 SOLICITOR HAYES: Now you don't have to. What that
8 simply means is that's an inference that you are entitled
9 to draw, and that you can assign the drugs to the person
10 who had control of the house if you want to do so. But you
11 don't have to stop there. You can look at the rest of the
12 evidence in the case. That is an inference that the law
13 allows you because the law contemplates people have stuff
14 in their houses.

15 Examples of constructive possession:

16 TV in a person's living room. If they're at work they
17 still own their TV. The cell phone locked in their car
18 because they got called for jury duty. If they're sitting
19 on the jury they still own their cell phone.

20 Your college stuff that you have in a storage unit:
21 Just because you don't go to the storage unit everyday
22 doesn't mean you don't own your stuff in there.

23 A gun that someone puts on their bedside table and
24 then goes to work, they still own that gun.

25 The methamphetamine that's in someone's pants in their

1 closet when they go to work: They still own the
2 methamphetamine if its in the pants in their closet. And
3 this is an important point, and we'll get to this later
4 because of the testimony of Mr. Ostrowski and the nature of
5 his house, but two or more people can own the same drugs.
6 Just like anything two or more people can own it. Two or
7 more people can own a house together. Two more people can
8 own a car. Two or more people can own the same drugs.

9 What is possession of a weapon during the commission
10 of a violent crime? Just like it sounds. Possessing. And
11 that's the same rules for drug possession you apply to gun
12 possession, of a firearm during the commission of a violent
13 crime. Violent crimes are from a list created by our
14 legislature and trafficking methamphetamine is on the list.

15 You cannot have a gun connected to trafficking
16 methamphetamine. And in the special rule for drug cases
17 there has to be a connection between the guns and the
18 drugs. And under our law there is a connection if the gun
19 is available to the trafficker in such a way that it could
20 be used to serve as a defense to anybody that wanted to
21 come in and take the drugs or the money.

22 What is possession of a handgun with the serial number
23 obliterated? Probably the most obvious one on this list;
24 knowingly possessing a firearm, a handgun that has a serial
25 number removed or obliterated. I won't spend any more time

1 on that.

2 And what is possession of a handgun by a person
3 convicted of a crime of violence? This is different than
4 violent crime and I don't know why our legislature called
5 them something so similar but they did. A crime of
6 violence is also a list from our legislature that includes
7 things like assault and battery of a high and aggravated
8 nature. And so if you have been convicted of something
9 like that, you're not allowed to have a gun in South
10 Carolina. That is separate and apart from the possession
11 of a weapon during the commission of a violent crime.
12 Please write the legislature and tell 'em to change that
13 because it's very confusing.

14 I wanted to get into the facts now and talk to you
15 about the witnesses that you heard from. You heard from
16 Leland Harrelson who is the case agent from the Drug
17 Enforcement Unit. You heard from Jason Satterwhite who was
18 the DEA representative on this team that did this search on
19 that day and Jason Satterwhite also did some preexisting
20 surveillance you heard.

21 You heard from John Rainier the DEU officer who found
22 the gun. You heard from Robert Jenkins the DEU officer who
23 did surveillance while the team was getting the search
24 warrant to make sure nobody went in or out. You heard from
25 Ryan King the DEU officer who did the cell phone, we call

1 it cell phone rip, but downloaded the cell phone and
2 presented that to you in court yesterday. You heard from
3 Chris Rowe the DEU officer who did some searching around
4 the outside of the house and one of the rooms inside the
5 house.

6 You heard from Lieutenant Johnny Neal the Chester
7 officer who arrested Mr. Ostrowski in Great Falls and who
8 pulled the phone off of him. You heard from Jimmy Stiles
9 the evidence custodian who testified nothing was wrong as
10 far as the handling of the evidence. You heard from Dee
11 Ann Johnson, a very important witness, who testified that
12 she tested those drugs but those drugs are methamphetamine
13 and those drugs weigh more than 28 grams. In fact they
14 weighed 31.66 grams.

15 You heard from a representative of the York County
16 Natural Gas just to prove to you that Mr. Ostrowski lives
17 at 162 Bailey Avenue or lived at 162 Bailey Avenue. We
18 can't take that for granted so that's why we had him come
19 in and testify. You heard from Judge Sexton who testified
20 that the Defendant put his name next to his address at 162
21 Bailey Avenue on Court forms. Again we can't take that for
22 granted.

23 You heard from the York County Clerk of Court who
24 testified about Mr. Ostrowski's ABHAN conviction, assault
25 and battery of a high and aggravated nature, ABHAN for

1 short. You heard from firearm examiner Ray Barnwell who
2 testified there is no serial number on that gun. You heard
3 from George Weeks and Curtis Cousins who were fingerprint
4 examiners who looked at the drug bag and the gun. Didn't
5 find any prints but sometimes you don't find prints.

6 Now let's look at the evidence. On January 5th, 2017
7 somewhere in the 7 o'clock hour officers observed Mr.
8 Ostrowski leave 162 Bailey Avenue. In the 11:00 a.m. hour
9 officers observe Alexandra Peters leave and take her into
10 custody on the unrelated charge that she told you about.

11 She was charged and taken into custody.

12 Afternoon around lunch time the officers had the
13 search warrant and begin searching 162 Bailey Avenue. They
14 search for a few hours and in the 3 o'clock hour Mr.
15 Ostrowski is in custody in Chester County specifically
16 Great Falls.

17 So what did the officers find in the house? As Mr.
18 Ostrowski told you his house was a meth party house, and I
19 think the pictures certainly bear that out. There's Mr.
20 Ostrowski's picture in the house. Ms. Peters' picture in
21 the house. Mr. Ostrowski's picture again, Ms. Peters and
22 Mr. Ostrowski. The closet: Mr. Ostrowski testified that
23 people's pants are in there including his pants. And as
24 you know, those -- those drugs were found in pants in that
25 armoire. And this is just a reminder. I know it's hard to

1 see, you'll have this with you in the jury room, that
2 methamphetamine is gonna be in there with you. Or excuse
3 me, that report is gonna be in there with you and it puts
4 the weight of this methamphetamine at 31.66 grams. More
5 than enough to get you over the 28 gram requirement.
6 That's just a reminder of the weight of these drugs.

7 And of course you also had the smaller residue amount
8 that was on that piece of tin foil. That was only .03
9 grams so you can add those two together but that 3 - that
10 31.66 grams is more than enough to get you over 28 grams.

11 There is the pants they were found in. There's the
12 size of those pants, men's size 38. Clothing of Ms. Peters
13 in another part of the house. Clothing of Ms. Peters.
14 Razor blades: The officers told you what those are about
15 in a meth party house or in meth usage. Mr. Ostrowski
16 advised us he has a meth party house at 162 Bailey Avenue.

17 More razor blades.

18 Digital scale: The officers told you what those are
19 used for. Made sense in a meth party house. Meth pipe:
20 Makes sense. Razor blades, another meth pipe. Marijuana
21 pipe: Makes sense when you think about it. The
22 refrigerator: close up of the gas bill. Again we can't
23 take that for granted so that is Mr. Ostrowski's gas bill
24 at 162 Bailey Avenue. Court forms with his address and
25 name next to 'em. Meth paraphernalia in that basket

1 consistent with a meth party house.

2 That's just to kind of give you a side view of the
3 house and a little bit of -- a picture of the house we're
4 talking about. Of course those shelves and toolboxes were
5 searched. Digital scale. Meth pipe. Sandwich baggies in
6 the shed which when you think about it meth pipes and the
7 sandwich bags in the shed, sandwich bags are used in the
8 drug trade. Another meth pipe.

9 Night stand in the master bedroom. That's where the
10 gun was found. And just a reminder: Assault and battery
11 of a high and aggravated nature conviction, the Defendant
12 is not allowed to have that gun. That court form is in
13 there as well.

14 So you just saw the pictures of the search. And you
15 will remember after the search Mr. Ostrowski was located in
16 Chester County. He was stopped in Great Falls and his
17 phone was located by Lieutenant Neal and ultimately given
18 to Investigator Harrelson.

19 Investigator Harrelson advised the Defendant of his
20 *Miranda* rights and ask him a few questions, and as Mr.
21 Ostrowski freely testified, he admitted to the meth pipes
22 in his house, but of course denied the large amount of
23 drugs that were found. And all of this took place in a
24 very short time of the search of 162 Bailey Avenue. If you
25 remember the testimony of Investigator Harrelson and

1 Lieutenant Neal it was a quick operation.

2 Let's talk about the phone because that is the State's
3 strongest evidence in this case and it will completely
4 destroy the credibility of any defense argument because you
5 take one look at that phone and you know the truth beyond a
6 reasonable doubt. One look at that phone and you know the
7 truth. That phone was on his person the day of the search
8 warrant.

9 The sender on that phone responds to the name John,
10 which by the way is what everybody calls him that testified
11 for the Defense. There is a selfie on that phone. Use
12 your common sense. Its 2018, people have selfie's on their
13 phone. The sender admits he's in Great Falls, South
14 Carolina. Why is that significant? Because it ties it all
15 together. It tells you who is sending messages from that
16 phone. That person is Jonathan Ostrowski sitting in this
17 courtroom. That is the owner and the author of those text
18 messages. That is the only reasonable conclusion from the
19 evidence that you have seen. And that is the selfie --

20 MR. PHILLIPS: Objection, your Honor.

21 THE COURT: Yeah. Argument.

22 SOLICITOR HAYES: That is the selfie that we are
23 talking about. And we did not go through all the text
24 messages. You will have them in the jury room. There is a
25 big stack. I pulled out some highlights just to try to

1 move this along a little bit. The sender: Jonathan
2 Ostrowski. You want a gram of clear. You know from
3 Investigator Harrelson, Investigator King, what clear is.
4 I need another gram. Sender responds: Okay. I gotcha.
5 Jonathan Ostrowski responds okay, I gotcha.

6 People ask for drugs. He says okay. Jonathan
7 Ostrowski says okay. I have some clear, says Jonathan
8 Ostrowski. I don't do parking lots, says Jonathan
9 Ostrowski. Fixing to start selling all my shit, says
10 Jonathan Ostrowski on January 24th, 2017. Those were the
11 photographs from the face of the phone. And as
12 Investigator King explained to you, these are the text
13 messages that we get by digging a little deeper on the
14 BlackBag program that can download this information. So
15 the sender on these is on the right side in green.

16 Jonathan Ostrowski 162 Bailey Avenue. I got dope too,
17 says Jonathan Ostrowski. I have some clear if you want it,
18 says Jonathan Ostrowski. It is in my gold Blazer under the
19 driver side floor mat, just put the money there, says
20 Jonathan Ostrowski. No green just clear, says Jonathan
21 Ostrowski. Cash or front, says Jonathan Ostrowski. I know
22 that one is hard to see because it's far away but you'll
23 have it in your stack. Cash or front. Investigator King,
24 a member of the York County Multi-Jurisdictional Drug
25 Enforcement Unit, told you what a front is. A front is

1 drugs on credit.

2 Soon as I reup should be later tonight. January 19th,
3 2017. If you adjust for the difference in time on the
4 phone time stamp versus East Coast time that is on the late
5 night hours of January 18th, 2017. Investigator King told
6 you what a reup is and if you wonder what one looks like.

7 (SOLICITOR HOLDS UP EXHIBIT 3.)

8 SOLICITOR HAYES: State's Exhibit 3. That's 31.66
9 grams of methamphetamine. Day before the search warrant:
10 Jonathan Ostrowski tells somebody to find a new dealer.
11 And a key piece that ties it all together, the day of the
12 search warrant, the day of Jonathan Ostrowski's arrest mere
13 hours before it happened, I'm in Great Falls. That's where
14 Mr. Ostrowski was arrested and it unlocks it.

15 I want to talk to you about the physical evidence. I
16 don't want to belabor this because you're gonna have a
17 chance to look at it but I ask you please do so because
18 there is a lot of it. And it will give you a real feel for
19 162 Bailey Avenue as it existed on January 25th, 2017. You
20 can hold a meth party house in your hands. I ask that you
21 do so because it's an important part of this case; the
22 items that the officers ask for them -- the officers chose
23 to pull out of that house to present as evidence in court.

24 Please look at the physical evidence.

25 Let's connect the dots and match the facts to the law.

1 These are your -- You've got your top two ways that you can
2 prove trafficking. And then you're weight requirement at
3 the very bottom. You know what? After you look through
4 that phone you got both. You got somebody who's selling,
5 and attempting to sell, and you got somebody who is in
6 constructive possession.

7 You have both. You only need one. And of course you
8 have your weight. That was from Ms. Johnson, 31.66 grams
9 well in excess of 28 grams.

10 Possession: The Defendant had both the power and
11 intent to control the disposition or use of the drugs.
12 Take a look at the phone. Take a look at the phone, this
13 is his business on that phone.

14 Constructive possession: Please don't forget that
15 you're entitled to infer, that the Defendant's knowledge
16 and possession may be inferred when the substance is found
17 on the property under the Defendant's control. And that is
18 a lot of the reason we went through great lengths to prove
19 to you his address because that's an important fact. He
20 lived at 162 Bailey Avenue in January of 2017 and that
21 carries great significance.

22 So we'll go back to our examples of constructive
23 possession. I think we all agree on the top three. The
24 bottom two are the very issue in this case, and the only
25 reason we're here, but you can see there is no difference.