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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM LAURENS COUNTY S.C. SUPREME COURT
Court of General Sessions
Hon. Donald B. Hocker, Circuit Judge
Hon. Frank R. Addy, Jr., Circuit Judge

Appellate Case No. 2016-002524

The State Respondent,

vs.

Terrance Edward Stewart Appellant.

RECORD ON APPEAL
VOLUME I

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION LYNN W. LANCASTER

March 25, 2015 8:14:54

UNITED STATES OF AMERICA,

-versus-

TERRANCE EDWARD STEWART,

Defendant.

March 25, 2015

Greenville, SC

6:14-400-4

LAURENCE COUNTY
CLERK OF COURT

TRANSCRIPT OF SENTENCING

BEFORE THE HONORABLE HENRY H. HERLONG, JR.
SENIOR UNITED STATES DISTRICT JUDGE, presiding

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

For the Government:

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The proceedings were taken by mechanical stenography and
the transcript produced by computer.

Karen E. Martin, RMR, CRR
US District Court
District of South Carolina

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GOVERNMENT'S EXHIBITS

NO.	DESCRIPTION	ID	EVD
1	SLED Lab Report - Controlled Buy	3	56
2	SLED Lab Report - Search Warrant	3	56

All exhibits were returned to the Government.

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1 Wednesday, March 25, 2015

2 (WHEREUPON, Government's Exhibits Nos. 1 and 2 were
3 marked for identification only prior to court.)

4 MS. HOWARD: Your Honor, the next case for
5 sentencing is United States vs. Terrance Edward Stewart,
6 Docket No. 6:14-400. He's represented by Larry Crane.

7 THE COURT: Mr. Stewart, are you ready for
8 sentencing at this time?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And have you had enough time to
11 discuss this matter with your attorney?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Are you satisfied thus far with the
14 representation of your attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you have any complaints of your
17 attorney or anyone else in connection with this case?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you and your attorney
20 thoroughly reviewed the Presentence Report?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Crane, are there any objections
23 to the report?

24 MR. CRANE: Yes, sir, Judge.

25 THE COURT: I'll hear from you.

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1 MR. CRANE: Well, Judge, we object to the drug
2 weights as found in Paragraph 79, Paragraph 91, Paragraph
3 95, and Paragraph 52. And also, there was a revised
4 Presentence Report wherein the probation took away his two
5 points for acceptance of responsibility and we object to
6 that.

7 THE COURT: I'll hear from the Government.

8 MS. HOWARD: Your Honor, we have witnesses we
9 can present as to that.

10 THE COURT: All right.

11 MS. HOWARD: Just initially, Your Honor, as to
12 Paragraph 52, which involves some conduct which he has
13 been sentenced for in state court, however, if you look at
14 Paragraph 151, that was -- he was not given any criminal
15 history points for that conviction; neither was he given
16 any kind of enhancement or criminal history points because
17 it was -- he was on probation during this period of time.

18 THE COURT: Well, let's look at 52. What I'm
19 looking at is just factual.

20 MS. HOWARD: Paragraph 52 is where he was
21 arrested, Your Honor, and charged with 9.05-grams of
22 methamphetamine and \$1,143.

23 THE COURT: Well, he says that didn't happen.

24 MR. CRANE: No, it did happen. It was my
25 understanding from the --

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US District Court
District of South Carolina

5
1 THE COURT: You said you objected to the
2 findings in 52.

3 MR. CRANE: No, we object to the drug weights
4 being included in his drug weight calculations.

5 THE COURT: Oh, I see. So his total drug
6 weights then, and 52 is just one of them?

7 MR. CRANE: Yes, sir.

8 THE COURT: So let me ask about 52. You object
9 to the 9.05-grams of methamphetamine?

10 MR. CRANE: Being included in the federal drug
11 weight, yes, sir.

12 THE COURT: And the currency, I guess they
13 converted the currency?

14 MR. CRANE: Yes, sir.

15 THE COURT: Okay.

16 MS. HOWARD: All right, Your Honor.

17 THE COURT: Do you want to present evidence?

18 MR. CRANE: When I calculated it, it was
19 included in. If I calculated it wrong --

20 MS. HOWARD: Your Honor, I'll be glad to take
21 those weights out, those 9-grams. And then he could get
22 the criminal history points -- the three additional
23 criminal history points added to his criminal history.
24 You can't have it both ways.

25 THE COURT: I don't know what y'all are talking

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US District Court
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1 about.

2 MS. HOWARD: Okay. Your Honor, Paragraph 52.

3 THE COURT: Yes.

4 MS. HOWARD: And then we have Paragraph 151.

5 THE COURT: I'm sorry. 151?

6 MS. HOWARD: Yes, sir. Paragraph 151 is the
7 conviction in state court for Paragraph 52. And he got no
8 criminal history points for that.

9 THE COURT: Why?

10 MS. HOWARD: Because we used that in the weight.
11 If he doesn't want us to use that in the weight, that's
12 fine. And we would just --

13 THE COURT: So you say he was convicted of that.

14 MS. HOWARD: He was convicted of that, yes, sir.

15 THE COURT: They just didn't in state court come
16 up with an amount.

17 MS. HOWARD: This was the --

18 THE COURT: Is he agreeing there was some amount
19 of drugs but not that total amount or what? I mean, what
20 is it in 52 that you're objecting to?

21 MR. CRANE: He's agreeing that he had 9.05-grams
22 of methamphetamine. But from the inception of this case,
23 it was my understanding the Government, the United States
24 Government was not going to pursue that as part of the
25 calculation for the drug weight.

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1 THE COURT: Well, if you're talking about -- we
2 get into these dynamics. What happens is the Government
3 is the Justice Department and they prosecute cases. Part
4 of the Court is the US Probation Office. And once
5 somebody pleads guilty, they are charged with the
6 responsibility of going out and gathering facts to give to
7 the sentencing judge to figure them under the guidelines.

8 And they have to -- and what they do typically
9 is sometimes they talk to officers and the Government and
10 the defense lawyer and they look at the case file, and
11 they're reporting to me what they're finding. So when you
12 say you didn't think the Government was going to count
13 it --

14 MR. CRANE: I'm talking about.

15 THE COURT: Let me say this delicately. Whether
16 the prosecutor wants to count it or not, it's not her
17 responsibility.

18 MR. CRANE: I understand that.

19 THE COURT: Unless the Court accepts it, and she
20 says we shouldn't. I look at the probation officer to
21 report to me what he thinks the facts are in this case.

22 MR. CRANE: Yes, sir.

23 THE COURT: So I'm just trying to explain what
24 I'm looking at. So -- and I responded to that by you
25 saying you didn't think the Justice Department was going

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1 to pursue that against him.

2 MR. CRANE: That's correct, Judge. In other
3 words, if we had made --

4 THE COURT: Well, the probation office says that
5 52 is accurate and that happened.

6 MR. CRANE: Yes, sir. And we agree that
7 happened.

8 THE COURT: Well, okay.

9 MR. CRANE: What I'm saying, Judge, had he made
10 an exception to that, it was my understanding from the
11 inception that the Government would not have presented
12 evidence to you to include that in the drug weight.

13 THE COURT: If they want to withhold evidence,
14 that's really -- I don't mean that in the wrong kind of
15 way, if they don't want to present evidence. And if it's
16 contested, that's -- to continue my story, that's the way
17 this happens. The defense lawyer says that didn't happen.
18 Probation officer told the Court this happened. Defense
19 lawyer says it didn't happen. I look to the Government.
20 Do you have proof of that? If the Government doesn't put
21 up any proof, you prevail. If the Government puts up --
22 that's the way. But to say we didn't think they were
23 going to claim it, she says they were going to claim it.

24 MS. HOWARD: Absolutely, Your Honor. We were
25 prepared -- as, Your Honor, a little bit of background.

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US District Court
District of South Carolina

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1 As you recall, this case was going to trial. The jury was
2 in the jury room and we were getting ready to call the
3 jury in when he said he wanted to plead guilty.

4 THE COURT: Okay. Let's go back and talk about
5 52.

6 MR. CRANE: Judge, he'll accept the weight.

7 THE COURT: Okay. So he withdraws his objection
8 to 52?

9 MR. CRANE: Yes, sir.

10 THE COURT: Now, let's go to the next one. What
11 other objection do you have? I wrote them down as you
12 read them. The first one you said was 79. I'd have to
13 look and see what that is.

14 MR. CRANE: 79 a co-defendant who gave
15 statements after being arrested five separate times and
16 finally gave statements against several individuals and
17 included a quantity of drug weight on my client which we
18 disagree with.

19 MS. HOWARD: Your Honor, we have him present and
20 ready to testify.

21 THE COURT: All right. Let's set him aside and
22 bring up the witness.

23 MS. HOWARD: All right. Jeffrey Newman. I
24 think we have him right outside, Your Honor.

25 THE CLERK: If you'll raise your right hand to

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1 be sworn, sir.

2 JEFFREY NEWMAN, after being duly sworn,
3 testified as follows:

4 THE CLERK: Step around to the witness box,
5 please.

6 DIRECT EXAMINATION

7 BY MS. HOWARD

8 Q Would you state your name, please?

9 A Jeff Newman.

10 Q Mr. Newman, you were charged in this indictment with
11 Terrance Stewart and with others, correct?

12 A That's correct.

13 Q And you entered a plea of guilty; is that right?

14 A I did.

15 Q And as part of your guilty plea, you entered into a
16 plea agreement; is that right?

17 A That's correct.

18 Q And as part of that plea agreement, you agreed to
19 testify if the Government called upon you to do so; is
20 that right?

21 A That's correct.

22 Q And were you present on the morning when Terrance
23 Stewart was going to trial?

24 A I was.

25 Q Okay. And you were prepared to testify at that time?

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1 A I was.

2 Q All right. Then you understood he pled guilty?

3 A That's correct.

4 Q All right. How do you know Terrance Stewart?

5 A I only had one dealing with him personally. I met

6 him through the phone through a mutual customer of ours.

7 She had given me his number, I guess, with his permission

8 or whatever. And that's how that happened.

9 Q Well, she gave you the number for what purpose?

10 A So I could get in touch with Cheddar to buy some ice.

11 Q Ice. Is that methamphetamine?

12 A That's correct.

13 Q Okay. And were you dealing in methamphetamine.

14 A I was.

15 Q All right. And were you dealing with large

16 quantities of methamphetamine?

17 A I was.

18 Q And were you looking for -- who was your supplier of

19 methamphetamine?

20 A Um, originally?

21 Q Yes.

22 A A Mexican.

23 Q All right. Anybody else in this conspiracy?

24 A Correct, Cheddar.

25 Q All right. And how -- you said that you dealt with

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1 him personally on one occasion.

2 A (Nods head.)

3 Q All right. What do you mean by that?

4 A Well, the first time that I called his phone or

5 whatever and I set up to meet, I met a guy on Pine Knoll

6 in a little house behind a house who I thought was Cheddar

7 and I bought an ounce of ice from him. And then I came

8 back and talked with a girl named Brianna and described

9 Cheddar and she said, "That's not Cheddar." And so --

10 Q Why did you think that he was Cheddar?

11 A Because I was calling Cheddar's phone.

12 Q All right. And did you continue to call that phone

13 number?

14 A Yes, I did.

15 Q Okay. And what happened when you would call that

16 phone number?

17 A I would be directed where to go to pick up the ice.

18 Q All right. And who were you talking to when you

19 called that number?

20 A I assumed I was talking to Cheddar.

21 Q Okay. Did you ask for Cheddar?

22 A Yes.

23 Q All right. And were you aware of other people that

24 were dealing with Cheddar?

25 A I was.

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1 Q Okay. And was he known throughout the community
2 as -- the methamphetamine community as selling large
3 quantities of methamphetamine?

4 A He was.

5 Q All right. So tell me about the next time you dealt.

6 A The next time I called that same number and was asked
7 to go to Mark III -- I think it's Mark III. It's off
8 Grove Road. It's a trailer park -- and was directed to go
9 to a trailer in the back. I went into the trailer and
10 there was a couple of white guys and a black guy in there.
11 And that still wasn't Cheddar. But we did the
12 transaction. I left.

13 Q How much did you buy at that point?

14 A It was either a half ounce or an ounce, I can't
15 remember exactly.

16 Q All right. And what happened after that?

17 A After that, I had called that number again and was
18 directed to go to McArthur Street. And I bought from some
19 individuals there. And the individual there was the same
20 individual that I had originally met at Pine Knoll. And,
21 I don't know, something happened to him. He went back to
22 Detroit or somewhere. That's what I was told or whatever.
23 And then I called that number again and I was directed to
24 go back to Mark III. And that was when I actually met
25 Cheddar for the first time.

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1 Q All right. And did he represent himself as Cheddar?

2 A Yes.

3 Q Okay. And what did you talk about at that time?

4 A Um, the price I was paying from him was more than

5 what I was used to paying for or whatever. And I let him

6 know that I had a line on it. My guy was out at the time,

7 but I could get it to him for like a thousand or \$1,100 an

8 ounce versus the 14 or \$1,500 I was paying him.

9 Q All right. And did y'all talk about drug

10 transactions back and forth?

11 A Yes.

12 Q Okay. And did you actually buy from him at that

13 time?

14 A I did, I purchased an ounce of methamphetamine.

15 Q An ounce of methamphetamine?

16 A That's correct.

17 Q All right. And again, it was that same number; is

18 that right?

19 A That's correct.

20 Q Okay. And did you review these telephone numbers

21 prior to the trial?

22 A I did.

23 Q Okay. And during a one-month period of time, would

24 you dispute that there was 83 contacts or 81 contacts with

25 your number?

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1 A I know that it was over 30. I don't remember --

2 Q You don't remember how many it was but it was

3 definitely over 30 --

4 A Uh-huh.

5 Q -- between you and Cheddar's number?

6 A That's correct.

7 Q All right. So, in all, how much methamphetamine

8 would you have purchased from Cheddar by calling that

9 number?

10 A At least five ounces.

11 Q At least five ounces. And this was during what

12 period of time?

13 A That would be between, I would say, November of 2012

14 up until September -- no, even after September. Um, up

15 until November of 2013. Wait a second. Yeah, November --

16 from November 2012 up until November of 2013.

17 Q All right. And you said that it was at least five

18 ounces of methamphetamine?

19 A That's correct.

20 Q Okay. Was his methamphetamine good quality?

21 A It was.

22 Q All right. Did the price get better as you bought

23 more?

24 A No.

25 Q Why was his price so much higher?

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US District Court
District of South Carolina

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1 A I don't know. Like, when I went to McArthur Street,
2 when I bought an ounce, I was given, like, 16 bags of --
3 individual bags. Instead of it being an ounce bagged up,
4 it was 16 bags equaling an ounce.

5 Q Okay. You mentioned McArthur Street. You mentioned
6 the Mark trailer park. Was there any other location you
7 purchased from?

8 A Pine Knoll.

9 Q Pine Knoll.

10 A Over behind Wade Hampton High School.

11 Q Okay. And what kind of places were these?

12 A Just, um, the place over at Pine Knoll is like a
13 little house behind a house. And the one on McArthur
14 Street, it was a house that had, you know, several people
15 staying in there. And then the trailer I went to on Mark
16 III, I don't know what it was. When I actually met
17 Cheddar, I actually picked him up on the road in to Mark
18 III.

19 Q Was it your understanding that Cheddar was the one
20 who ran these locations?

21 A Yes.

22 Q All right. And he was responsible for the drug sales
23 from there?

24 A Yes. He actually had -- the person there actually
25 called him there one time to confirm my price because it

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1 was cheaper than what most people were paying.

2 Q All right.

3 MS. HOWARD: I don't have any further questions.
4 Your Honor.

5 THE COURT: You may examine.

6 MR. CRANE: Thank you, Judge.

7 CROSS-EXAMINATION

8 BY MR. CRANE

9 Q Mr. Newman, when did you first debrief with the
10 Government? When did you first give them a statement?

11 A Um, in Spartanburg County Detention Center. No, I
12 guess Spartanburg -- over in Spartanburg.

13 Q I know, but when was that?

14 A What day?

15 Q If you can remember.

16 A I don't know.

17 Q Was it November of 2013?

18 A I actually met with an investigator from the county
19 sheriff's department and my lawyer over at Spartanburg
20 City Police. And then the US Attorney and Investigator
21 Parrish came to Spartanburg County and met with me, but
22 I'm not sure of the date.

23 Q Okay. Well, let me ask you. During the summer of
24 2013, were you not arrested July 30th for drugs?

25 A I was.

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District of South Carolina

1 Q You got out on bond?

2 A That's correct.

3 Q You got arrested again with a search warrant in

4 September?

5 A That's correct.

6 Q You got out on bond. You got arrested again because

7 you sold to someone?

8 A They had a search warrant.

9 Q They had another search warrant. You got arrested

10 again, so that's three times. Did you get out on bond

11 again?

12 A No.

13 Q You didn't get out on bond again?

14 A I got out -- I did eventually get out on bond, but I

15 sat there awhile.

16 Q You sat there awhile. But isn't it a fact that even

17 when you get out on bond you got arrested in 2014 for

18 drugs, didn't you?

19 A In 2014?

20 Q Yes, sir, January 2014, according to the records that

21 the agents have. Didn't you get rearrested?

22 A I was arrested for rental car violation and I had

23 drugs on me, so, yeah.

24 Q Okay. So you get arrested three times, out on bond.

25 You get arrested for a search warrant. And at that time

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1 start talking about your dealings, right?

2 A I started -- I actually talked about my dealings in

3 September the 13th when I was arrested.

4 Q 2013. So you talked to them, give some information,

5 and then some three months later end up getting arrested

6 again with drugs on you?

7 A That's correct.

8 Q So you didn't get out of the game either, did you?

9 A No.

10 Q Okay. When you told the agents in September of 2013,

11 who did you tell them you were primarily dealing with?

12 A Who did I tell them I was primary dealing with?

13 Q Yeah, that you were buying most of your narcotics

14 from.

15 A At that time I think it was Joe and Sikeo.

16 Q Winfrey and Sikeo Butler?

17 A Yes.

18 Q And how much -- do you recall how much you told them

19 you were getting?

20 A Probably half ounce every couple days.

21 Q Half ounce every couple days. All right. And you

22 also told them at that time -- when you gave these

23 statements in September, you weren't sworn, were you?

24 A No.

25 Q All right. This is the first time you've been sworn

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1 to give statements?

2 A That's correct.

3 Q Now, when you got arrested -- when you were arrested
4 this last time with the search warrant, they found a
5 quantity of heroin sufficient to put you in state prison
6 for 25 years minimum, didn't they?

7 A No, sir.

8 Q When did they find that much narcotics?

9 A That was in November.

10 Q Oh, I'm sorry. So you -- so you got arrested in
11 September, talked to the agents, got arrested in November
12 and they found a large quantity of drugs?

13 A That's correct.

14 Q All right. So that's four and then got arrested in
15 January again. So when you got arrested in November, they
16 found, how much was it, 30-grams or so of heroin?

17 A 28, 30-grams.

18 Q 28? And for that in state court you can get up to 25
19 years minimum, can't you?

20 A I guess, I mean --

21 Q Okay. And that's when you started giving all this
22 information, isn't it?

23 A No, I actually gave the information in September the
24 13th.

25 Q Okay. But kept dealing and putting drugs out on the

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1 street, right?

2 A Yeah, I was also actively using at the time.

3 Q I understand. Now, let's get to your information

4 about Mr. Stewart. You indicated that -- when did you

5 meet him?

6 A When did I meet him?

7 Q Yes, sir.

8 A I met him at Mark III sometime around -- between

9 December and January of 2012 or the beginning of 2013.

10 Q December 2012, January 2013, somewhere in there?

11 A No. Let's see.

12 Q I'm not trying to trick you. I thought that's what

13 you said.

14 A Yeah. The dates are confusing. And I had -- I

15 actually had Nicole Piper in the car with me when I met

16 Cheddar, so it would have had to have been prior to the

17 arrest in -- on July the 30th. So it would have been

18 either in January of 2012 or December of 2011.

19 Q Would it surprise you to learn that he didn't even

20 come from Detroit until August of 2012?

21 A August of 2012?

22 Q 2012.

23 A I could be wrong on my dates, but Nicole was with me.

24 Q If you could be wrong about your dates, couldn't you

25 also be wrong about whether or not you bought all those

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1 narcotics from him?

2 A I know I bought from him personally one time.

3 Q One time. Okay. And when you say you bought from

4 him personally one time, how much did you buy from him?

5 A An ounce.

6 Q One ounce. All right. And when was that? Do you

7 remember when that was?

8 A It would have had to have been in -- where was we

9 staying? Sometime in 2012, maybe...

10 Q You were arrested the first time I think in July of

11 2013.

12 A Yeah. It was before then.

13 Q Before then. So sometime from December 2012 to

14 July 2013, is that fair?

15 A I'm going to say after January -- it was probably

16 after January 2012, sometime before July of -- a few

17 months before. I would say -- July -- I was arrested in

18 July. Maybe a month or two prior to that.

19 Q Okay. Now, from whom did you get his phone number?

20 A From Star (phonetic).

21 Q Who?

22 A Star, Christin Reese.

23 Q Star?

24 A Yes.

25 Q Okay. And where did you get that phone number from

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1 her? Where were you when you got that number?

2 A At the hotel on Congaree, at the Comfort Inn and
3 Suites.

4 Q And the phone number that Star gave you, did she
5 identify who it was or did she say you could buy dope from
6 this guy or what?

7 A She said -- another girl named Sunny was buying her
8 dope from Cheddar. And she had asked me if I could
9 find -- because I had just started messing with the
10 methamphetamines at the time -- that Cheddar was looking
11 for a connection for the methamphetamines and wanted to
12 know if I would be willing to sell any -- any quantity.
13 And at that time I wasn't. So I ended up going back to
14 her, asking her and Star. They both were prostituting out
15 of that hotel. And they both were buying drugs from me.
16 And they said they were buying drugs from Cheddar. Sunny
17 was buying heroin from Cheddar supposedly. And Star was
18 buying some crack from Cheddar.

19 Q Okay. You don't have any independent knowledge of
20 any of that, do you?

21 A No.

22 Q All right. So you get a phone number from Star and
23 you call the phone number. But yet, you never met the
24 person that answered the telephone, did you?

25 A I thought -- originally, I thought I met him when I

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1 went to Pine Knoll. But then when I described the person
2 to someone who actually knew Cheddar, they said that
3 wasn't Cheddar.
4 Q So you bought narcotics from someone at Pine Knoll
5 that was not Cheddar?
6 A Right.
7 Q All right. Is that the same guy that you said
8 eventually, you think, went back to Florida?
9 A Detroit.
10 Q Went back to Detroit?
11 A Yeah.
12 Q Do you know what his name was?
13 A I can't remember. He had a nickname.
14 Q Do you know what he looked like?
15 A Yeah, he was a smaller, smaller guy, skinny, maybe
16 might have called him 2-4 or something. I don't know.
17 Q 2-4?
18 A Yeah.
19 Q And then the second time -- second time you bought
20 half to an ounce and where was that?
21 A That was at Mark III.
22 Q That wasn't Cheddar either?
23 A No.
24 Q The third time at McArthur Street; is that right? Is
25 that -- who was that?

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1 A Huh?

2 Q The third time?

3 A The third time? That was the same dude from Pina

4 Knoll.

5 Q All right. So on these different purchases, the best

6 you can recall, you purchased one ounce from Mr. Stewart?

7 A That's correct.

8 Q The rest of them you're saying came from someone else

9 that claimed to know Mr. Stewart?

10 A That was answering his phone or was being directed by

11 his phone.

12 Q Answering a phone with a phone number that you were

13 told belonged to Mr. Stewart, right?

14 A Uh-huh.

15 Q Okay. Now, do you know William Winfrey and Goolsby?

16 A I do.

17 Q Did they have their own operation?

18 A What do you mean?

19 Q All right. I'll rephrase it. Was Mr. Stewart -- let

20 me rephrase it again. Do you know whether Mr. Stewart

21 shared the proceeds from his dealings with Winfrey or

22 Goolsby?

23 A No, I don't know if he shared the proceeds.

24 Q Okay. So it wasn't -- Goolsby and Winfrey and

25 Stewart and maybe someone else weren't in a big group

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1 where they all pooled their money and bought dope and made
2 money together, were they?

3 A I did see Mr. Stewart and Joe, I don't know if
4 Mr. Goolsby were there that day meeting with -- at the
5 Bi-Lo up above my house on Summit Drive --

6 Q Right.

7 A -- to purchase drugs. But I don't know if they were
8 buying them together or individually.

9 Q Right. Okay. Now, when you got arrested
10 November 12th of 2013 and they found I think it was about
11 14-grams of heroin, wasn't it? Do you remember that? You
12 told them that you got this stuff from Floyd?

13 A Yeah.

14 Q Who is Floyd?

15 A That's another dealer.

16 Q What?

17 A Another heroin dealer.

18 Q Okay. But -- and that was basically -- after that
19 arrest is when you started giving some information, isn't
20 it?

21 A I gave information on both arrests.

22 Q On what?

23 A On both arrests.

24 Q I understand. But it wasn't until after that arrest
25 that you started giving information, correct?

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1 A No.

2 Q Why did you start giving information?

3 A To be honest with you, I was using drugs. And I knew

4 what I was doing was wrong. And I don't know, when they

5 came in there, I mean, I didn't -- I not only gave them

6 information on other people, I gave it on myself. I mean,

7 it was almost like I was unburdening myself with, you

8 know, some of the, you know, misgivings I had about what I

9 was doing, you know. I was caught and, you know, I just

10 basically told them, you know, these are my drugs. This

11 is what I was doing. I told them who I was getting them

12 from.

13 Q And did you have misgivings about having to do 25

14 years in the state penitentiary?

15 A At the time I wasn't even thinking about the time.

16 Q You weren't thinking about that. Have those state

17 charges been adopted by the federal government?

18 A They have.

19 Q So you're not going to do 25 years in the state

20 penitentiary, are you?

21 A I don't know what I'm going to do, sir.

22 Q What type of sentence do you think you're going to

23 get?

24 A 15 to 18 years.

25 Q And have you been promised assistance by way of a

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1 downward departure if you cooperated with the feds?

2 A I haven't been promised anything.

3 Q Okay. All right. Thank you, sir.

4 MR. CRANE: Nothing further, Judge. Thank you.

5 MS. HOWARD: Can I just clarify one point?

6 REDIRECT EXAMINATION

7 BY MS. HOWARD

8 Q You mentioned that you -- the Bi-Lo above your house
9 you saw Joe, is that William Winfrey?

10 A Yes.

11 Q You saw him with Cheddar, Stewart?

12 A Yeah. I don't remember if Mario was with them or
13 not. The only reason that I remembered that Cheddar was
14 with them was because that was the first time that I had
15 seen Joe and Cheddar together. And I asked somebody else,
16 I said, "That's Cheddar, isn't it?" Because that's who I
17 had met at Mark III and I was wanting to confirm that that
18 was actually Cheddar.

19 Q And you said that they were buying drugs at that
20 time?

21 A Getting marijuana.

22 Q They were getting marijuana. Okay. Did you ever buy
23 any heroin from Cheddar?

24 A I bought it from McArthur Street. And I bought
25 supposedly some heroin through Floyd from Cheddar.

1 Q All right. Was it good heroin?

2 A It was, but it wasn't worth what I paid for it.

3 Q All right. So Cheddar was your meth man; is that
4 right?

5 A He was basically my fallback meth man. His prices
6 were high but it was good. And if I couldn't get it
7 anywhere else, that's where I would go.

8 Q All right.

9 MS. HOWARD: Nothing else, Your Honor.

10 THE COURT: You may step down. Thank you.

11 As to the objection, there's substantial
12 evidence to support Paragraph 79, was it? Yes.

13 What's your next objection?

14 MR. CRANE: Judge, I'm sorry. What did you say?

15 THE COURT: I overrule your objection as to
16 Paragraph 79.

17 MR. CRANE: Might I be heard briefly?

18 THE COURT: I've heard --

19 MR. CRANE: I'm sorry, Judge?

20 THE COURT: Go ahead.

21 MR. CRANE: Well, first off, they say it's six
22 ounces and this man testified no more than five. And he
23 testified it was only one from my client and four from --

24 THE COURT: Directly from your client.

25 MR. CRANE: Excuse me?

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1 THE COURT: Directly from your client.

2 MR. CRANE: Yes, sir. And the other four --

3 THE COURT: I agree with you, there's only

4 evidence of five ounces in the light most favorable to the

5 defendant.

6 MR. CRANE: Okay.

7 THE COURT: Anything further?

8 MR. CRANE: No, sir.

9 THE COURT: All right. I need a recalculation

10 on that.

11 I'll hear you on your next objection.

12 MR. CRANE: Judge, it was Paragraph 95.

13 THE COURT: All right. Let me look at it.

14 MS. HOWARD: Your Honor, I believe it was 91.

15 MR. CRANE: I'm sorry. Is it 91? I was one

16 ahead of me. 91, that's correct.

17 THE COURT: What's your objection?

18 MR. CRANE: To the drug weight. We disagree

19 that my client is responsible for that much drug weight.

20 MS. HOWARD: Your Honor, we have Joseph Caston

21 who is ready to testify.

22 THE COURT: All right.

23 MS. HOWARD: I see him right out there, Your

24 Honor.

25 THE CLERK: Place your left hand on the Bible

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1 and raise your right hand to be sworn.
2 JOSEPH CASTON, after being duly sworn, testified
3 as follows:

4 THE CLERK: Thank you. If you'll step around to
5 the witness stand, sir.

6 DIRECT EXAMINATION

7 BY MS. HOWARD

8 Q State your name, please.

9 A Joseph Read Caston.

10 Q Mr. Caston, why are you here today?

11 A Because I was subpoenaed. I got a subpoena. I got
12 tracked down by the federal officer and subpoenaed to show
13 up to court.

14 Q All right. And were you also present the morning
15 that Mr. Stewart was supposed to go to trial?

16 A Yes, ma'am.

17 Q And you were prepared to testify at that time?

18 A Yes, ma'am, I was subpoenaed then as well.

19 Q All right. So you're not here today of your own free
20 will then?

21 A No.

22 Q All right. Do you know the defendant, in this case,
23 Terrance Stewart?

24 A Yes, ma'am.

25 Q How do you know him? What do you call him?

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1 A Cheddar.

2 Q Cheddar? All right. And how do you know Cheddar?

3 A I know him through some friends.

4 Q All right. And what do -- what do you -- you know

5 him through some friends. What do you and your friends do

6 with Cheddar?

7 A I would buy heroin.

8 Q Heroin?

9 A Yes, ma'am.

10 Q All right. And were you using heroin?

11 A Yes, ma'am.

12 Q And were you also selling heroin?

13 A To a certain extent, yes, ma'am.

14 Q To support your habit?

15 A Yes, ma'am.

16 Q All right. And when was this?

17 A The last couple years.

18 Q And how did you meet Cheddar?

19 A I can't remember exactly, but it was through friends.

20 Q Through friends. All right. Where did you go to

21 meet him?

22 A Different places. Like, I would meet him, like -- I

23 usually wouldn't meet him. I would meet somebody, like,

24 at the Superlodge or at -- what's that, Pine Knoll or

25 something like that.

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1 Q What was at Pine Knoll?

2 A It was a trap house I guess you would call it.

3 Q A trap house?

4 A Yeah.

5 Q Okay. And what's a trap house?

6 A Where they sell dope out of.

7 Q All right. And who operated that trap house on Pine

8 Knoll?

9 A There was this dude named -- he had -- Rocko was

10 written -- I'm assuming it was Cheddar's.

11 Q Why did you assume it was Cheddar's?

12 A Because it was his dope.

13 Q All right. How did you know it was his dope?

14 A Because it was the same dope that I was getting from

15 him.

16 Q All right. How would you get in touch with Cheddar?

17 A I'd call the phone and tell them tell me where to go.

18 Q And they would tell you where to go?

19 A Yes, ma'am.

20 Q And where would they direct you?

21 A To wherever they -- like McArthur Street or something

22 like that.

23 Q McArthur Street?

24 A Yes, ma'am, or Pine Knoll.

25 Q Or Pine Knoll.

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1 A One or the other.

2 Q Okay. Was there any other location?

3 A Unless we met at a gas station or something like

4 that.

5 Q Okay. But it was Pine Knoll or McArthur?

6 A Yes, ma'am.

7 Q All right. And you said it was heroin?

8 A Yes, ma'am.

9 Q How much were you purchasing from Cheddar?

10 A Well, I had a habit. So I'd get like a gram or two

11 maybe just to support my habit and I would sell some, just

12 to...

13 Q A gram or two how often?

14 A About every day.

15 Q Every day. So you bought a gram or two of heroin

16 every day for what length of time?

17 A For a good while, maybe about a year or two.

18 Q All right. Do you recall earlier saying it was two

19 years in a statement?

20 A Well, it was about that time -- about -- well,

21 because it was -- there was different people but, yeah,

22 about two years probably because I've known him for --

23 since 2012, so, yeah.

24 Q All right. And prior to you buying your heroin from

25 Cheddar, who were you buying it from?

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1 A There was this guy that I knew in Fleetwood Manor and
2 I was getting it from different folks.

3 Q Were you ever buying it from William Winfrey? Joe?

4 A I had before, yes, ma'am.

5 Q All right. And did you buy it from Joe before you
6 bought it from Cheddar?

7 A Yes, ma'am.

8 Q Okay. Did Joe ever introduce you to Cheddar?

9 A I want to say my ex-brother-in-law introduced me to
10 Cheddar.

11 Q All right. Did you ever see Joe and Cheddar
12 together?

13 A From time to time, yes, ma'am.

14 Q All right. And what were they doing there together
15 when you observed them?

16 A It just depends, usually they were just talking.

17 Q Would there be drugs involved?

18 A Well, there was always drugs.

19 Q And what kind of drugs?

20 A Heroin. That was my thing, that's what I was
21 addicted to was heroin, so that's mainly what I saw.

22 Q Did you ever see them with large quantities of
23 heroin?

24 A Like what would you consider a large quantity?

25 Q More than the gram or two that you were buying?

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1 A Oh, yes, ma'am.

2 Q And how much would you see?

3 A I can't put an exact number on it. But, you know, it

4 was enough to last me probably a month.

5 Q So at least an ounce then?

6 A Possibly. I mean, I'm not sure because I didn't

7 never, you know, see it, like, weighed.

8 Q Did you also buy from Rio?

9 A Yes, ma'am.

10 Q Okay. Is that Jamarlo Goolsby?

11 A Yes, ma'am.

12 Q All right. And what about -- we talked about William

13 Winfrey. Okay. But who did you buy -- who did you buy

14 the most from?

15 A Probably Cheddar or Rio.

16 Q And did Cheddar and Rio like each other?

17 A Well, Rio would talk junk about him but they, I mean,

18 you know, they just -- they -- he talked junk, but I guess

19 they liked each other.

20 Q Were they kind of in competition?

21 A I'd imagine so. I mean, I don't know. I mean, I

22 liked them both but...

23 Q Did one of them have better dope than the other?

24 A Oh, yeah.

25 Q And who had the better dope?

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1 A Cheddar had the better dope, hands down.

2 Q All right.

3 MS. HOWARD: I don't have any further questions.

4 Your Honor.

5 THE COURT: You may examine.

6 CROSS-EXAMINATION

7 BY MR. CRANE

8 Q Mr. Caston, when did you say you started -- when did
9 you say you met Mr. Stewart?

10 A Back in 2012 I'm guessing. I actually met him over
11 at my ex-brother-in-law's house.

12 Q Do you remember what month of 2012?

13 A August, September maybe. It was toward the end of
14 the summer.

15 Q August or September of 2012. And do you remember
16 when you gave a statement to the Government?

17 A It was when they had -- they had caught -- they had
18 said -- they caught me and pulled over -- when I rented
19 those cars, they had caught me with some, some drugs and
20 basically had me dead to rights.

21 Q Was that in November of 2013?

22 A No, that was in -- yeah, that might be. I can't
23 remember exactly.

24 Q Okay. So if you met Mr. Stewart in August or
25 September of 2012 and you got caught November of 2013,

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1 from the time you met him until the time you gave the
2 statement is about 15 months, correct?

3 A Yeah, I guess so. Yes, sir.

4 Q Now, do you remember telling -- and who else did you
5 buy heroin from? Was it Goolsby and Winfrey?

6 A Yeah.

7 Q And as the US Attorney said to you, and as you
8 indicated, Goolsby and Winfrey and Stewart were not
9 partners but rather in competition with each other; is
10 that correct?

11 A Yes, sir.

12 Q Okay. And do you remember telling the agents that
13 you purchased about a gram a day every day from Goolsby
14 for one year?

15 A Yes, sir. I purchased at least a gram every day from
16 Goolsby, from, you know, every day, maybe two, Cheddar,
17 everybody, I mean, because I got a bad habit.

18 Q How much were you paying for those grams?

19 A Anywhere from 120, 150.

20 Q All right. Do you also recall saying that you
21 purchased one to two grams of heroin from Winfrey every
22 day?

23 A I'd say it was every other day, one person or the
24 other. I would get it from one person or the other,
25 whoever I could get ahold of first. Any way you slice it.

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1 I was getting one to two grams a day, period.

2 Q You weren't get more than one or two grams a day?

3 A Sometimes, if I could afford it. But I was getting

4 it from one person or the other, hands down.

5 Q Did you get any heroin from Laron Winfrey?

6 A From who?

7 Q Laron Winfrey. You told the agents that you did?

8 A What's his --

9 Q Laron Winfrey.

10 A Slim?

11 Q Excuse me?

12 A Slim?

13 Q I don't know the name.

14 A I had back in the past but I hadn't in a while. I

15 mean, he stopped selling.

16 Q All right. Well, the calculations I have from what

17 the Government's supplied to me is that you spent over

18 \$300,000 a year for heroin. Does that sound right?

19 A Yeah, but it's not all my money.

20 Q Excuse me?

21 A It wouldn't be all my money.

22 Q Was it \$300,000?

23 A It was a good bit. If you don't believe me, you can

24 ask my dad.

25 Q All right. But needless to say, if during that time

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1 period, did you buy heroin every day for those 15 months
2 from Mr. Stewart?

3 A Not every day.

4 Q Okay. Out of those 15 months that you knew him
5 before you gave your statement, how many days of that 15
6 months did you buy from Mr. Stewart?

7 A I don't know how to -- I mean, I don't recall.

8 Q There's 365 days in a year plus --

9 A How am I supposed to remember that though?

10 Q Excuse me?

11 A How am I supposed to remember what days out of the
12 year I bought from who? I mean, I was in a stupor after I
13 bought it anyway.

14 Q Well, did you buy from Mr. Stewart every other day
15 or, you know, every three days or do you remember?

16 A I can't recall that. I mean, it was from one person
17 or the other. But yes, I bought from them. I bought
18 from -- I don't know what you're trying to ask. I can't
19 calculate that.

20 Q I'm trying to ask you this. You said you bought from
21 one or the other, but they weren't together, were they?

22 A No.

23 Q All right. So if you bought an amount from William
24 and an amount from Goolsby and an amount from Stewart.
25 The judge needs to know how much Stewart sold you during

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1 that 15 months.

2 A I can't recall exactly. I mean, I know that I would
3 buy a gram or two. And then, like, it's whoever I could
4 get ahold of first, I mean...

5 Q All right. If we took -- would it be safe to say
6 that on an average, you know what an average is?

7 A Yeah.

8 Q Okay. On an average, during that 15 months that you
9 knew Mr. Stewart, would you have bought from him about
10 every other day?

11 A Yeah, probably.

12 Q Okay. So if we've got 365 plus 90 is 455 and divide
13 that in half, that's about 227 days.

14 A I guess so.

15 Q At one to two grams a day; is that correct?

16 A Yes, sir.

17 Q Okay.

18 MR. CRANE: Nothing further. Thank you.

19 THE COURT: Anything further?

20 MS. HOWARD: Just to clarify.

21 REDIRECT EXAMINATION

22 BY MS. HOWARD

23 Q How long were you buying from Terrance Stewart,
24 Cheddar?

25 A Since the day I met him.

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1 Q All right. Was that 15 months or two years or three
2 years?

3 A It was from the day I met him until -- and then after
4 I got out of jail, I still bought from him. So...

5 Q When was the last time you bought from him?

6 A I can't recall.

7 Q Has it been in the last month?

8 A Oh, no.

9 Q When -- has it been in the last three months?

10 A No. I've been clean for, like, the last probably six
11 months.

12 Q All right.

13 THE COURT: Let me just ask you this to clarify
14 something if you remember. You were asked just now by the
15 defense attorney when you first started buying from
16 Cheddar and he said until you were arrested --

17 THE WITNESS: Yes, sir.

18 THE COURT: -- was something like 15 months; is
19 that right?

20 THE WITNESS: About 15 months.

21 THE COURT: Did you -- after you were arrested,
22 did you ever buy from him?

23 THE WITNESS: Um, not from him personally. But
24 from some -- from somebody, this dude that used to stay
25 over by the M and M Store.

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1 THE COURT: So once you were arrested -- or you
2 gave a statement when you were arrested?

3 THE WITNESS: Yeah, when they came and pulled me
4 out and all that.

5 THE COURT: So that didn't stop you from buying
6 drugs?

7 THE WITNESS: No. I actually got off when I --
8 I've been clean about six months.

9 THE COURT: So once you were arrested, you
10 didn't buy anymore drugs?

11 THE WITNESS: No, I still bought drug.

12 THE COURT: Well, that's what I was asking. You
13 got out on bond.

14 THE WITNESS: Yes, sir -- no, no. I was in
15 there until I got -- until -- I had to serve because I
16 violated house arrest.

17 THE COURT: All right. You were arrested and
18 you were in prison.

19 THE WITNESS: Yes, sir.

20 THE COURT: For how long?

21 THE WITNESS: For four months.

22 THE COURT: Four months?

23 THE WITNESS: Yes, sir.

24 THE COURT: When you got out, did you start
25 buying drugs again?

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1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. For how long?

3 THE WITNESS: Maybe a few months because I'm on
4 probation.

5 THE COURT: That's all right. You may step
6 down.

7 I'll hear from you.

8 MR. CRANE: I'm sorry, are you through?

9 MS. HOWARD: Your Honor, as to that objection, I
10 believe what the report says attributes 1,095-grams of
11 heroin. And I think that that is every day for three
12 years. That's what it would be. That would be reasonably
13 foreseeable to Stewart that Caston was purchasing from
14 Stewart and also from William Winfrey. He saw them
15 together with drugs he said at the Bi-Lo.

16 THE COURT: Well, I know but I'm talking about
17 Stewart right now. And I believe he testified, when he
18 first started testifying, he said one to two grams every
19 day for one to two years. And then later he said, well,
20 he would buy them from different people.

21 MS. HOWARD: Yes, sir. As I recall the
22 testimony, it was from these trap houses that Cheddar --
23 he would call the same number that was Cheddar's dope.
24 And that that's -- Your Honor, I would -- the 1,095 may be
25 overstating --

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1 THE COURT: I don't have confidence in the
2 number. I know that's a cumulative weight.

3 I'll hear from you, Mr. Crane.

4 MR. CRANE: Your Honor, as the Assistant US
5 Attorney said, I believe the number 1,095 is the three
6 individuals going back three years. And this fellow just
7 testified he's only known -- he only knew my client for
8 about 15 months. So to go back three years and include
9 the other two individuals, I would submit, is
10 inappropriate.

11 Calculating as I did, of course, I may calculate
12 low, but trying to give the benefit of the doubt to the
13 United States of America, if we -- if he said on an
14 average every other day one or two grams, I took half of
15 365 at one to two grams -- well, half -- every other day
16 would be about 227 days. At one gram a day, that's
17 227-grams. If we throw an extra gram in there for half of
18 those days, then we have got another 130-grams. I would
19 submit 340-grams of heroin, if we believe this fellow is
20 appropriate, not 1,095.

21 MS. HOWARD: And, Your Honor, I would submit
22 that his testimony was more that he bought every day, and
23 one to two grams, and he said for two years. And then it
24 wasn't just for the 15 months, because then he purchased
25 again once he got out of prison.

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1 MR. CRANE: But he also said they were not
2 connected. So it's not reasonably foreseeable for my
3 client to know with these other two guys who aren't
4 connected with him are going to be doing.

5 THE COURT: Give me a moment.

6 MR. CRANE: Yes, sir.

7 (Pause)

8 THE COURT: I agree with you, Mr. Crane. You
9 came up with a figure of what, 340 or something?

10 MR. CRANE: 340.

11 THE COURT: I came up with 341. And what I did
12 was 90 days plus 365 divided by 2 times 1.5, one to two
13 grams. I'm going to have the probation officer calculate
14 it at 340.

15 MR. CRANE: Thank you, Judge.

16 THE COURT: Now, what's your next objection?

17 MR. CRANE: Your Honor, the next objection was
18 No. 5, it has to do with five grams of heroin.

19 THE COURT: Paragraph No. 5?

20 MR. CRANE: I'm sorry, Paragraph 95.

21 THE COURT: 95.

22 MR. CRANE: William Grubbs.

23 THE COURT: Does the Government have a witness?

24 MS. HOWARD: Your Honor, we do not have
25 Mr. Grubbs present for this. We do have the investigator

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1 who took the statement from him.

2 THE COURT: Okay. Bring him forward.

3 He's already under oath. Please resume the
4 witness chair.

5 KYLE PRICE, after being duly sworn in a previous
6 hearing, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. HOWARD

9 Q Investigator Price, did you interview a William
10 Grubbs on December 30th of 2013?

11 A Yes, ma'am.

12 Q Okay. And as a result of that interview, did you
13 make a report on that?

14 A I did a written synopsis of the interview.

15 Q All right. And in that written synopsis, did William
16 Grubbs give you information about Terrance Stewart?

17 A Yes, ma'am.

18 Q And what did he tell you about the amount of heroin
19 that he was getting from Terrance Stewart?

20 A If I could, if I could review my statement?

21 Q Yes.

22 A He stated that he was able to get a 5-for-5 deal,
23 meaning 5 grams of heroin for \$500, but he could also get
24 an ounce of heroin for \$2,400.

25 Q All right.

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1 A He goes on further to say that he sells
2 methamphetamine. And he goes on further to say that also
3 he says if he could get any type of weight of heroin, just
4 larger amounts, five ounces or more, it might take a
5 couple days for Stewart to get the dope.

6 Q Okay. And that was from Stewart?

7 A Yes, ma'am.

8 Q Okay.

9 MS. HOWARD: I don't have any further questions.

10 THE COURT: Wait a minute. Help me out here.

11 Based on 95, what calculation was used against this
12 defendant?

13 THE PROBATION OFFICER: On Paragraph 95?

14 MS. HOWARD: Paragraph 95, it was 5-grams of
15 heroin. And I think that was just -- that's exactly what
16 he obtained, that's what he had gotten from him. But he
17 could have gotten more from him and they discussed a
18 price.

19 THE COURT: Oh, I thought I heard him say he
20 could get 5 at a time. So he just said he obtained 5.

21 MS. HOWARD: He obtained 5-grams but he could
22 get an ounce for \$2,400, and that's how much he could get
23 from him. But he'd actually obtained from him --

24 THE COURT: Wait a minute. He said that Stewart
25 was the only one that was consistent with his dope.

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1 Grubbs said he obtained 5-grams of heroin for \$500 and
 2 would get an ounce for \$2,400 from Terrance Stewart. I'm
 3 lost here. Did he say he got an ounce for \$2,400? Do you
 4 recall?

5 THE WITNESS: I don't recall, Judge. I'm just
 6 reading based off the statement how it's worded. But I do
 7 not recall.

8 BY MS. HOWARD

9 Q And what did you put in your statement?

10 A In the statement, the exact verbiage, it says, "He
 11 stated that Cheddar is the only one that is consistent
 12 with his dope. He stated that he gets a 5-for-5 deal,
 13 meaning 5-grams of heroin for 500. He stated that he
 14 could get an ounce of heroin for about 2400.

15 THE COURT: That doesn't mean he got it.

16 MS. HOWARD: That's right, Your Honor.

17 THE COURT: So you only attributed the 5 ounces

18 {verbatim}?

19 THE PROBATION OFFICER: That's correct.

20 THE COURT: You may examine.

21 MR. CRANE: Thank you, Judge.

22 CROSS-EXAMINATION

23 BY MR. CRANE

24 Q Was he sworn when he was gave this statement?

25 A No, sir, he was at the jail.

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1 Q Okay. Is there any independent information from
2 anybody other than him that Terrance Stewart sold him
3 5-grams of heroin?

4 A No, sir.

5 Q Okay.

6 MR. CRANE: Thank you. Nothing further.

7 THE COURT: You may step down. Thank you.

8 MS. HOWARD: Let me ask one other question.

9 REDIRECT EXAMINATION

10 BY MS. HOWARD

11 Q All right. You said was there any other information.
12 Were you aware of the telephone records at that time in
13 this case?

14 A Yes, ma'am.

15 Q Okay. And were there telephone records that matched
16 up between William Grubbs and Terrance Stewart? Do you
17 remember?

18 A I don't recall. I don't remember the exact phone
19 records.

20 MS. HOWARD: All right.

21 THE COURT: You may step down.

22 I overrule your objection to that.

23 MR. CRANE: Okay. Thank you, Judge.

24 THE COURT: If they only gave him 5-grams,
25 they're giving him a tremendous benefit of the doubt.

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1 Because it appears that he got an ounce from him. But he
2 only got 5-grams more than one time and more than an ounce
3 more than one time.

4 But you only accounted for 5 grams?

5 THE PROBATION OFFICER: That's right because
6 that was the only confirmed amount we could get. He said
7 he could -- the way I took it is he got 5-grams for \$500,
8 but if he wanted an ounce --

9 THE COURT: That's giving him the benefit of the
10 doubt.

11 What's your next objection?

12 MR. CRANE: I believe on the revised report they
13 took away the two points for acceptance of responsibility.
14 We would simply submit that he pled guilty. When
15 interviewed, he accepted his responsibility.

16 They are alleging that he was re-arrested, which
17 he was, for narcotics. And we would submit that at this
18 point it's simply an arrest, not a conviction. Whether or
19 not he's going to be found guilty of that, we don't know.

20 So based on that, we would submit that the two
21 points were taken away because he said that he falsely
22 would not accept basically the drug weights. Well, he did
23 accept the drug weights. And you've now ruled that he was
24 appropriate in not accepting the drug weights. So I would
25 hope that that would go by the wayside. But we can't get

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1 around the fact that he was re-arrested for narcotics
 2 offenses, although he hasn't been convicted. If that is
 3 sufficient to take away the two-points, then we don't need
 4 to have any testimony. But that's basically what
 5 happened. We would submit that's not sufficient under the
 6 notes of the guidelines.

7 MS. HOWARD: Your Honor, we have the officer
 8 here to testify, just if he can just testify briefly as to
 9 that arrest.

10 THE COURT: Okay.

11 MS. HOWARD: We'd call Sergeant Matt Veal.

12 THE COURT: Come forward and be sworn, please.

13 THE CLERK: Place your left hand on the Bible
 14 and be sworn.

15 MATT VEAL, after being duly sworn, testified as
 16 follows:

17 THE CLERK: And your last name is Veal?

18 THE WITNESS: V-E-A-L.

19 DIRECT EXAMINATION

20 BY MS. HOWARD

21 Q Sergeant Veal, you're with the Laurens County
 22 Sheriff's Department; is that correct?

23 A Yes, ma'am.

24 Q And you are a sergeant there in narcotics?

25 A I'm the sergeant in narcotics, yes, ma'am.

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1 Q All right. And are you familiar with Terrance
2 Stewart?

3 A Yes, ma'am.

4 Q Okay. And on January 20th of this year, did you
5 obtain a search warrant --

6 A We did.

7 Q -- for Terrance Stewart?

8 A Yes, ma'am.

9 Q And what was the probable cause for that search
10 warrant?

11 A We did a controlled buy with a confidential informant
12 from Mr. Stewart at his residence, purchased a quantity of
13 heroin from Mr. Stewart.

14 Q Okay. And when was that?

15 A That was on the -- I believe it was the 21st of
16 January of this year. Yes, it was the 21st of January.

17 Q That was the actual -- the date that you purchased?

18 A Let me review. The search warrant was signed on the
19 21st. We executed the search warrant on the 22nd. So we
20 bought on the 21st. We bought the day before we executed
21 the search warrant.

22 Q All right. Okay. And when you executed the search
23 warrant, what address was that?

24 A What arrest?

25 Q What address? I'm sorry.

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1 A It was at , Laurens
2 County.
3 Q All right. Were you personally there at the search?
4 A Yes, ma'am, I was.
5 Q Okay. And when you went in, what did you find?
6 A Found numerous items. We found a bag containing
7 23.83-grams of what was tested from the State Law
8 Enforcement Division as heroin and fentanyl. We also
9 found a bag with 56 Oxycodone tablets. We also found
10 money, a weapon. The home was in deplorable conditions.
11 He was charged with the weapon. He was charged with the
12 unlawful neglect towards a child.
13 Q Who was in the home when you went in for the search?
14 A Him and a Tondalay Coleman (phonetic), which I
15 believe was his girlfriend at the time.
16 Q All right. And were there any small children there?
17 A There were two children -- two small children in the
18 home.
19 Q Two minor children?
20 A Yes, ma'am. I'm trying to find their birthdays.
21 Q You don't need to say the...
22 A There was a three year old and five year old in the
23 residence.
24 Q All right. Where -- you said you found a gun?
25 A Yes, ma'am.

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1 Q Okay. And where was that gun located?

2 A It was located -- he lives in a single-wide mobile
3 home. And they have a -- there's an for the washer and
4 dryer. It was located above the washer and dryer when you
5 go in the back door.

6 Q Okay. And what about the drugs, where were they
7 located?

8 A They were located on top of the refrigerator in the
9 kitchen.

10 Q All right. I'm going to show you Government's
11 Exhibit No. 1 and ask you if you can identify this
12 exhibit?

13 A That is the lab report from the State Law Enforcement
14 Division.

15 Q Okay. And is this from the drug buy?

16 A Yes, ma'am, that is the -- where we submitted four
17 Ziploc baggies of powdered substance to them.

18 Q All right. Okay. And I'm going to show you
19 Government's Exhibit No. 2. Are you familiar with this
20 document?

21 A That is another SLED report, State Law Enforcement
22 Division, for the drugs found during the search warrant.

23 Q All right.

24 MS. HOWARD: And at this time I'd move
25 Government's Exhibits 1 and 2 into evidence.

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1 MR. CRANE: No objection, Judge. I've seen
2 them.

3 (WHEREUPON, Government's Exhibits Nos. 1 and 2 were
4 admitted into evidence.)

5 Q So Government's Exhibit 1 is the buy?

6 A Yes, ma'am.

7 Q And Government's Exhibit 2 is the drugs that were
8 found in the house; is that correct?

9 A Yes, ma'am.

10 Q Okay. And Government's Exhibit No. 2, in addition
11 to -- is that 22.83-grams of heroin?

12 A 23.83-grams that was a confidence level of 99.7
13 percent.

14 Q Okay. And then Oxycodone?

15 A Yes, ma'am. It was 56 white tablets that we did not
16 find a prescription for.

17 Q Okay. That was my question. Was there a
18 prescription?

19 A No, ma'am, we did not find one.

20 Q The children that were in the house, were they --
21 what happened to them?

22 A The girlfriend or the child's mother also was
23 arrested and charged with unlawful neglect. And the
24 children were placed in Emergency Protective Custody in
25 the Department of Social Services.

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1 MS. HOWARD: I don't have any further questions,
2 Your Honor.

3 MR. CRANE: Thank you, Judge.

4 CROSS-EXAMINATION

5 BY MR. CRANE

6 Q Officer, on the controlled buy, was that a
7 confidential informant?

8 A Yes, sir, it was.

9 Q And at this point do you know whether or not
10 Mr. Stewart has been provided a preliminary hearing in
11 state court?

12 A I do not know if he has or not.

13 Q Do you know whether or not he's been adjudicated
14 guilty of these charges yet?

15 A I think they're still pending.

16 Q They're still pending?

17 A Yes, sir.

18 Q When he -- when the search warrant was executed, did
19 he indicate that there was no narcotics in the house?

20 A He did indicate there was none.

21 Q But yet you said you found some in the house?

22 A Yes, sir.

23 Q And did he indicate that if you found a gun, someone
24 had left it there New Years?

25 A He indicated that someone had left it there.

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1 Q Okay. And maybe you said it, where was the gun
2 found?

3 A It was located above the washing machine in the --
4 right in front of the back door when you walk into a
5 single-wide mobile home, there was a washer and dryer and
6 it was on a shelf above it.

7 Q All right. Where were the narcotics found?

8 A On top of the refrigerator in the kitchen area.

9 MR. CRANE: Thank you. Nothing further.

10 THE COURT: You may step down. Thank you, sir.

11 THE WITNESS: Thank you, sir.

12 THE COURT: I'll hear from you on this.

13 MR. CRANE: I would reiterate, Judge, he hasn't
14 been convicted. He has been arrested. He may or may not
15 ever get convicted. It's inappropriate because he did in
16 fact indicate to the probation when he was asked about
17 what he did, he acknowledged what he did. And we would
18 submit --

19 THE COURT: He acknowledged that he was selling
20 drugs?

21 MR. CRANE: When he -- after he pled guilty and
22 went to them, he told them what he had done as a result of
23 what he pled guilty to.

24 THE COURT: I was talking about the Laurens
25 County drugs.

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1 MR. CRANE: No, no, no, no. He didn't tell
2 them. He hasn't given them a statement. I don't
3 represent him in Laurens County. I was given a copy of
4 the report.

5 THE COURT: The question is not whether he's
6 been convicted, the question is whether he's been dealing
7 drugs subsequent to his plea.

8 MR. CRANE: I don't know. I mean, I don't
9 represent him.

10 THE COURT: Well, you don't know, but I make a
11 finding that I believe this officer. And I believe that
12 he was -- and my finding is he was dealing drugs and had a
13 weapon in possession in the presence of children.

14 MR. CRANE: Okay.

15 THE COURT: So he rightfully has lost his
16 acceptance of responsibility.

17 Now I'll go to your next objection.

18 MR. CRANE: Judge, I think that's it.

19 Isn't it?

20 That's all.

21 THE COURT: Okay. Come forward.

22 Do you have a recalculation on the drug amount?

23 THE PROBATION OFFICER: Yes, sir.

24 (WHEREUPON, the Court spoke privately to the
25 probation officer.)

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1 THE COURT: I am informed that based on my
2 rulings in favor of you on the reduced drug amounts, that
3 he would be a Total Offense Level of 28.

4 MR. CRANE: Judge, roughly my calculations
5 indicate the same.

6 THE COURT: Okay.

7 Now, are there any further objections? I think
8 I asked you and you said none.

9 MR. CRANE: Not from me, Judge.

10 THE COURT: And Mr. Stewart, do you have any
11 further objections to anything in the Presentence Report?

12 THE DEFENDANT: I don't have any objections.

13 THE COURT: The Court having ruled on the
14 objections which have been made, the Court having reviewed
15 the report, including the guideline calculations contained
16 in the report, accepts the report, including the guideline
17 calculations. The Court will accept the guidelines as
18 advisory only.

19 This matter involves -- this charge involves a
20 statutory five years to 40 years, supervised release of at
21 least four years. He has a Total Offense Level of 28,
22 Criminal History Category of III. His range is 97 to 121
23 months imprisonment, four years supervised release. He
24 does not have the financial ability to pay a fine. And
25 for that reason, a fine will not be imposed. Special

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1 assessment requirement is \$100.

2 For sentencing purposes, I'll hear from you.

3 MR. CRANE: Thank you, Judge. Mr. Stewart is a
4 single person. He does have six children. He has a GED.
5 He, while in Spartanburg, has actually completed a Work
6 Keys class over there. So he's trying to do something
7 while he's incarcerated. He's been incarcerated since
8 January.

9 We would ask that you go along with the
10 guidelines and ask that you tend to sentence him towards
11 the lower range. He exercised his right to challenge some
12 of the drug weights, that's what he asked me to do from
13 the start. And I believe he's got something to say to
14 you, Judge.

15 THE COURT: Sure. I'll be glad to hear from
16 you, sir.

17 MR. CRANE: By the way, his mom and brother are
18 back here, Judge.

19 THE COURT: And where are they from?

20 THE DEFENDANT: Illinois, but they live here
21 now.

22 THE COURT: Oh, they live here now.

23 I'll hear from you at this time, Mr. Stewart.

24 THE DEFENDANT: I just want to say -- I want to
25 apologize and say that when I moved down here in August of

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1 2012, I didn't move down here in the pursuit of a career
2 in drugs or nothing.

3 I had just got out of jail February 2012. I
4 moved back to Detroit. I was living with my brother and
5 his wife. The conditions was bad. We was squetting. He
6 and my brother used to go out and cut grass for, like, \$8
7 a yard just to try to get some money.

8 After August the 7th, my daughter and during my
9 fiance's birthday, I couldn't do nothing for them. I
10 heard from my -- I talked to my friend William who told me
11 he had a studio that he was opening up and a car wash down
12 here. So I figured they was doing pretty good and I moved
13 down here.

14 Once I got down here and I seen what was going
15 on, not even from the time I moved down here, I moved
16 away. I moved from Greenville to Fountain Inn, like, I
17 just separated myself. I am not saying I wasn't bad in
18 doing stuff myself. But I separated myself from what they
19 was doing. I wasn't -- that wasn't my intent. I just got
20 caught up again and started doing wrong again and I
21 apologize. But I just want to get back home with my
22 family. And I'm sorry.

23 MR. CRANE: Judge, I don't know if his mom
24 wanted to say something or not. Do you want to hear from
25 her?

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1 THE COURT: If you want her to speak briefly.
2 I'll hear from her.
3 MR. CRANE: Do you want to say something?
4 THE MOTHER: I just wanted to say --
5 THE COURT: What's your -- I've got to put your
6 name on the record. What your name, please, ma'am?
7 THE MOTHER: Gloria Stewart.
8 THE COURT: Thank you. I'll hear from you.
9 THE MOTHER: He's my oldest son. He's a good
10 guy. He's always trying to help and look out for his
11 children and family, always trying to help somebody. He
12 tries to work and do good. And he's just a real model
13 son. And he, you know, he don't try to get into no
14 trouble.
15 THE COURT: Thank you.
16 THE MOTHER: Thank you.
17 THE COURT: There's nothing like a mother's love
18 for a son. And she says you're a good fellow. And what
19 that means to me is when you've been around her, you
20 showed her respect and you've been good to her. What I
21 see here is you came down to South Carolina and you've
22 been a major drug dealer. And I don't -- pardon? You're
23 shaking your head no.
24 THE DEFENDANT: No, I'm not. I'm listening.
25 I'm sorry.

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1 THE COURT: What is it you want to deny that you
2 did? You already lost your acceptance of responsibility.
3 I don't guess you can lose that anymore. What did you
4 plead guilty to?

5 THE DEFENDANT: I pled guilty to a conspiracy.

6 THE COURT: To sell drugs.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you sold a bunch of drugs.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Now we're on -- okay. And
11 then you got -- you pled guilty and you went back to
12 Laurens County and started selling drugs again. You don't
13 have to answer that because that's still pending. But
14 that's the evidence I heard and that's what I'm seeing
15 here.

16 And not only that, you had drugs in Laurens
17 County around little children again. That's the second
18 time today I've had -- there's no evidence that they had
19 drugs in their system like the previous defendant. But
20 you have a gun and you -- anyway I will depart from this.

21 MS. HOWARD: Your Honor, if I could just briefly
22 say something?

23 THE COURT: Yes.

24 MS. HOWARD: I think this case is the best case
25 I've ever seen for an upward variance under the 3553(a)

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1 factors. This defendant has not shown any respect for the
2 law. To be -- to plead guilty and then go right back out
3 and get on bond and sell drugs again, have more drugs in
4 his house, that shows no respect for the law.

5 I think an upward variance from the guideline
6 range is appropriate in this case based upon that factor
7 alone. And the other factors, considering the nature and
8 circumstances of this offense and his criminal history, I
9 think all point towards an upward variance in this case.

10 MR. CRANE: May I respond briefly?

11 THE COURT: Sure.

12 MR. CRANE: Judge, the nature of the offense and
13 his criminal history are all taken into account by the
14 guidelines. I wasn't put on notice that we were having a
15 motion for an upward variance. I don't know that I'm
16 entitled to one. But I would submit to you that he came
17 in here, he successfully challenged the drug weight, which
18 is his right to do. I ask that you not hold that against
19 him.

20 THE COURT: I guarantee you I will not hold that
21 against him.

22 MR. CRANE: Yes, sir. I don't represent him on
23 Laurens County, so I feel a little bit at a loss as to
24 what the officer testified to. He was arrested. The
25 children were there. There's been no testimony that they

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1 tested positive for drugs.

2 THE COURT: I made that finding. There's no
3 evidence that the children tested positive for drugs.
4 They were merely present according to the testimony.

5 MR. CRANE: Yes, sir. We would ask that you not
6 do an upward variance.

7 THE COURT: I understand that. I would not do
8 an upward variance except for the Laurens County conduct,
9 which I am going to depart upwards for that reason.

10 It smacks in the face of anything proper when a
11 person, who is charged with being a major drug dealer,
12 like he was, and comes in and pleads guilty, and
13 subsequent to that, goes right back out, starts dealing --

14 This was subsequent to his guilty plea, right?

15 MS. HOWARD: That is correct, Your Honor.

16 THE COURT: And he goes right back out in
17 another county with a firearm. He's a felon who didn't
18 even have the right -- he's committing a serious federal
19 offense just to have a firearm present, even if there were
20 no drugs, but he's dealing drugs. They did an undercover
21 -- they've got evidence, what the testimony is, they've
22 got evidence there was drugs -- that he was selling drugs
23 out of there. They send in a confidential informant.
24 They buy drugs. They get a search warrant and they find
25 drugs. They find children. They find a weapon.

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1 It's a rarity to find somebody that thumbs his
2 nose at the justice system like he has. I know his momma
3 loves him and he's a good boy to her. But he's a major
4 drug dealer. And even after he gets charged with a
5 serious federal offense, pleads guilty, is awaiting
6 sentencing, goes out and becomes a drug dealer in Laurens
7 County, just moves one county down from Greenville County.
8 So for that reason I will depart downward {verbatim}. And
9 I've stated my reasons for it.

10 I've looked at those factors under 3553(a). I
11 don't find that a guideline sentence is appropriate and
12 that's why I'm going to vary upward. Had he not committed
13 the Laurens County, I would be looking under the
14 circumstances of this case of an upward part of the
15 guideline for his conduct in any event.

16 So it is the Sentence of the Court that he be
17 committed to the custody of the Bureau of Prisons for a
18 period of 146 months, that's 120 months plus 24 for the
19 variance, and pay \$100 special assessment fee which is due
20 immediately.

21 Then he's placed on supervised release for a
22 term of four years with special conditions as follows. He
23 shall submit to random drug testing as administered by the
24 US Probation Officer. He shall participate in the
25 employment program as directed by the probation officer

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1 until he's released from the program by the officer.
2 That's the end of the sentence. You do have a
3 right to appeal this sentence. If you cannot afford the
4 costs of appeal, you can apply to proceed without the
5 payment of costs and apply to have an attorney appointed
6 to represent you.

7 That's all.

8 MR. CRANE: Thank you, Judge.

9 MS. HOWARD: Thank you, Your Honor.

10
11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled matter.

13 *Karen E. Martin*
14 s/Karen E. Martin

7/7/15
5/27/2015

15 Karen E. Martin, RMR, CRR

Date

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Karen E. Martin, RMR, CRR
US District Court
District of South Carolina

1 State of South Carolina

Court of General Sessions

2 County of Laurens

3

4

5 State of South Carolina,)

Transcript of Record

6 vs.)

2015-GS-30-0958

7 Terrance Edward Stewart,)

2015-GS-30-0959

8 Defendant.)

2015-GS-30-0561

9

10

July 27 & 28, 2015

Laurens, South Carolina

11

12 B E F O R E:

13 The Honorable Donald B. Hocker, Judge

14

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

16 Christopher Dale Scott, Deputy Solicitor

17 Margaret Boykin, Assistant Solicitor

Attorneys for the State

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19 Claude H. "Chip" Howe, III, Esquire

20 Chelsea McNeill, Esquire

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21

22

23

24

Stacy S. Johnson, RPR

Circuit Court Reporter

25

26

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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1 (The following proceedings were held July 27, 2015.)

2 **BAILIFF:** Let's all rise. Court come to order,
3 please.

4 **THE COURT:** Thank you very much. Please have a
5 seat.

6 Okay. We're on the record this afternoon in the
7 case of State of South Carolina versus Terrance Edward
8 Stewart on indictments 15-GS-30-958, 959 and 961. The
9 first matter of business in this case is a motion to
10 suppress that the defense has filed in this case. I had
11 a conference with the attorneys in chambers to review
12 this motion to suppress, but we need to go ahead and get
13 everything on the record, number one, and, number two, I
14 think it's gonna be necessary to take some testimony
15 in-camera in order for me to rule on the motion.

16 But, Mr. Howe, do you want to reserve any arguments
17 until after I take some testimony? I assume it's gonna
18 be from the officer or officers that obtained the search
19 warrant from Judge Tucker. Do you want to reserve argument
20 until after or --

21 **MR. HOWE:** If I could have one minute?

22 **THE COURT:** Sure.

23 (Discussion between defense counsel.)

24 **MR. HOWE:** Yes, sir. I think -- you know, we
25 submitted the memoranda and you've had that and then I

1 received the response from Mr. Scott, so I think after --
2 after testimony is taken, you know, we would be -- ask
3 to make the arguments. Now if the Court is going to be
4 inclined to allow the oral supplement, I think I'm
5 obligated to object to that contemporaneous with -- with
6 the testimony concerning that --

7 **THE COURT:** Right.

8 **MR. HOWE:** -- and I'd ask that I be allowed to do
9 that if the Court so rules on that issue. And, Judge,
10 just a little matter here, a housekeeping matter, we're
11 asking that witnesses be sequestered in this trial of this
12 case --

13 **THE COURT:** Okay.

14 **MR. HOWE:** -- and ask that you -- I don't know what
15 you do now, Judge, if you do anything in addition that
16 I've seen some judges do now that we have electronic
17 communications, e-mail, texting, et cetera, but that
18 the -- any of the witnesses be admonished that the
19 sequestration requirement, if you grant it, would include
20 those type communications, you know, while we do that,
21 so I'd be asking for that.

22 **THE COURT:** Okay. All right. Solicitor, do you have
23 a position on Mr. Howe's request to -- and I don't know
24 who all your witnesses are.

25 **MR. SCOTT:** Yes, sir. I have a big problem with

1 that, but what I'd ask though is -- Veal is gonna be our
2 lead investigator. I think we'd be entitled to have him
3 sit with us.

4 **THE COURT:** Right.

5 **MR. SCOTT:** And Walter Bentley, we've got him on the
6 witness list, but it would be for the specific purpose
7 of introducing some jail calls. I don't know what
8 sequestering him would accomplish. He'd be more of a
9 foundation-type witness. We would rely on him to work
10 our technology to really make the court procedure more
11 efficient --

12 **THE COURT:** Right.

13 **MR. SCOTT:** -- so we would ask for him to stay. I've
14 got Deputy Sweat here. He's gonna be our first witness.
15 Other than that, we have no problem with complying with
16 any kind of sequestration. We would ask for reciprocal
17 sequestration.

18 **MR. HOWE:** Yeah.

19 **THE COURT:** Sure. Sure. But right now for purposes
20 of this in-camera hearing, the witnesses that we have are
21 here, and Officer Sweat is gonna be your first one, and
22 then Bentley and Veal are connected with the case, so.

23 **MR. HOWE:** Thank you, Judge. And I only have -- even
24 though this is for the -- we're addressing primarily the
25 search case now, I think there's one witness, I've never

1 met her, but I understand it's Ms. Coleman, who's back
2 there in the courtroom, and I would -- she's our only
3 non-law enforcement witness that I know of that's present
4 right now --

5 **THE COURT:** Okay.

6 **MR. HOWE:** -- and I'd ask that she be part of the
7 sequestration as well, I think, in fairness to everybody
8 involved.

9 **THE COURT:** Okay. All right. Ms. Coleman, would
10 you please stand. You are a potential witness in this
11 case, at least according to what Mr. Howe tells me, and
12 you'll need to -- not leave the courthouse, but you'll
13 need to leave the courtroom and then if you're needed for
14 what we're gonna do today, then, of course, you'll be
15 brought in, okay, ma'am?

16 **MS. COLEMAN:** Okay.

17 **THE COURT:** Okay.

18 (Whereupon, Ms. Coleman leaves the courtroom.)

19 **THE COURT:** And, Mr. Howe, concerning your objection
20 to if the Court decides to take any testimony related to,
21 as I understand, some oral testimony given to Judge Tucker
22 when the search warrant was issued, you're going to object
23 to that and then make your objection, place it on the
24 record with whatever grounds that you have, and then I'll
25 make a ruling. And if I rule against you, of course, your

1 objection will cover throughout this proceeding.

2 **MR. HOWE:** Thank, Your Honor.

3 **THE COURT:** All right. Okay. With that said,
4 Solicitor, I'm gonna turn it over to you. If you'll
5 call your first witness with respect to this issue of
6 suppression.

7 **MR. SCOTT:** Yes, sir. I'm gonna call the affiant on
8 the warrant first, Steven Sweat.

9 **MR. HOWE:** Judge, one more thing unrelated to this.
10 Terrance's family brought a shirt for him, but it doesn't
11 fit, and so we want to let you know that he would have
12 been wearing a nicer shirt, but it didn't fit, and so
13 that's why he's out in a T-shirt, to show no disrespect to
14 this Court. I told him I was gonna tell you that. That's
15 why he's wearing a T-shirt.

16 **THE COURT:** And, Mr. Stewart, certainly the Court
17 understands the problem sometimes when defendants are, you
18 know, being held in the detention center and trying to get
19 clothes and proper attire for court proceedings, sometimes
20 that's difficult. And certainly the Court does not take
21 that as any disrespect on your part and really will not
22 factor in whatsoever concerning any rulings I make in the
23 case, okay, sir?

24 **THE DEFENDANT:** Thank you.

25 **MR. HOWE:** Thank you, Judge.

1 **THE COURT:** All right. Madam Clerk.

2 STEVEN SWEAT,

3 having been duly sworn, testified as follows:

4 **MR. SCOTT:** Judge, I don't know, sometimes the rules
5 are a little bit different in a bench trial, but do you
6 have our witness list?

7 **THE COURT:** I do.

8 DIRECT EXAMINATION

9 BY MR. SCOTT:

10 Q. Okay. Deputy Sweat, you are with the Laurens County
11 Sheriff's Department?

12 A. Yes, sir.

13 Q. I want you to, for this particular hearing, take us
14 back to January 20th of this year.

15 A. Yes, sir.

16 Q. Did you have an occasion to receive some information
17 from Fountain Inn?

18 A. I have. Prior to this investigation, I received
19 information by a uniformed patrol officer of Fountain Inn
20 city and Laurens County, my agency, that there had been a
21 series of overdoses that had occurred in --

22 **MR. HOWE:** Objection, Your Honor. And I'm gonna
23 object to that as not being relevant to the issue of
24 whether or not this search should be granted and I would
25 say that it would be prejudicial. If there were a jury

1 hear, I'd certainly be objecting to any allegations of
2 overdoses based on that.

3 **THE COURT:** Okay.

4 **MR. HOWE:** And then I'm gonna contend it's hearsay as
5 well.

6 **THE COURT:** Right. I understand. Solicitor.

7 **MR. SCOTT:** It would be relevant. Part of the --
8 part of the reason that this was kind of a very quick
9 investigation. I referenced an e-mail. There was a buy
10 conducted the very next day from what he's speaking of.
11 There was a warrant sought that night, there was a search
12 warrant executed the very next morning, and the haste, I
13 guess, which I referenced in that was to try to cut down
14 on some of these things that they'd been seeing up there.
15 I don't know that we can really pinpoint all these to him,
16 but this is the information this affiant is receiving.
17 This is information that he is basing some of his actions
18 on.

19 **THE COURT:** What I'm gonna do is I'm gonna overrule
20 the objection for purposes of this suppression hearing and
21 you've just got -- and, again, depending upon how this
22 goes, in trial certainly if it's brought out, you can
23 object and I may deny the admissibility, and you guys and
24 girls just need to trust me that I will weed out what I
25 need to weed out and consider what I need to consider. So

1 I think it's being provided by way of background with
2 respect to what this officer did, so I'm gonna allow it
3 for purposes of this hearing. You may proceed.

4 BY MR. SCOTT:

5 Q. Okay. So January 20th is where we were. You had
6 received some information from Fountain Inn?

7 A. Yes, sir, in that area supposed overdoses that were
8 occurring up here because of overconsumption of heroin.
9 Several individuals had been found unconscious with a
10 syringe in their arm.

11 MR. HOWE: Same objection, Judge. And I don't want
12 to continue to interrupt, but you see what I'm --

13 THE COURT: You're protected. You're protected.

14 BY MR. SCOTT:

15 Q. Okay. Did you have any idea, I guess, or did y'all
16 have some idea where this heroin was originating from?

17 A. From the information we got, we were -- it had been
18 told to us that --

19 MR. HOWE: Objection. Hearsay.

20 MR. SCOTT: Hearsay is admissible in a suppression
21 hearing.

22 THE COURT: Overruled. You may proceed. And speak
23 up a little bit. You're soft-spoken, officer, and I
24 understand that, but you just need to speak up a little
25 bit, please.

1 **THE WITNESS:** Yes, sir. The drugs were originating
2 somewhere in the Happy Valley area of Laurens County. Of
3 course, I went to the area trying to investigate, looking
4 for any indicators, high volume traffic activity; however,
5 the next day I received a phone call from Fountain Inn
6 Police Department who had an informant that was pertinent
7 to this case.

8 BY MR. SCOTT:

9 Q. Tell me about the informant.

10 A. This informant, he was one of the individuals who
11 had been previously found unconscious at a gas station,
12 along with his girlfriend, with a syringe in his proximity
13 overdosed on heroin.

14 Q. Did y'all gain some information from this individual?

15 A. Yes, sir, we did. He advised us the individual that
16 he was getting his heroin from was someone he only knew as
17 Cheddar.

18 Q. What now?

19 A. Cheddar.

20 **THE COURT:** Cheddar?

21 **THE WITNESS:** Cheddar, as in cheese, yes, sir.

22 BY MR. SCOTT:

23 Q. Okay.

24 A. That was an alias that was provided. He described
25 his physical description to us. He also described the

1 house that he was going to to make his transactions. He
2 described having an extensive history with this Cheddar
3 individual; methamphetamine, heroin, other types of drugs,
4 but those were the two mains ones he recalled.

5 Q. I see he relayed to you some familiarity with this --
6 the individual, but he only knew him by a nickname?

7 A. Yes, sir.

8 Q. But he provided a physical description, is what you
9 said?

10 A. Yes, sir.

11 Q. And do you recall -- were you briefed initially on
12 this -- did you speak to the informant or were you
13 receiving this from Fountain Inn?

14 A. This -- what I'm testifying to now is what I found
15 out once I went to Fountain Inn Police Department and
16 spoke to the informant myself.

17 Q. Okay. And do you recall the physical description he
18 gave you?

19 A. A larger black male, had short dreadlocks, and lived
20 somewhere in the Happy Valley. He was able to describe
21 how to get there from the police department by way of
22 landmarks, certain roads, certain stores, things of that
23 nature, which we were able to cross-reference using the
24 Laurens County GIS mapping system along with Google Earth
25 and doing a street view, which he also described the

1 residence. He said it was a single-wide mobile home that
2 had a -- I'm trying to remember the exact word -- like a
3 tent net structure in the front yard with a building out
4 behind it. I was able to pinpoint this down as being
5 35 Hue Circle, which also lies in the county of Laurens.

6 Q. Okay. Did you take any other measures to verify that
7 that was, indeed, the location that he was describing?

8 A. Later on, yes.

9 Q. What -- tell me about that.

10 A. We're getting on toward the controlled buy.

11 Q. You don't have to get into that, but did you drive
12 by and show him the property at some point?

13 A. Yes, sir.

14 Q. And he provided the address of what as being the home
15 of Cheddar?

16 A. He didn't provide the address. We were able to find
17 that during our research during the investigation.

~~18 Q. You're talking about the GIS and Google Maps?~~

19 A. Yes, sir.

20 Q. And then you actually went to that location
21 eventually, didn't you?

22 A. Yes, sir. After -- like I said, we were speaking
23 with the informant and we were able to access -- well,
24 Fountain Inn Police Department was able to access the
25 Greenville City master ID system, which contains aliases,

1 addresses, just little descriptions of individuals who
2 they've had contact with law enforcement county to county,
3 and in it they were able to find an individual who had the
4 nickname of "Cheddar", who also lived at 35 Hue Circle,
5 that ended up being Terrance Stewart, the individual
6 sitting here before us today.

7 Q. Okay. And that's on -- is this on the 21st that a
8 lot of this briefing with CI happened?

9 A. It occurred on the 21st, yes.

10 Q. And what did y'all decide to do after that?

11 A. At that point, once we established who the suspect
12 was and where the alleged activity was occurring, we
13 started towards conducting a controlled buy. The
14 confidential informant was able to make a series of phone
15 calls setting up the buy. It took several hours. Around
16 four or 5:00 that afternoon we were able to set up a
17 positive time to meet the suspect in regard to this and at
18 that point the suspect -- or, excuse me, the confidential
19 informant was searched. His girlfriend was also involved
20 with this.

21 Q. What do you mean? How was she involved?

22 A. She was also one of the individuals being interviewed
23 in regard to this. He was able to provide more information
24 -- most of the information really.

25 Q. She went along for the ride?

1 A. Yes, but they were both searched and equipped with
2 audio/video surveillance equipment. Fountain Inn City
3 provided us a car to use, at which point they were searched
4 and provided the documented funds, a hundred dollars cash,
5 U.S. currency, twenty dollar bills. The confidential
6 informant got in the vehicle with me, along with his
7 girlfriend. She sat in the back. We then proceeded to
8 the incident location of .

9 Q. What's the name of that road? What Circle?

10 A.

11 THE COURT: ?

12 THE WITNESS:

13 MR. SCOTT: We have -E Your Honor.

14 THE COURT: Okay. Got you. Thank you.

15 THE WITNESS: Yes, sir.

16 BY MR. SCOTT:

17 Q. Okay. You had five twenty dollar bills you gave the
18 CIO?

19 A. Yes.

20 Q. And each of those were documented with the serial
21 numbers?

22 A. Yes.

23 Q. You said you searched them. Did both of them have a
24 camera at this point?

25 A. No, only the male confidential informant was equipped

1 with audio/video surveillance. The female, she stayed with
2 me in the vehicle the entire time during the control buy
3 operation.

4 Q. Okay. Well, describe that. She stayed in the vehicle
5 with you. Were you involved with this controlled buy?

6 A. Yes, sir.

7 Q. How was that?

8 A. I drove the vehicle to the location. At that point,
9 once we arrived there, the confidential informant went to
10 see if the Defendant was there or not. He had not arrived
11 yet. We sat there for a few more moments and then a white
12 colored Buick, a newer model, pulled up into the driveway.
13 As it passed by -- I, of course, was driving the vehicle.
14 It passed by on the left and I was able to see the
15 Defendant sitting in the passenger side of the vehicle.
16 It pulled towards the back of the residence and the
17 confidential informant then exited my vehicle that I was
18 in. He went over there, spoke with the Defendant. They
19 then went toward the back of the single-wide mobile home
20 to the back door and briefly went out of view just for a
21 moment and came -- the confidential informant came back
22 to me, got in the vehicle. At that point, he presented
23 me with five small plastic bags, each of them having kind
24 of an off-white powder substance in it that the CI,
25 confidential informant, described it as being heroin.

1 We then left the scene. As we were leaving, the CI
2 going down the road told me that it would be a good idea
3 to pull up in the Sav-Way. I asked him why and he said
4 well, Cheddar is gonna be coming up the road here in a
5 second and he's gonna expect to see us there. Apparently,
6 the way the CI described, he always stops there after he
7 conducts one of these transactions. I pulled into the
8 gas station, the Sav-Way at [redacted] and Durbin Road, and sat
9 there for a moment and sure enough the vehicle I'd seen
10 earlier comes down Durbin Road and passes by and after it
11 passed by, we went back to the police department.

12 Q. Okay. So that was your informant's routine and he
13 didn't want to break his routine?

14 A. That's right. We wanted to keep things looking as
15 normal as possible to try to not blow the cover that we
16 had.

17 Q. Okay. But let me back up though. You said as you
18 -- you were driving the car and while you were waiting
19 on Mr. Stewart to get to [redacted], you actually
20 observed him pull up in the yard. He was a passenger you
21 said. You observed him as he pulled up into the yard?

22 A. Yes, sir.

23 Q. And did you see him get out of the car?

24 A. Yes, sir, I did.

25 Q. Okay. And -- okay. But you remained in the car with

1 the girlfriend?

2 A. That's correct.

3 Q. Do you know about how long they were out? How long
4 did this buy take?

5 A. Maybe two, three minutes. It wasn't long at all.

6 Q. Okay. And then you mentioned going to the Sav-Way
7 and then after that you went back to Fountain Inn?

8 A. Yes, sir. We went back to the police department at
9 that point and took all the equipment we used in the
10 control buy operation worn by the confidential informant.
11 He was searched again. No other drugs or things of that
12 sort was found on his person. I took one of the bags that
13 had been obtained during the controlled buy and opened the
14 bag and I field-tested it using a standard issue heroin
15 field test kit. It did give a positive result for the
16 presence of heroin in the substance testing.

17 Q. Did he give you the heroin he purchased right when he
18 got back in the car?

19 A. Yes, sir.

20 Q. And how many bags were there?

21 A. A total of five.

22 Q. How many had you planned on having the CI purchase?

23 A. It was supposed to be four, but my understanding
24 after debriefing the informant that he -- that the
25 Defendant had allegedly giving him an extra bag due to

1 the --

2 Q. Wait a minute. Twenty-five bucks a piece was what
3 they were supposed to be --

4 A. Yes.

5 Q. -- but \$20 a piece was the amount given?

6 A. Yes, sir.

7 Q. Okay. So you went back to Fountain Inn. Did you
8 review the videotape at that point?

9 A. Sometime after getting back to the police department,
10 yeah. I don't recall, but I believe it was once we got
11 back --

12 Q. All right.

13 A. -- to the office.

14 Q. I'm sorry. I didn't mean to interrupt you. I think
15 you mentioned it before, but about what time did that buy
16 happen?

17 A. We started somewhere between four and 5:00 that
18 afternoon, I believe.

19 Q. What do you mean you started? That's when --

20 A. That's when --

21 Q. -- you drove to the house?

22 A. -- we got the phone call saying things were a go and
23 we started the process of making the controlled buy.

24 Q. Okay.

25 A. The last phone call that was made.

1 Q. Okay. And there's timestamps on the video, correct?

2 A. Yes, sir.

3 Q. Tell me about the issue with the timestamps on your
4 equipment.

5 A. The camera -- the video camera that was used in this
6 controlled buy was acquired by the Department prior to me
7 being in the narcotics division. It's my understanding
8 that the time on it was approximately twelve or
9 thirteen hours off, ahead of schedule. So, say, if it
10 was 5:00 in the afternoon on the 21st, it would say it was
11 like 5:00 in the morning on the 22nd.

12 Q. Okay. Just a matter of AM and PM is the discrepancy
13 on it?

14 A. Yes, sir.

15 Q. Okay. So you begin this operation at four or 5:00.
16 Do you remember about what time you're down at the
17 magistrate's office?

18 A. I'm sorry, what was the last part of your question?

19 Q. Do you remember -- well, what was the next step after
20 watching the video?

21 A. After we watched the video and reviewed everything,
22 then I generated an incident report. I also generated the
23 search warrant and made contact with Judge Tucker, the
24 Laurens County magistrate. I met with her --

25 Q. Was this after hours? Would she have been in the

1 office?

2 A. No, this was after hours.

3 Q. So you had to go to her house?

4 A. Yes, sir.

5 Q. Where does she live?

6 A. Gray Court area.

7 Q. The judge is way more familiar with this county than
8 I am, but is that close to Fountain Inn?

9 A. Yes.

10 Q. Would that have been the closest magistrate you could
11 have gone to?

12 A. I believe she was the on-call judge.

13 Q. She was on call?

14 A. I believe so. I -- I can't recall off the top of my
15 head. I believe I could have gone and seen Judge Lyles,
16 it was a lot closer, if I could have, but I wasn't able to
17 so I went back to Gray Court.

18 Q. You swing about by Tucker's house and -- let's see.

19 **MR. SCOTT:** Judge, let me -- I'm gonna get this ID'd
20 for you.

21 (State's Exhibit Number 1 was marked for
22 identification.)

23 BY MR. SCOTT:

24 Q. Let me show you State's Number 1 here. Do you
25 recognize that?

1 A. Yes, I do.

2 Q. Is that the warrant you generated?

3 A. Yes, sir.

4 Q. And can you tell on that -- I think it's got a time
5 on it when it was printed.

6 A. 7:15 PM on the 21st of January, 2015.

7 Q. Where did you print that up?

8 A. Out at the sheriff's office. 216 West Main Street,
9 Laurens.

10 Q. All right. So help me out. So you would have been
11 at Fountain Inn. This occurred in Fountain Inn?

12 A. Yes.

13 Q. You come back down to the sheriff's office here,
14 draft the warrant and then you run to Gray Court?

15 A. Yes, sir.

16 Q. Okay. And so it's 7:15 it was printed up?

17 A. Yes, sir.

18 Q. About what time -- just -- I mean, if you're
19 comfortable with estimating, about what time would you
20 have been at Judge Tucker's house?

21 A. I don't know the exact time. Sometime after 7:15.
22 I assume more than thirty minutes to an hour.

23 Q. Okay. So 8:00, 8:15, somewhere around there, you'd
24 present that?

25 A. Yes.

1 Q. All right. Tell -- well, read to the Judge what your
2 affidavit says for, you know, the reasons that you're
3 requesting a search warrant.

4 A. The reason for what I believe that the property
5 sought is on the subject premises, confidential informant
6 working with Laurens County Sheriff's Office in an
7 undercover capacity has given information to law
8 enforcement pertaining to the illegal sale and storage
9 of illegal narcotics at the above-described premises.
10 Officers have corroborated this information during
11 recent narcotics operations and other search warrants at
12 this location in the past. This information was obtained
13 within the last seventy-two hours of the issuance of this
14 warrant.

15 Q. Okay. Now would that have been the only information
16 you gave Judge Tucker?

17 A. Absolutely not.

18 Q. Did she ask questions or did you --

19 **MR. HOWE:** The objection would begin right now,
20 Judge, because that's information not available to us.

21 **THE COURT:** I understand. I'm gonna overrule your
22 objection at this time, but your objection is so noted on
23 the record.

24 BY MR. SCOTT:

25 Q. Let me back up. How long have you been in law

1 enforcement?

2 A. Almost eight years.

3 Q. How many search warrants do you think you've sworn
4 to?

5 A. Several. I couldn't give you an exact number.

6 Q. Several?

7 A. I've done quite a few, yes.

8 Q. Fifty, a hundred?

9 A. I'm not --

10 Q. Don't worry about it.

11 A. I don't know.

12 Q. Let me ask you this. How common is it for you to
13 supplement your affidavit --

14 **MR. HOWE:** Objection, Judge. That wouldn't be
15 relevant to this particular case.

16 **THE COURT:** I think the question was how often do
17 you supplement your affidavit. I'm gonna sustain the
18 objection. That would not be relevant to this case.

19 **MR. SCOTT:** All right.

20 BY MR. SCOTT:

21 Q. In this particular case, were you able to supplement
22 your affidavit with sworn testimony?

23 A. Yes, I was.

24 Q. Did Judge Tucker put you under oath?

25 A. Yes.

1 **MR. HOWE:** Judge, my objection, I think -- just so
2 we're protected on the record, that is continuing and
3 I'm not gonna do that any more, but I just wanted to make
4 sure.

5 **THE COURT:** It's noted and it's continuing throughout
6 this witness's testimony related to any oral testimony
7 that he gave Judge Tucker leading up to the issuance of
8 the search warrant.

9 **MR. HOWE:** Thank you, Judge.

10 **THE COURT:** And do you want to repeat the question,
11 Solicitor?

12 **MR. SCOTT:** Yeah. Let me think of what was the
13 question.

14 BY MR. SCOTT:

15 Q. Did you provide any sworn oral testimony that
16 supplemented your affidavit?

17 A. I did. I described to the judge what I just explained
18 to you about the background information, the controlled
19 buy that occurred there, what we obtained during the
20 controlled buy, the circumstances involved, the audio and
21 video surveillance of the confidential informant, my
22 presence there, what I observed, telephone communication,
23 everything that I'd just described a moment ago.

24 Q. All right. So what you just testified under oath
25 to to the judge would have substantially been what you

1 testified to under oath to Judge Tucker?

2 A. Yes, sir.

3 Q. What about the documented funds?

4 A. Yes, sir.

5 Q. About what about seeing Terrance Stewart at the
6 scene?

7 A. Yes, sir.

8 Q. What about your field test?

9 A. Yes, sir.

10 Q. All that stuff? And really -- I don't know. You
11 don't have your incident report up there, do you?

12 A. No, sir.

13 Q. You generated an incident report you already testified
14 to as far as the distribution case?

15 A. Yes, sir.

16 Q. Substantially did you include all that information
17 you just testified to Judge Hocker? Did you provide all
18 of that in your incident report?

19 A. No. Not in great detail, no, sir.

20 Q. Let me show you -- I want you just to, I guess, take
21 a look at this and see if you -- it refreshes your memory.
22 Is that your incident report for the distribution?

23 A. Yes, sir.

24 Q. Okay. And did you talk about the information from
25 Fountain Inn?

1 A. Yes, sir.

2 Q. Okay. Did you talk about the suspected overdoses and
3 whatnot?

4 A. Yes.

5 Q. And did you talk about going along for the controlled
6 buy?

7 A. Yes.

8 Q. Okay. Did you talk about your involvement with the
9 controlled buy or else provided in the video?

10 A. ~~I did not speak in the incident report about me going~~
11 ~~with the confidential informant.~~

12 Q. That's in your video though, correct?

13 A. Yes.

14 Q. All right. And you mentioned documented funds in
15 there?

16 A. Yes.

17 Q. Did you mention the five bags of heroin that were
18 obtained?

19 A. Yes.

20 Q. Okay. Substantially everything you've talked about
21 here today was also documented in your original incident
22 report?

23 A. Yes, sir.

24 Q. Do you remember about how long you were in there with
25 your presentation to Judge Tucker?

1 A. About fifteen, twenty minutes tops.

2 Q. Okay. And then, ultimately, did she sign off on the
3 warrant?

4 A. Yes, sir, she did issue a search warrant.

5 Q. Did you sign off as an affiant?

6 A. I did.

7 Q. Okay. Now when was the search warrant executed?

8 That's gonna be -- I guess signed off to around, you
9 estimate, 8:15 PM on January 21st. When did you execute
10 the search warrant?

11 A. The very next morning right around daybreak.

12 Q. Okay. Do you know about what time?

13 A. I want to say around 6:30 in the morning, seven in
14 the morning.

15 Q. You don't have the incident report up there with you?

16 A. I'm sure I gave that to you earlier.

17 Q. I've got it, but you don't have it up there with you?

18 A. No, I don't.

19 Q. Do you have -- do you recognize that as your incident
20 report?

21 A. I do.

22 Q. Does it have a time, I guess, when y'all would have
23 proceeded up to the residence?

24 A. Yes, sir. It has our arrival time at 0722 or
25 7:22 AM.

1 Q. And then -- Judge, I don't want to get really, I
2 guess, into the -- a lot of what the testimony will be
3 once we begin the trial, but, I guess, did y'all go serve
4 the search warrant that morning?

5 A. Yes.

6 Q. And what time was it again?

7 A. 7:22 AM.

8 Q. At 7:22 AM y'all went in there and did you see
9 Mr. Stewart there?

10 A. Yes.

11 Q. What now?

12 A. I did.

~~X~~ 13 Q. And let me -- you really weren't involved with the
14 whole execution of the search warrants?

~~#~~ 15 A. No, sir. I was on the scene, but I was out of view.

~~X~~ 16 Q. Okay. Just because of your involvement in the
17 distribution case?

~~A~~ 18 A. Yes.

19 Q. All right. Was evidence seized from the location?

20 A. Yes, sir.

21 Q. Okay. And to your knowledge, what individuals were
22 in the home?

23 A. The Defendant, his significant other, I don't know if
24 they're married or not, and two children.

25 Q. Okay. But the -- I guess for the most part y'all

1 found the heroin at least for the trafficking case?

2 A. Yes.

3 Q. And Oxycodone, which leads to the intent to distribute
4 case?

5 A. Yes, sir.

6 Q. And then a pistol?

7 A. Yes.

8 MR. HOWE: Judge, I'm gonna ask him not to lead; that
9 he not lead so much.

10 THE COURT: Try to rephrase. And I realize this is
11 a -- a hearing outside the presence of any jury to allow
12 some leading, but try to rephrase, Solicitor, if you
13 would.

14 BY MR. SCOTT:

15 Q. I don't want you to testify to all of the evidence
16 you found in the house because some of it we're not gonna
17 even worry about, but tell me what drug evidence you found
18 in the house, not anywhere else.

19 A. In the house itself, we found several pain pills,
20 which is a Schedule II controlled substance, Oxycodone.
21 Off the top of my head and all, we found baggies of heroin;
22 approximately twenty-five grams. We found a .357 Sig
23 handgun that was loaded, two boxes of ammunition, a large
24 amount of money, our controlled -- our documented funds
25 during the controlled buy.

1 Q. You actually found those documented twenty dollar
2 bills that you referenced?

3 A. All five.

4 Q. All five of them?

5 A. Yes, sir.

6 Q. Okay. Did y'all make some arrests that day?

7 A. Yes, sir, we did.

8 Q. Who was arrested?

9 A. The Defendant, Mr. Stewart, as well as Ms. Coleman.

10 Q. Do you know where those documented funds were found?

11 A. I believe they were located in the living room on
12 the -- I believe they were in his pocket, but they were
13 removed from -- back up. When we executed the search
14 warrant, it was my understanding that Mr. Stewart was
15 detained. He asked to have some pants put on.

16 MR. HOWE: And, Judge, I am gonna object. For the
17 purpose of this hearing, as I understand, this officer
18 said he did not execute the search warrant himself, carry
19 it out. So even though I know the argument is the hearsay
20 evidence, this is -- I would object he doesn't have the
21 knowledge.

22 THE COURT: Okay.

23 MR. SCOTT: I'll move on, Judge, and I think I'm kind
24 of getting a little bit far from what --

25 THE COURT: Probably so.

1 **MR. SCOTT:** -- the purposes of this hearing is.

2 | BY MR. SCOTT:

3 Q. Okay. But there was a -- a search warrant was
4 executed to your knowledge. Was there a return generated?

5 | A. Yes, sir, there was.

6 Q. But you didn't sign off on the return; is that right?

7 | A. No, sir, I didn't.

8 **MR. SCOTT:** I think that's all. Answer any questions
9 Mr. Howe has for you.

10 THE WITNESS: Thank you.

11 **THE COURT:** Mr. Howe, do you have any questions of
12 this witness for purposes of this suppression hearing?

13 **MR. HOWE:** I do, Your Honor. And subject to my
14 earlier objection --

15 THE COURT: Subject to your objection.

16 **MR. HOWE:** -- if I understand -- can we approach real
17 quick, Judge?

18 THE COURT: You sure can.

19 (Proceedings held at the bench; not reported.)

20 **MR. HOWE:** And, again, Judge, subject to objections
21 and now that I have a clearer understanding of where we
22 are in this proceeding right now.

23 CROSS-EXAMINATION

24 BY MR. HOWE:

25 Q. Officer Sweat, the search warrant that -- that we're

1 talking about, you went to Magistrate Glynda Tucker's
2 residence; is that correct?

3 A. Yes, sir.

4 Q. And that's located in Gray Court. And I don't want to
5 give that out for purposes of this hearing, but do you know
6 where she lives?

7 A. I do.

8 Q. You've been there before?

9 A. Yes, sir.

10 Q. Okay. And was it just you and Judge Tucker who were
11 present when this took place, sir?

12 A. Yes, sir.

13 Q. Okay. No other officers, no other witnesses,
14 et cetera?

15 A. Yes, sir.

16 Q. And it took place in her home?

17 A. Yes, sir.

18 Q. All right. And did Judge Tucker have available to her
19 a tape recorder or anything to record your testimony?

20 A. Not that I'm aware of.

21 Q. And you -- did you have your cell phone with you, your
22 iPhone or whatever you used at that time?

23 A. I'm sure I did.

24 Q. Okay. And was any recording to the best of your
25 knowledge made of that proceeding?

1 A. No, sir, it wasn't.

2 Q. All right. And is it your testimony then, sir, that
3 Judge Tucker was taking notes?

4 A. No, sir. She asked me a couple of questions, but she
5 didn't take any notes.

6 Q. She took no notes?

7 A. Not that I recall.

8 Q. She made no record of what was being said that you
9 saw?

10 A. Not that I can recall, no, sir.

11 Q. All right. I noticed on the search warrant itself
12 that -- the date and her signature. There was no
13 indication as to what time she actually issued the warrant,
14 the search warrant, correct?

15 A. I believe that's correct.

16 Q. Yes, sir. In fact -- in fact, I think when you were
17 asked by Mr. Scott that you were guesstimating as to the
18 time that the search warrant was issued; is that correct,
19 sir?

20 A. Yes, sir.

21 Q. All right. And, again, Judge Tucker is making no
22 notes, making no -- not making any entries in any kind of a
23 log or anything that you saw?

24 A. Not that I can recall.

25 Q. All right. Now you -- the original of that search

1 warrant, where is that, sir?

2 A. (Hanging.)

3 Q. You have the original?

4 A. Yes, sir.

5 Q. May I see that, please?

6 A. (Hanging.)

7 Q. I just -- and as a matter of procedure, the original
8 of the search warrant, is that something that y'all keep in
9 your possession or is that something that you went to Judge
10 Tucker and obtained from her?

11 A. We generate it at the sheriff's office; all of the
12 information that's listed on there as far as premises,
13 property sought, the affidavit portion. At that point we
14 then take it to a magistrate and the magistrate reviews the
15 case, we offer any testimony we have with regards to the
16 case, the magistrate asks a few questions about the case,
17 any concerns they may have, we try to fulfill that, then
18 the magistrate will either decline or issue the search
19 warrant. But once the search warrant is issued, at that
20 point it remains in our custody until it's executed. We
21 execute the search warrant, complete the return, take it
22 to the judge and then in cases where an arrest is made
23 generally provide the search warrant return and all of the
24 documents matching the defendant back.

25 Q. And you would concede that the return was actually not

1 even made to Judge Tucker, it was made to Judge Thomas L.
2 Copeland, correct?

3 A. Yes, sir. Laurens is a lot closer --

4 Q. Sir?

5 A. Laurens is a lot closer to my office than Gray Court.

6 Q. Okay. All right. So the return itself was not made
7 to the same judge that -- that you have you have testified
8 you communicated all that to?

9 A. Yes. However --

10 Q. From -- go ahead.

11 A. -- after the search warrant was given to the judge up
12 here, of course, it's then mailed back to the original
13 judge's office where the search warrant was obtained from
14 for their records.

15 Q. All right. For Judge Tucker's records?

16 A. Yes, sir.

17 Q. All right. Now -- and, again, everything -- you said
18 everything basically that you've testified to concerning
19 the controlled buy testimony and everything else was
20 presented to Judge Tucker?

21 A. Yes, sir.

22 Q. All right. And that was done at her home, just the
23 two of you present, correct?

24 A. Yes, sir.

25 Q. And you saw her make no notes, make any records

1 whatsoever while you were there?

2 A. Not that I can recall, no, sir.

3 Q. All right. Okay. And, as a matter of fact, when we
4 were going over the reasons for it, you testified that --
5 or your affidavit that you swore to said other search
6 warrants at this location in past, correct, sir?

7 A. Yes, sir.

8 Q. Okay. I didn't hear you testify to that. Is it now
9 your testimony that you told her about other search
10 warrants?

11 A. I did. I mentioned early incidents that occurred at
12 this location.

13 Q. Okay. What instances would those have been? Because
14 this is something that we've been wondering. What -- what
15 incidents and when did you give this information to Judge
16 Tucker?

17 A. Well, the incidents that this is talking about is
18 prior to my involvement in the narcotics unit; however, I
19 was able to find in the LawTrak at the sheriff's office
20 that prior a search warrant had been executed at that
21 location in regards to drug activity.

22 Q. Okay. And did you -- did you inform Judge Tucker that
23 those search warrants were not related to my -- my client?

24 A. No. No, they weren't related at all.

25 Q. But you would agree now that those search warrants --

1 search warrant or search warrants were not related to my
2 client, correct?

3 A. No, the only thing that tied the two together was the
4 incident location.

5 Q. Okay. All right. And those particular search
6 warrants, since you went into LawTraks to get them, I guess
7 you could now produce those for us to look at; is that
8 correct?

9 A. I'm sure it could pulled somewhere.

10 Q. Okay. Well, would you -- would you do that at first
11 opportunity you get, please? Can I get you to commit to
12 that?

13 A. I'll have to -- to speak with them.

14 Q. Okay. But, again, search warrants -- how many years
15 ago were those search warrants actually issued, sir?

16 A. Off the top of my head, I can't tell you.

17 Q. Well, prior to you coming into narcotics. When did
18 you come into narcotics?

19 A. November of 2014.

20 Q. So November of 2014, so it would have been before
21 November of 2014 any search warrants, correct?

22 A. Yes, sir.

23 Q. And you would agree that those search warrants were
24 not issued as a result of allegations my client was
25 involved in anything, correct, sir?

1 A. As far as I know, to be sure, I can't tell you because
2 I did not have involvement in those cases.

3 Q. And it's your testimony that you made all of that
4 clear to the judge as well and didn't mislead the judge
5 that you had maybe obtained search warrants from -- at this
6 particular location that did not involve my client and that
7 would have occurred at least before November of 2014 when
8 you started doing narcotics work; is that correct, sir?

9 A. I can tell you right now I've never had any dealings
10 with the Defendant before. Not before this incident.

11 Q. All right. So -- and so isn't it even a fair
12 statement that some of those search -- at least one of
13 those search warrants could have occurred as early as 2007?

14 A. Sir, I don't know.

15 Q. Okay. But, again, this is information that you're
16 presenting to the judge as part of the reason for the judge
17 issuing this affidavit; is that correct, sir?

18 A. I figured it would be prudent to let her know we have
19 executed a search warrant at this location in the past
20 related to narcotics offenses, yes, sir.

21 Q. And is it your testimony then that Judge Tucker didn't
22 ask you one single question about well, who were those
23 search warrants issued for?

24 A. I can tell you that I did tell her that I had only
25 ever dealt with Mr. Stewart in regards to the case that I

1 was working right now.

2 Q. Okay. So Judge Tucker then heard that, that search
3 warrants had been issued at that location before, and it's
4 your testimony you clearly told the judge that it did not
5 involve my client?

6 A. Again, I'd never had any dealings with Mr. Stewart,
7 the Defendant, before this investigation.

8 Q. That you had?

9 A. That's correct.

10 Q. That you had, but what about other individuals in law
11 enforcement?

12 A. I can't testify to those cases. I wasn't involved
13 except for having prior knowledge that they had -- a search
14 warrant had been executed there before.

15 Q. Search warrant or search warrants?

16 A. A search warrant at least.

17 Q. At least?

18 A. Yes.

19 Q. Well -- and I'm just trying to nail that down because
20 I hope you're gonna give us that, but was it a search
21 warrant or search warrants or are you sure now?

22 A. I'd have to go back through the records. I want to
23 say it was more than one, but I'm not sure.

24 Q. All right. Did you make any copy of those search --
25 that search warrant or search warrants so you could show

1 Judge Tucker, look here, judge, we've obtained search
2 warrants or a search warrant before at this location?

3 A. No, I did not.

4 Q. Now --

5 **MR. HOWE:** If I can have just one minute, please.

6 **THE COURT:** Sure. Take your time.

7 BY MR. HOWE:

8 Q. You clearly did not show Judge Tucker any video
9 evidence, correct, sir?

10 A. Yes, sir.

11 Q. All right. You clearly also did not provide any
12 documents to Judge Tucker, whether it would be copies of,
13 as you call it, the buy sheet, or any other information,
14 paperwork. You didn't do that, did you, sir?

15 A. Absolutely I had my incident report with me.

16 Q. Okay.

17 A. My whole case file at that point.

18 Q. Okay. You had your incident report?

19 A. Yes, sir.

20 Q. Okay. And you generated that earlier that day?

21 A. Yes, sir.

22 Q. Did Judge Tucker ask for a copy of your incident
23 report?

24 A. I didn't leave one with her.

25 Q. Okay. Did she ask for one was my question, please,

1 sir?

2 A. I don't -- I can't remember. I know I didn't leave
3 one with her, so I'm assuming she didn't.

4 Q. Okay. Did she ask for copies of those search
5 warrants?

6 A. No, just -- are you talking about this search warrant
7 here --

8 Q. No, sir.

9 A. -- or are you talking about the ones before?

10 Q. No, sir. The earlier search warrant or warrants that
11 you put in your affidavit?

12 A. No, sir.

13 Q. Now I believe your testimony was the entire time that
14 you met with Judge Tucker was about fifteen minutes?

15 A. Fifteen to twenty minutes.

16 Q. Fifteen to twenty?

17 A. That's an estimation.

18 Q. Max twenty minutes? Is that a fair statement, sir?

19 A. Somewhere around there, yes.

20 Q. Okay. All right. Now you testified earlier about the
21 -- the problem with the timestamp on the video equipment
22 and Mr. Scott asked you about that and you would agree that
23 the timestamp on the video equipment shows that this --
24 that the control buy, alleged controlled buy, the timestamp
25 shows that it happened on the 22nd, correct?

1 A. I believe so, yes, sir.

2 Q. All right. Which clearly the 22nd being after the
3 21st when the search warrant was issued, correct?

4 A. Yes, sir.

5 Q. Okay. And the explanation is that something's wrong
6 with the equipment, correct?

7 A. Yeah, and we have no idea how to fix it.

8 Q. Okay. All right. And y'all have never -- it's never
9 occurred to y'all to maybe get some more equipment?

10 A. The recording of the video is just fine and we also do
11 an introductory statement prior to each recording of the
12 date and time that the recording is taking place.

13 Q. So I guess then you're just gonna continue to explain
14 that the thing is off?

15 A. Keep doing introductory statements, that's correct.

16 Q. Yes, sir. All right. Now, Officer Sweat, you would
17 agree with me that you had to supplement through oral
18 testimony this affidavit because you would agree that
19 wouldn't have been enough to make any sense to anybody,
20 would it?

21 A. Absolutely. We generally try to do an oral supplement
22 with our affidavit in the search warrant as an issue of
23 protecting our confidential informant as to not give away
24 too much information that may jeopardize the informant's
25 safety.

1 Q. All right. But let's -- let's just get down to this.
2 Isn't it true that the -- the search warrant itself talks
3 about a confidential informant and speaks of a confidential
4 informant within the last seventy-two hours, so -- so that
5 argument doesn't make a lot of sense, you would agree,
6 because anybody can figure out who supposedly -- if they
7 did that, they'd dealt with in the last seventy-two hours,
8 correct?

9 A. I'd have to disagree with you there, sir.

10 Q. Okay. You'd disagree?

11 A. Yes, sir.

12 Q. All right. Now the -- the information that was
13 furnished to Judge Tucker, it would have been very easy for
14 you to come back and do a supplemental report and detail
15 what you told Judge Tucker, correct?

16 A. It would have been a lot of typing, but I could have
17 eventually done one.

18 Q. Okay. It's not that hard to do. In fact, y'all do
19 supplemental reports all the time, correct?

20 A. When they are needed, yes, sir.

21 Q. Yes, sir. In fact, there was a supplemental report,
22 I believe, that I saw in the file generated showing that
23 the distribution arrest warrant was served on my client at
24 the jail at the same time as the other warrants; is that
25 correct, sir?

1 A. Just one moment.

2 Q. Okay.

3 A. Yes, sir.

4 Q. And you would agree that that -- that distribution
5 warrant alleges that that occurred on January the 22nd, not
6 January 21st, correct, sir?

7 A. I did not obtain the warrants myself in regard to that
8 case.

9 Q. Whose fault was that then, sir?

10 A. I'm not saying it's anybody's fault, but I'm telling
11 you I did not obtain the warrant in regards to that case;
12 therefore, I cannot testify as to what occurred that you're
13 speaking of.

14 Q. Okay. And -- and did you appear before the grand
15 jury?

16 A. No, sir.

17 Q. Okay. Who appeared before the grand jury?

18 A. I do not know.

19 Q. You don't know. And have you looked at the indictment
20 to see that it's also alleged that that distribution
21 occurred on January 22nd, sir?

22 A. No, sir, I haven't looked at the indictment.

23 Q. Okay. You did not appear before the grand jury?

24 A. Again, no, sir.

25 Q. Okay. But you've looked at the warrant now and you

1 would agree with me that the warrant alleges that the
2 distribution took place on the 22nd?

3 A. I was looking at the supplemental, not the warrant.

4 Q. I'm talking about the arrest warrant for distribution.
5 So you understand what I'm talking about, I'm talking about
6 the arrest warrant for the distribution of heroin, which
7 was the controlled buy we've been talking about.

8 A. Yes. It says 1-22-2015.

9 Q. All right. And you would agree with me that's what
10 the timestamp showed on the distribution as well, wouldn't
11 you, sir?

12 A. Time -- can you be a little more specific on that?

13 Q. On the video. I didn't make myself -- the timestamp
14 that Mr. Scott was talking about on the video is
15 January 22nd?

16 A. Yes, sir.

17 Q. All right. And if I showed you the indictment, you
18 would agree that the indictment shows the 22nd?

19 A. If it says the 22nd. I haven't seen the indictment.

20 Q. Okay.

21 **MR. HOWE:** Do you have it, Margaret? Would you hand
22 it to me, please? I've got it. I just can't find it.

23 **MS. BOYKIN:** (Handing.)

24 **BY MR. HOWE:**

25 Q. I'm showing you -- this is the original indictment

1 that the Solicitor's office keeps. What is the allegation
2 on the date that the distribution took place, sir?

3 A. It says on or about January 22, 2015.

4 Q. Okay. 22nd.

5 A. On or about.

6 Q. On or about, yes, sir. On or about. And that
7 language -- have you ever seen that type language in an
8 indictment before, sir, on or about?

9 A. I haven't really looked over any indictments.

10 Q. Okay. I'll leave that alone.

11 **MR. HOWE:** I don't have any further questions at this
12 time.

13 **THE COURT:** Solicitor, any redirect?

14 **MR. SCOTT:** Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q. Have you ever requested recordings from, I don't know,
18 a presentation you've given to a magistrate before in
19 seeking a search warrant?

20 A. No, sir.

21 Q. And Mr. Howe, he covered this, but I just want to be
22 sure. Did you make it clear to Judge Tucker that those
23 prior search warrants had nothing to do with Terrance
24 Stewart?

25 A. Yes, sir. It just had to do with the incident

1 location.

2 Q. Why did you reference that though? You just -- you
3 thought it was pertinent to that specific incident
4 location?

5 A. Yes, sir. That there was a history of drug activity
6 at that incident location in the past.

7 Q. Okay. But you made it clear to Tucker that had
8 nothing to do with the Defendant?

9 A. Yes, sir. My only dealings with the Defendant was
10 this case. I hadn't heard of him prior to this case.

11 Q. Now the buy video, we talked about the time, the
12 discrepancy of the time. Did you clearly state to Tucker
13 that you were present during the undercover buy?

14 A. Yes, sir.

15 Q. And did you clearly state to her the time of day and
16 the date that that occurred?

17 A. Yes, sir.

18 Q. And tell me -- you know, the introductory statement
19 you mentioned in the video, what's that all about?

20 A. The introductory statement is gonna consist of the
21 investigators involved in the case, the time -- or
22 approximate time, the date, whatnot, suspect and any
23 aliases, as well as any other type of controlled substance
24 we're gonna try to get as evidence, a general description.

25 Q. Okay. And there were a lot of questions asked about

1 your oral testimony. Is that something you generally do is
2 provide an oral testimony in addition to the affidavit?

3 A. Yes.

4 Q. Okay. And you say that you didn't -- you didn't get
5 the arrest on the distribution, but Mr. Howe did ask you to
6 a take a look at it and I don't think there's any question
7 it says on or about January 22nd that that distribution
8 occurred, but what's your sworn testimony to this judge
9 when that distribution occurred? What was the date that
10 that occurred on?

11 A. The 21st of January, 2015.

12 Q. All right. Have you had a chance to watch that video
13 recently?

14 A. Yes, sir.

15 Q. Does it happen in the daytime or the nighttime?

16 A. It happens in the afternoon, towards the evening.

17 Q. Okay. So you see daylight?

18 A. Yes, you can clearly see daylight.

19 Q. And then you said the search warrant was executed the
20 next morning, January 22nd?

21 A. Yes, sir.

22 Q. Do you remember if it was dark or daylight when that
23 occurred?

24 A. It was at the crack of dawn. I think there was very
25 little daylight. You could see, but the sun wasn't clearly

1 out yet.

2 MR. SCOTT: Okay. I think that's all I have.

3 THE COURT: Recross examination?

4 MR. HOWE: Just briefly, Judge.

5 THE COURT: Sure.

6 RECROSS EXAMINATION

7 BY MR. HOWE:

8 Q. Officer, if I can get that search -- or arrest warrant
9 from you.

10 A. Yes, sir.

11 Q. Okay. The arrest warrant was actually signed and
12 sworn to by Mr. Veal, who's the chief investigator on this
13 case, correct, sir?

14 A. Yes, sir.

15 Q. All right. And you would have discussed in full with
16 him all of the information necessary to obtain that arrest
17 warrant, wouldn't you, sir?

18 A. Yes, sir.

19 Q. All right. Now -- and you indicated that -- that the
20 information that you presented to Judge Tucker that you say
21 was done in full, including the information concerning the
22 other search warrant or warrants, was all done at her home
23 and in a span of about -- no great than twenty minutes,
24 correct?

25 A. Yes, sir.

1 Q. And -- is that correct, sir?

2 A. Yes, sir.

3 Q. And I heard Mr. Scott -- and you actually testified
4 that y'all were doing this in haste, that this was urgent
5 to get this done because of the testimony, which I objected
6 to, about the -- the overdoses, correct?

7 A. Yes, sir.

8 Q. But yet you waited until the next morning to actually
9 carry out the search warrant; is that correct, sir?

10 A. Yes, sir.

11 Q. All right. Now -- and I believe you -- you're then,
12 of course, saying that you told Judge Tucker that you
13 didn't actually witness the controlled buy, correct, sir?

14 A. I was present for it, but I did not see with my own
15 two eyes the exchange between both parties. That was --
16 that was all included in the video.

17 Q. But Judge Tucker didn't see the video, correct, sir?

18 A. No, she didn't.

19 Q. I'm talking about what you informed Judge Tucker.

20 A. Yes, sir.

21 Q. So you're telling Judge Tucker -- you told Judge
22 Tucker you didn't actually see it?

23 A. Yes, sir. I told Judge Tucker that I was waiting in
24 the -- I was with the confidential informant in the
25 vehicle, got to the scene, the Defendant wasn't there.

1 Went back to check if the Defendant was there or not. He
2 showed up in a white Buick, he exited, they spoke. They
3 went briefly out of view behind the trailer and then the CI
4 returned with the five baggies I've previously described,
5 as well as the whole procedure for the controlled buy I
6 testified to early.

7 Q. And so your testimony is you swore to all of that
8 under oath to Judge Tucker?

9 A. Yes, sir.

10 Q. And all that took place in twenty minutes?

11 A. Yes, sir.

12 Q. All right. And you indicated Judge Tucker asked you
13 questions?

14 A. Yes, sir.

15 Q. And what specifically were her questions?

16 A. I can't remember. That was back in January.

17 Q. Okay. And is that -- and also what you've testified
18 in detail that you told her was back in January, too. Is
19 that a fair statement?

20 A. Oh, absolutely, yeah.

21 Q. All right. Did you tell Judge Tucker about the other
22 female individual who was in the vehicle with you?

23 A. Yes, sir.

24 Q. Okay. Did you give her a name?

25 A. No, sir.

1 Q. Was that other individual actually present and would
2 have had the same information you saw?

3 A. You're speaking of --

4 Q. Of what happened there at the house.

5 A. Just to be clear, you're speaking of the --

6 Q. The female.

7 A. Yeah, she would have -- she saw everything that
8 happened during this as I did.

9 Q. So she would be a witness as well?

10 A. Yes, sir.

11 Q. Okay. And she was actually a girlfriend of your
12 CI --

13 A. Yes, sir. Or they were in some type of relationship.

14 Q. -- and would have a lot of knowledge. And her name
15 is what?

16 A. I can't recall off the top of my head.

17 Q. You can't recall?

18 A. I recall his, but I can't recall hers.

19 Q. All right.

20 A. All she did was ride with us to more or less make
21 everything look normal.

22 Q. I saw the video of the preparation for the buy. Have
23 you seen that, the entire preparation for the buy --

24 A. Yes, sir.

25 Q. -- because you said it took -- isn't it correct that

1 y'all were actually trying to hook her up with video
2 equipment as well and she was complaining about it hurting
3 and saying -- saying damn, it hurts and all that kind of
4 stuff?

5 A. I can't recall. All I know is we hooked him up with
6 it and he was gonna be the one to make the transaction.

7 Q. Who did the actual hooking up of the people in the
8 video?

9 A. I provided the camera to the suspect -- or, excuse
10 me, to the confidential informant. I'm trying to recall
11 who -- I believe Sergeant Veal took care of that as far as
12 the audio goes.

13 Q. All right. Maybe I'm just dreaming, but do you --
14 you don't recall her saying that, talking about something
15 was hurting when --

16 A. I don't recall ever trying to put anything on her.

17 Q. Okay.

18 **MR. HOWE:** All right. That's all the questions I
19 have. Thank you.

20 **THE COURT:** Deputy Sweat, let me -- let me ask you a
21 couple of questions.

22 **THE WITNESS:** Yes, sir.

23 **EXAMINATION**

24 **BY THE COURT:**

25 Q. The State has represented to the Court that through

1 discovery they have provided to the defense your incident
2 report, the video that you've just testified to, the
3 information related to the confidential informant, okay?

4 A. Yes, sir.

5 Q. That's what they've represented to the Court. Other
6 than this issue of other search warrants, did you tell
7 Judge Tucker leading up to obtaining the search warrant
8 anything that's not contained within the incident report,
9 the video or the confidential informant information? Other
10 than this issue of other search warrants I'm gonna ask you
11 about in just a minute.

12 A. And you're speaking of the actual -- documented on
13 paper?

14 Q. Well, if you -- if you read your incident report --

15 A. Yes, sir.

16 Q. -- watch the video --

17 A. Yes, sir.

18 Q. -- and read whatever this -- this confidential
19 informant information, whatever that appears on, if you
20 read those or see those three things, other than this issue
21 of other search warrants, in reading that would someone
22 know exactly what you told Judge Tucker in your oral
23 testimony leading up to the issuance of the search warrant?
24 Do you understand the question? Maybe I'm not --

25 A. Uh-huh. I believe I did, yeah. I think you're trying

1 to -- more or less everything that I testified to is on
2 camera or it's on paper somewhere?

3 Q. Right.

4 A. Yes, sir. Like I said, I gave her oral testimony and
5 whatnot, some of that is not documented on paper, nor is it
6 captured on the video.

7 Q. Okay. So she received information that does not
8 appear on one of these three items; incident report, the
9 video and the confidential informant information?

10 A. Let me just have one moment to get the right answer.

11 Q. Sure. Take all the time you need.

12 A. Yes, sir. In the video, you can clearly see me in
13 the vehicle with the confidential informant. That is not
14 described in the incident report, but it is in the video.

15 Q. Right. Maybe you don't understand my question. Let
16 me try to repeat the question. The defense is arguing that
17 possibly Judge Tucker received some information from you,
18 okay, that has not been provided in discovery. Now I have
19 not made that determination yet whether or not they would
20 even be entitled to that, okay, but that's what the
21 defense's argument is; is that in discovery you may have
22 provided some information to Judge Tucker that they've
23 never seen, they've never heard about. They have been
24 provide the incident report, they have been provided the
25 video and they have been provided the information related

1 to the confidential informant. What I need to know is did
2 Judge Tucker receive any information from you that is not
3 disclosed in one of those three things?

4 A. No, sir.

5 Q. Okay. All right. Now this issue about other search
6 warrants, if I understand your testimony correctly, you
7 indicated to Judge Tucker that it only involved the
8 location that y'all were interested in and not related to
9 the Defendant; is that correct?

10 A. Yes. Yes.

11 Q. Okay. Now whether or not these search warrants are
12 helpful or not helpful, how easy or how hard would it be
13 to go to the system that you went in on and actually print
14 those out?

15 A. I'd have to -- I'd have to go in under a particular
16 ID on the system and try to input the address under that
17 ID. If the incident is protected under a certain ID, I
18 wouldn't have access to it. Generally a narcotics ID has
19 access to things related to the incidents, let's say, if
20 the individual officer didn't protect it on the computer.
21 However, if I was able to get to it, I could possibly
22 cross-reference the incident location to the execution of
23 a search warrant to the search warrant portion of the
24 system; however, the system does not require that you put
25 in a case number for issuing or printing of a search

1 warrant. Therefore, if it was not there, then I'd have to
2 go to a date range in the search warrant system and search
3 through each individual search warrant to locate the exact
4 one.

5 Q. All right. So when you were doing your work related
6 to determining whether or not there had been other search
7 warrants related to this address, you only saw the
8 existence of a search warrant and not necessarily the
9 contents of the search warrant; is that correct?

10 A. Yes, sir. I did an incident report code execution
11 of a search warrant, plus any other things that we found.
12 Say if we went to Main Street and executed a search warrant
13 over there and after we executed the search warrant we
14 found cocaine and the drugs and things related to that
15 as well as any other offenses that pertained to that
16 particular case.

17 Q. All right. But you don't have the opportunity through
18 this system to actually read the contents of the search
19 warrant?

20 A. Yes, sir, I do, but I'd have to look at the search
21 warrant and most of the time the case numbers aren't
22 attached to the search warrant, particularly anything prior
23 to about 2012, 2013, at least in my experience.

24 Q. All right. So if you had wanted to or felt the need
25 for it in the course of your investigation, when you did

1 all that work, you could have printed out the search
2 warrant --

3 A. The old one, yes, sir, I could have probably --

4 Q. -- or these other search warrants that are mentioned
5 in your search warrant that's at issue here?

6 A. Yes, sir. I could have, over time, eventually found
7 the search warrant in there probably as long as it wasn't
8 protected underneath a particular officer's ID number.

9 **THE COURT:** All right. Solicitor, any follow-up
10 questions related to the Court's questions of Officer
11 Sweat?

12 **FURTHER REDIRECT EXAMINATION**

13 **BY MR. SCOTT:**

14 Q. Well, I guess -- I think we're all trying to figure it
15 out, but why was it relevant to mention the prior search
16 warrants of the house?

17 A. It was important to know. That shows the history.

18 Q. Just a location with a history of drug issues?

19 A. A history, yes, sir.

20 Q. I just want to make it clear that Tucker, you
21 indicated that Mr. Stewart had nothing to do with the prior
22 search warrants?

23 A. Yes, sir.

24 **MR. SCOTT:** That's all I've got on that.

25 **THE COURT:** Mr. Howe, anything in follow-up as relates

1 to the Court's questions?

2 FURTHER RECROSS EXAMINATION

3 BY MR. HOWE:

4 Q. Obviously you had to do some work and you were trying
5 to get a search warrant because this was an urgent
6 situation, but you had to do some -- some work to find
7 information on those other search warrants; isn't that
8 correct, sir?

9 A. Yes, sir.

10 Q. All right. So you did that at that time and you
11 thought it was important enough to tell the judge and
12 include it in your affidavit, correct, sir?

13 A. Yes.

14 Q. All right. And in doing that -- you did it that night
15 because you were in a time crunch and you were trying to
16 get this done so you could get that search warrant executed
17 because of the reasons that you talked about, the haste
18 that was involved in this particular case; is that correct,
19 sir?

20 A. Could you say that one more time?

21 Q. Okay. You were in a hurry to get the search warrant?

22 A. Oh, yes, sir. We were trying to get it squared away
23 and --

24 Q. And I believe --

25 A. Yes, sir.

1 Q. And I apologize for interrupting. You were in a
2 hurry to get it squared away and I believe the --
3 Solicitor Scott called it haste. Y'all were in a hurry
4 to get it, correct?

5 A. Yes, sir.

6 Q. Okay. So you -- part of what you were doing was
7 finding information on other search warrants? You went to
8 do that.

9 A. Yes.

10 Q. Okay. And, again, I'm still a little confused about
11 what you'd have to do, but we're talking about what you
12 told Judge Tucker. But isn't it a fair statement you
13 didn't tell Judge Tucker that this man didn't have anything
14 to do with those search warrants, did you?

15 A. Yes, sir, I did.

16 Q. You told her that very clearly?

17 A. I told her that this was the first dealing I'd ever
18 had with this individual before. I patrolled Gray Court
19 as my zone of patrol prior to doing narcotics work and
20 I'd never heard about this guy and I mentioned that to
21 her.

22 Q. All right. And you had -- and it's also a fair
23 statement that those -- this other search warrant or
24 search warrants you hadn't been involved in those,
25 correct?

1 A. Yes, sir.

2 Q. Is that -- is that true?

3 A. Yes. Yes, sir.

4 Q. Okay. So it's kind of misleading to the judge,
5 you would have to agree, isn't it, what you told Judge
6 Tucker?

7 A. No, sir, not at all.

8 Q. And the final sentence says that all this information
9 was obtained within the last seventy-two hours. That's
10 what the last sentence of this affidavit reads, correct?

11 A. Yes, sir. This investigation didn't begin until the
12 20th of January.

13 Q. Right. Okay. And so in writing that sentence, one
14 could read that and say so the search warrants had been
15 obtained in the last seventy-two hours, correct, sir?

16 A. No, not at all. The information.

17 Q. The information. All right. And -- and the
18 information that you got was off of LawTraks having to do
19 with something, you would agree, that could have occurred
20 years ago?

21 A. Yes, sir.

22 **MR. HOWE:** That's all the questions I have, Judge.

23 **THE COURT:** Anything in follow-up?

24 **MR. SCOTT:** Judge, I hate to keep --

25 **THE COURT:** That's all right.

1 CONTINUED REDIRECT EXAMINATION

2 BY MR. SCOTT:

3 Q. And do you know was that information regarding
4 the past search warrants relayed to you by another
5 officer?

6 A. I believe it was, but -- I believe it was, but I
7 did punch in that address and did see an executed search
8 warrant for that address prior to it.

9 Q. But that's what I'm trying to figure out. Is that
10 how maybe it came to your attention, that some other
11 officer said oh, yeah, that , we've served
12 search warrants there in the past? Is that possible?

13 A. Yes, sir.

14 Q. All right. Is that how recall it?

15 A. I can't --

16 Q. What I'm trying to figure out -- I think what
17 Mr. Howe was getting at is how would you have knowledge
18 of it if it happened before you were in narcotics and
19 you weren't involved in the case? Or did you just --

20 A. I'm trying to recall if I -- while we were trying to
21 get everything set up if I punched the address in the
22 computer and figured I'd ask about it or somebody told me
23 about it and I punched it in and saw it that way.

24 MR. SCOTT: Thank you, Judge. I can't think of
25 anything else.

1 **THE COURT:** One last question, Officer Sweat.

2 **THE WITNESS:** Yes, sir.

3 CONTINUED EXAMINATION

4 BY THE COURT:

5 Q. The confidential informant -- did you consider the
6 confidential informant to be reliable with respect to the
7 information that he was providing to you?

8 A. The information at that time, yeah, I had to make sure
9 he proved that, which we did with the controlled buy.

10 Q. All right. Okay. Because the initial information you
11 got concerning the confidential informant actually came
12 from Fountain Inn Police Department and not directly from
13 the CI?

14 A. Yes, sir.

15 Q. Okay. So the Fountain Inn Police Department had prior
16 dealings with -- with the CI?

17 A. I believe so with regards to that overdose I
18 mentioned.

19 **THE COURT:** Okay. All right. Thank you for your
20 testimony, Officer. You can step down, sir.

21 **THE WITNESS:** Thank you.

22 (Witness excused.)

23 **THE COURT:** Solicitor, any other witnesses for
24 purposes of this suppression hearing?

25 **MR. SCOTT:** Well, Judge, since the -- I'm just gonna

1 call the officer who did the return, who signed off on it.
2 It will be really quick. That may be one loose end we can
3 tie up.

4 **THE COURT:** That's fine.

5 **MR. SCOTT:** Judge, Deputy Brian Bridges.

6 BRIAN BRIDGES,

7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SCOTT:

10 Q. Deputy Bridges, you're also with the Laurens Sheriff's
11 Department?

12 A. Yes, sir.

13 Q. All right. And this specific case, you know why
14 you're here, the Terrance Stewart case?

15 A. Yes, sir.

16 Q. Were you involved with the search warrant at 35 Hue
17 Court?

18 A. I was.

19 Q. And what was your involvement in that search?

20 A. Basically I executed the search warrant and also did
21 the return on the inventory list for the search warrant.

22 Q. All right. Let me show you the last page of State's
23 Number 1. Do you recognize that?

24 A. Yes, sir.

25 Q. And that's the return you would have filled out?

1 A. Yes, sir.

2 Q. What is the date that you presented that return?

3 A. On the 22nd of January.

4 Q. What year?

5 A. 2015.

6 Q. All right. And what time did you indicate that the
7 search was done?

8 A. The search began about 7:30 AM that morning.

9 Q. Okay. And then -- let's see. What do you list as
10 items that were seized?

11 A. Each and every one of them?

12 Q. Yeah.

13 A. One plastic bag with off-white power substance, one
14 Sig Sauer that had the serial number, a .357 Magnum, a
15 set of digital scales, cell phones, pills, green leafy
16 substance, two boxes of .357 magnum bullets, one Crown
17 Royal bag with marijuana residue, one black in color Sony
18 camera, assorted PVC pipes that looked to be used to store
19 marijuana, also some metal pipes with the same description,
20 a bandolier with assorted shotgun shells, another box of
21 .357 bullets, a magazine clip with 45 cal bullets, \$3,928
22 in cash, there's a 1987 Corvette, a 2011 Suzuki motorcycle,
23 and a 2006 Ducati motorcycle.

24 Q. All right. And that return, who did you present that
25 to?

1 A. Judge Tommy Copeland.

2 Q. All right. And what date?

3 A. January 22, 2015.

4 Q. What time?

5 A. 1:37 PM.

6 Q. All right. So the search was executed beginning at
7 7:30 AM and you had it returned to the judge by 1:37 PM?

8 A. Yes, sir.

9 Q. All right. And did you sign off as the executing
10 officer?

11 A. I did.

12 Q. All right. Now -- well, let's see. If the affiant
13 was Steven Sweat, do you know why he didn't sign off on the
14 return?

15 A. Generally what we do is another officer who is not the
16 affiant on the original search warrant executes the warrant
17 for them.

18 Q. Okay. If there was a Magistrate Tucker who signed the
19 search warrant, why is it that you presented the return to
20 Thomas Copeland?

21 A. I believe with a search warrant most of the time it
22 can be issued to any Laurens County magistrate, not
23 necessarily a specific. I think they may in turn get the
24 specific warrant back to the appropriate judge.

25 Q. Okay. But Magistrate Copeland is -- where is his

1 office?

2 A. Here in the courthouse.

3 Q. And where is Tucker's?

4 A. Gray Court.

5 **MR. SCOTT:** All right. And I think that's it. Answer
6 any questions Mr. Howe has.

7 **THE COURT:** Mr. Howe.

8 **MR. HOWE:** Thank you.

9 CROSS-EXAMINATION

10 BY MR. HOWE:

11 Q. Officer Bridges, first of all, you testified that you
12 actually were present when the search warrant was carried
13 out, correct?

14 A. Yes, sir.

15 Q. Okay. And you indicated that the inventory was made
16 in the presence of Veal and Sweat and others, correct?

17 A. Right.

18 Q. So the inventory -- and the inventory was made at what
19 location?

20 A. Initially at the residence and then when I completed
21 it, we were back at our office. When we were conducting a
22 more thorough count, like 55 pills or something like that,
23 that was done back at the office.

24 Q. You indicated that others were also present when the
25 inventory was made. Who were the others?

1 A. The other officers at the residence itself would have
2 been various -- several other officers.

3 Q. Okay. You don't know who?

4 A. No.

5 Q. You can't recall who?

6 A. (Shakes head.)

7 Q. Officer, the physical possession of the search
8 warrant, and I'm talking about the entire search warrant,
9 would have included the return; is that correct? The
10 actual search warrant we're talking about, and I think
11 it's been introduced, take a minute and look at it and see
12 if you recognize that. I think it's marked as State's
13 Exhibit 1.

14 A. Yes, sir. What was the question again?

15 Q. Okay. That -- let's take it slowly. Is that the
16 original of the search warrant?

17 A. Yes, sir. Yes, sir.

18 Q. Okay. And the original of the return that you signed,
19 correct?

20 A. Yes, sir.

21 Q. Okay. So when you went to present to Judge Copeland,
22 you had in your possession the original search warrant,
23 correct?

24 A. Yes, sir.

25 Q. Okay. Now coming to -- the address,

1 who had the -- who had the original of the search warrant?

2 A. I believe I did.

3 Q. Okay. All right. And you believe you did or you're
4 pretty sure?

5 A. It would -- I think it would have either been me or
6 Matthew Veal or Sweat.

7 Q. Well, if it were Sweat, he would have had the original
8 of the search warrant?

9 A. One of us did, yeah. I just can't remember which,
10 Veal, or who it would have been.

11 Q. Okay. And you would agree that there is a duty to
12 present a copy of that search warrant to the occupant or
13 occupants of the house that you're searching, correct?

14 A. Yes, sir, if -- if that is available, yes, sir.

15 Q. All right. And, again, y'all had the original of the
16 search warrant. In fact, you took it to Judge Copeland
17 later on that day.

18 A. Yes, sir.

19 Q. All right. And do you have any record whatsoever
20 to show when that search warrant was presented to the
21 occupants of the house when you come knocking on the door
22 and saying I've got a search warrant?

23 A. When -- well, we were there, we showed it to them at
24 that time. After it was signed off -- the return was
25 signed off to the judge, I believe I gave it to Matthew

1 Veal, he was getting the arrest warrants to -- that way
2 could give him the arrest warrants as well as a copy of the
3 search warrant at the same time.

4 Q. Okay. Who did you show this search warrant to at the
5 home?

6 A. His wife, for one, and it was explained to her when
7 we went there, and to him, explained to him. He stayed in
8 the car most of the time, but both of them there at the
9 residence.

10 Q. Okay. Stayed in the car?

11 A. After -- after we were in there and he was arrested,
12 he was placed in the -- a police vehicle.

13 Q. All right. Okay. So you would agree that nobody gave
14 either one of these parties a copy of the search warrant at
15 the home?

16 A. Yes, sir, I would agree with that.

17 Q. Okay. And you would agree that from that point --
18 from the time y'all were there, he was in custody. In
19 fact, he was in the police car, correct?

20 A. For most of the time that we were there.

21 Q. Okay. So if later on this search warrant was
22 presented to him and he was provided with a copy of it, it
23 should have been in his property, correct, at the jail?

24 A. They would have given it to him or placed in property.

25 Q. All right. And the same thing for Ms. Coleman, who

1 was actually, I think, charged and arrested in this case as
2 well, correct, sir?

3 A. I don't know if she was, but this specifically lists
4 Mr. Stewart.

5 Q. All right. You specifically listed --

6 A. I believe it's Terrance Stewart's name as leaving a
7 copy with.

8 Q. Okay. And if you can show me on the search warrant
9 where that was done.

10 A. (Indicating.)

11 Q. I left a copy with Terrance Stewart?

12 A. Yes, sir.

13 Q. Okay. And you completed that?

14 A. Yes, sir.

15 Q. So that means you would have given a copy to Terrance
16 Stewart, not Mr. Veal?

17 A. I gave Matthew Veal a copy of it, too, to give to
18 Mr. Stewart while he was going to the jail with the arrest
19 warrants.

20 Q. It says I left a copy --

21 A. That's what it says, yes, sir.

22 Q. Okay. And that's an oath you give to the magistrate
23 when you make a return, that I gave a copy. You didn't say
24 Veal did, you said I did, correct?

25 A. I, that's correct.

1 Q. Okay. Now it is important to provide a copy of the
2 search warrant, isn't it --

3 A. Yes, sir.

4 Q. -- to the persons?

5 A. Well, I'm sure he's received one since this date.

6 Q. Okay. And also you would agree -- and so -- wait a
7 minute. So it's your -- you're telling me the sheriff's
8 practice is that you go get a search warrant from
9 Magistrate A and then you make a return to Magistrate B?

10 A. We've always been advised we could put -- right where
11 it says the return should be given to any Laurens County
12 magistrate.

13 Q. Who advised you of that?

14 A. The judges from seventeen years ago.

15 Q. Seventeen years ago. Okay. All right..

16 A. There's never been an issue with it so far, so.

17 Q. So far?

18 **MR. HOWE:** Okay. All right. That's all the questions
19 I have, I believe, Your Honor.

20 **THE COURT:** All right. Solicitor, anything in
21 redirect?

22 **REDIRECT EXAMINATION**

23 **BY MR. SCOTT:**

24 Q. Are you aware of any requirement that you have to give
25 a defendant a copy of the search warrant before you begin

1 the search?

2 A. No, sir. I wouldn't think the inventory would be
3 completed by then.

4 Q. Okay.

5 A. And -- and if there was nobody home, you wouldn't be
6 able to supply a person if somebody was not at home to
7 start with.

8 Q. What would you do, leave it at the house?

9 A. Leave it at the residence.

10 Q. Can you testify whether y'all did that or not?

11 A. We did not leave one at the residence.

12 Q. But all that was provided to the solicitor's office;
13 is that correct?

14 A. Yes, sir.

15 MR. SCOTT: All right. Thank you. That's all I
16 have.

17 THE COURT: Thank you, Officer, for your testimony.

18 MR. HOWE: May I have one minute, Judge?

19 THE COURT: You may have some recross? Yeah, keep
20 your seat.

21 RECROSS EXAMINATION

22 BY MR. HOWE:

23 Q. One question about -- Judge Copeland, I think,
24 actually on the return, on the search warrant, dated the
25 specific time the return was made to you, I think you

1 testified to that, 1:37 PM; is that correct?

2 A. Yes, sir, 1:37.

3 Q. You actually wrote that on there and made a note of
4 it?

5 A. Yes, sir.

6 Q. You would agree with that?

7 A. Yes, sir.

8 **MR. HOWE:** Okay. That's all I have.

9 **THE COURT:** Now you can step down, sir. Thank you.

10 (Witness excused.)

11 **THE COURT:** Does the State have any further witnesses
12 related to the suppression hearing?

13 **MR. SCOTT:** No, Your Honor.

14 **THE COURT:** Does the defense intend to call any
15 witnesses related to the suppression hearing?

16 **MR. HOWE:** We do, Judge, but I'm --

17 **THE COURT:** If you are, I'm gonna take a break.

18 **MR. HOWE:** Yes, sir. Take a break so we can find out
19 where we are on the particular issue. Thank you.

20 **THE COURT:** Okay. We'll be in recess for about ten
21 minutes.

22 (Recess taken.)

23 **BAILIFF:** Let's keep your seats and come back to
24 order, please.

25 **THE COURT:** Y'all have a seat. Thank you.

1 **THE COURT:** Okay. We're back on the record. And,
2 Mr. Howe, I understand that you're gonna call one witness,
3 if not more?

4 **MR. HOWE:** Yes, sir. At least one, Judge, yes, sir.

5 **THE COURT:** All right. Very good.

6 **MR. HOWE:** We call Magistrate Glynda Tucker.

7 **MR. SCOTT:** Judge, at the appropriate time can we get
8 a witness list from the defense?

9 **THE COURT:** Okay. You need it prior to this witness
10 testifying?

11 **MR. SCOTT:** No, sir, not this particular one, but I
12 don't know who else they intend to call. We haven't been
13 provided one yet.

14 **MR. HOWE:** I'll be glad to get that. Typically we get
15 that ready when we're going through examining -- qualifying
16 the jury.

17 **THE COURT:** Right. Maybe if you could get that to
18 them.

19 **MR. HOWE:** Sure. I'll be glad to.

20 **THE COURT:** Go ahead, Madam Clerk.

21 GLYNDA TUCKER,
22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. HOWE:

25 Q. Good afternoon, Judge Tucker. I'm Chip Howe of the

1 public defender's office. How are you?

2 A. Fine. Thank you.

3 Q. Good. First of all, I appreciate you coming on short
4 notice. We didn't realize we were gonna get to you today.
5 The subpoena was for tomorrow at nine that we sent out, but
6 you came because I think you've got a jury trial tomorrow;
7 is that right?

8 A. You're right.

9 Q. Okay. And we didn't want to have you tied up. Thank
10 you so much. Judge, how long have you been a magistrate?

11 A. Thirty-eight years.

12 Q. Thirty-eight years. Okay. And I would imagine that
13 you have issued a lot of search warrants; is that correct?

14 A. Some.

15 Q. Some. Help me with -- is some a lot or is some a
16 little?

17 A. I've issued my share.

18 Q. Okay. Thanks. And I'm gonna show you what's been
19 introduced and marked as State's Exhibit Number 1. Take a
20 minute, if you can, and look at that and -- and tell me if
21 you can identify that as one that you issued.

22 A. It's got my signature on it.

23 Q. And the date of that is what?

24 A. January 21st if I'm seeing it correctly.

25 Q. Okay. All right. Of 2015?

1 A. Yes, sir.

2 Q. Okay. Thank you, Judge. And you can hang on to that.
3 And I believe that the search warrant -- can you tell from
4 the signature who applied for the search warrant?

5 A. From the signature, no, sir.

6 Q. You can't tell from the signature? All right. Well,
7 let me ask you this. As a judge who's issued search
8 warrants before, you, of course, are familiar with the
9 procedures to issue a search warrant, correct?

10 A. Yes, sir.

11 Q. Yeah. Okay. And you actually are placed -- you place
12 someone under oath; is that correct?

13 A. Yes, sir.

14 Q. And ask them to tell the truth, correct?

15 A. Yes, sir.

16 Q. All right. Did you do anything -- in this particular
17 case, do you have anything -- and I realize you came on
18 short notice, and if we have to recess to do that, but do
19 you have any records whatsoever on this?

20 A. I don't have anything. This is apparently the
21 original since it's in blue, which was never returned to
22 me.

23 Q. Okay. Right. I noticed, in fact, it was returned to
24 another magistrate, correct?

25 A. Yes, sir.

1 Q. Okay. But are you familiar with what you're required
2 to keep in the way of records after you issue a search
3 warrant?

4 A. We keep the -- the name and the reason we issued it.

5 Q. Okay. All right. And do you have those records
6 available?

7 A. I don't have anything with me, no, sir.

8 Q. Okay. Would you have it at home or at your office?

9 A. I've searched my office and I cannot find anything.

10 Q. Find anything?

11 A. No, sir.

12 Q. Okay. Would you agree with me that -- that the law
13 requires you to keep that?

14 A. Yes, sir.

15 Q. Okay. Do you have any independent recollection of --
16 of who sought the search warrant and what was -- what you
17 were told orally to issue the search warrant?

18 A. No, sir. To be honest, no, sir.

19 Q. None whatsoever. Okay. And do you -- would you agree
20 -- and I'm gonna show you the law that I'm sure you're
21 familiar with concerning the -- what your obligations are.
22 And I'm not trying to pick on you. I'm just showing you so
23 we can see what kind of records are available. Can I show
24 you -- and it's small print because that's the way it comes
25 out, but if you have any trouble reading -- could you take

1 a look at Section 17-13-141 of the South Carolina Code of
2 Laws?

3 A. I cannot see that. I do not have my glasses.

4 Q. Okay. I think I've got -- or actually now that I
5 think about it, I think the one that I have is actually a
6 little bigger print. Can you read it at all or do you want
7 me to read it to you?

8 A. Just read it to me.

9 Q. All right.

10 **MR. HOWE:** Judge, with the Court's permission, I'm
11 gonna read it to her because she does not have her glasses.

12 **THE COURT:** Sure.

13 BY MR. HOWE:

14 Q. All right. Section 17-13-141 says records to be
15 kept by judiciary officers authorized to issue search
16 warrants, semicolon, penalty, and it -- and it says that
17 every judicial -- judiciary official authorized to issue
18 search warrants in this state shall keep a record along
19 with a copy of the returned search warrant and supporting
20 affidavit and documents for a period of three years
21 from the date of the issuance of each warrant. Do you
22 understand what I'm saying?

23 A. Yes, sir.

24 Q. Okay. The records shall be on a form prescribed by
25 the Attorney General and reflect as to each warrant,

1 colon, one, the date and exact time of issuance.

2 On that search warrant itself, and I've seen that
3 sometimes on there, do you indicate the date and time that
4 it was issued, Judge Tucker?

5 A. The date, yes, sir, is always on there.

6 Q. Okay. The date. What about the time?

7 A. No, sir. It's always on the return, I believe.

8 Q. Okay. Well, that's the time that the return's made;
9 is it not? Am I confusing?

10 A. No. I understand what you say.

11 Q. All right. So the date -- so there's nothing you
12 have. And would there be any records, Judge Tucker, to
13 indicate the time that you issued the search warrant?

14 A. Well, my guess, and I would have to guess, is this
15 one was probably in the middle of the night from what I
16 recall.

17 Q. Okay. You would guess the middle of the night. Would
18 that make a difference as to whether or not you'd keep
19 records?

20 A. No, sir, it shouldn't make any difference, but it
21 certainly would go a long way in why I didn't log in
22 everything.

23 Q. Okay. All right. You actually do, as I understand
24 it, from -- from magistrate's practice, you actually keep
25 logs; is that right?

1 A. Of what we --

2 Q. And log it in on what you've done; is that correct?

3 A. What we -- we have a piece of paper that we use.

4 Q. All right. And in this particular case, you said you
5 searched and you cannot locate any log whatsoever?

6 A. No.

7 Q. So -- and then the second thing you're required to do
8 is name the person to whom warrant's issued, okay? That
9 would be reflected in a log, correct?

10 A. I'm sure it would.

11 Q. Okay. Name of person whose property is to be searched
12 or, if unknown, description of person and address of
13 property to be searched. That would be kept in the log,
14 correct?

15 A. Yes, sir.

16 Q. Okay. And I want you to listen to this number four
17 real closely now for me, if you can. Reason for issuing
18 warrant. That would be in there, correct, in the log?

19 A. Yes, sir. Why the officer needed it.

20 Q. Okay. Why the officer needed it. That would be in
21 the log and -- and it wouldn't -- and so that would be
22 something you would keep in the log as well, correct?

23 A. Probably.

24 Q. Okay. Probably. All right. Because that's part of
25 your duty so that later on if some other court is reviewing

1 what you did so there would be a record of it. That's
2 one of the reasons I'm sure you were told to keep these
3 records; is that -- is that a fair statement?

4 A. I'm sure.

5 Q. All right. And reason for issuing warrant, as I
6 said, is important. Description of articles sought in the
7 search, date and time of return. And although the return
8 in this case wasn't made to you, it is, in fact, dated and
9 -- and signed by another judge; is that correct?

10 A. Yes.

11 Q. Did you look at it? That's Judge Copeland?

12 A. It is.

13 Q. And he actually dated it and did that, but there's
14 no question that you issued the search warrant, correct,
15 Judge Tucker?

16 A. I'm sure.

17 Q. Okay. All right. And, finally, just because it's in
18 there and this stuff is kind of important, Section B says
19 any person who alters or fails to keep for the prescribed
20 period of time the records, warrants and documents as
21 provided for in Subsection A that we just talked about,
22 shall be guilty -- deemed guilty of a misdemeanor and, upon
23 conviction, shall be punished by a fine not to exceed \$100
24 or imprisonment not to exceed thirty days. Are you
25 familiar with that provision?

1 A. Yes, sir.

2 Q. Okay. So -- so when the Legislature passed this law
3 and says that you've got to keep these records so that
4 some reviewing court can come back and look at them, and
5 particularly look at the reasons for the issuing -- for
6 issuing the warrant, then there have got to be some
7 records, correct?

8 A. Yes, sir.

9 Q. Okay. And -- and are we clear that in this particular
10 case that you have no such records?

11 A. No, sir, I do not.

12 Q. Okay. All right. And are we clear that you have no
13 independent recollection of what was said to you for the
14 purpose of obtaining this warrant?

15 A. Not from January, no.

16 Q. January of this year, 2015?

17 A. It looks like Steven Sweat --

18 Q. Yeah. Okay.

19 A. -- took the warrant out.

20 Q. Right. Steven Sweat took the warrant out.

21 A. And he would have had to have been sworn in and have
22 given probable cause to get it.

23 Q. Yeah. But you don't have any idea what was said
24 whatsoever?

25 A. No, sir, I don't.

1 Q. And you kind of need to have those records, you would
2 agree, don't you?

3 A. Yes, sir.

4 Q. Okay.

5 MR. HOWE: Thank you. That's all I have.

6 THE COURT: Solicitor, any cross-examination of
7 Judge Tucker?

8 CROSS-EXAMINATION

9 BY MR. SCOTT:

10 Q. Judge Tucker, you and I have never met, have we?

11 A. No.

12 Q. You've been a magistrate for thirty-eight years?

13 A. Yes, sir.

14 Q. How often do you find yourself in general sessions
15 court?

16 A. This is the first time.

17 Q. Okay. In thirty-eight years, I think Mr. Howe tried
18 to get a number from you, but you just said a lot of search
19 warrants, is that correct, that you've issued?

20 A. Yes, sir.

21 Q. All right. How about since January? Do you think
22 you've issued a lot of search warrants since then?

23 A. Actually I think most of them were done in the Laurens
24 office. Maybe six or eight done at night.

25 Q. Okay. Is it fairly common for deputies to show up to

1 your home after hours and ask for warrants?

2 A. Yes, sir.

3 Q. Okay. Are you always on call; is that right?

4 A. I'm not sure that I was on call on this particular
5 night, but sometimes when there's an area to be searched
6 within our -- close to where I live, they'll come by and
7 get a search warrant.

8 Q. And tell me -- you live in Gray Court; is that
9 correct?

10 A. Yes, sir.

11 Q. And I certainly don't want to embarrass you either,
12 but do you recognize this man? I know you don't have any
13 glasses, but do you see this man right here in the blue
14 shirt?

15 A. Walter Bentley.

16 Q. Do you know Walter Bentley?

17 A. (Nods head.)

18 Q. How long have you been knowing him?

19 A. Probably since he was a little boy.

20 Q. Well, you do recall him being over at your office
21 about two weeks ago, correct?

22 A. I had forgotten about it until -- when you said that
23 a while ago, I remembered him needing the warrant.

24 Q. So you did have records, correct?

25 A. Yes, sir.

1 Q. And you turned them over to Mr. Bentley, correct?

2 A. Yes, sir.

3 Q. And, as a matter of fact, it was State's Number 1 that
4 you turned over to him, correct?

5 A. Yes, sir.

6 Q. Okay. So to say that you didn't keep up with your
7 records as you're required to do is not exactly true, is
8 it?

9 A. No, sir. I have copies or originals for many years.

10 Q. In your experience, aside from the affidavit that an
11 officer will give you, is it -- it's pretty common, isn't
12 it, to swear in some oral testimony to supplement it?

13 A. Yes, sir.

14 Q. And it's safe to say you don't issue these search
15 warrants unless you're confident there's sufficient
16 probable cause to issue it; is that correct?

17 A. Exactly.

18 Q. And you want as much information as you can get;
19 correct?

20 A. Yes, sir.

21 Q. So if the officer is telling you something and it
22 doesn't make sense, you need more information, you're gonna
23 ask him some questions, correct?

24 A. I do.

25 Q. And only then when you have a clear understanding of

1 the PC they're asking for that you issue one of those
2 warrants, correct?

3 A. Yes.

4 **MR. SCOTT:** Thank you.

5 **THE COURT:** Redirect, Mr. Howe?

6 **REDIRECT EXAMINATION**

7 **BY MR. HOWE:**

8 Q. In this particular case, you have no recollection
9 whatsoever of what you were told verbal or otherwise to
10 apply to the court to issue a search warrant, correct?

11 A. No, sir.

12 Q. Okay. And officer -- and you said Investigator
13 Bentley came a couple of weeks ago and was looking for
14 those records and they're not there?

15 A. They're here.

16 Q. Okay. The search warrant itself, correct?

17 A. Yes, sir. And all the information --

18 Q. Did you maintain the original of the search warrant?

19 A. I did.

20 Q. Okay. And that's all you have is the search warrant?

21 A. I did not find anything else.

22 Q. Okay. So, again, if some court is reviewing to find
23 out what you were told orally to -- to issue a search
24 warrant, you have no records, you have no log, even though
25 I think you are required to have the reasons for issuing

1 the warrant?

2 A. Yes, sir.

3 Q. Because I think from your experience we've agreed
4 what's in the warrant is only a little bit of what -- what
5 you might have for your reasons, correct? Because you
6 testified that sometimes they orally tell you other stuff.

7 A. Right.

8 Q. Okay. And by the way, were you told anything about
9 any other search warrants in this particular case?

10 A. Not to my knowledge, no.

11 Q. Okay. Have you -- let me -- you have it and, again,
12 because you don't have your glasses with you, I'm gonna
13 read the information in this particular sentence. Officers
14 have corroborated this information during recent narcotics
15 operations and other search warrants at this location in
16 the past.

17 What does that mean to you from your experience,
18 other search warrants at this location in the past?

19 A. That somewhere another they had reason to look
20 before.

21 Q. Okay. Reason to look before. Would it be important
22 for you to know who they were focussing the search on?

23 A. I don't know that I would have asked.

24 Q. Okay. You wouldn't have asked. You would have just
25 -- you would have asked no questions?

1 A. If probable cause had been there, I probably would not
2 have asked why they needed other search warrants in the
3 past.

4 Q. You would not have asked why other search warrants
5 would have been needed in the past even though that was in
6 the affidavit; is that correct?

7 A. That's what I answered.

8 Q. Okay.

9 MR. HOWE: Thank you. That's all I have.

10 THE COURT: Thank you. Anything in recross,
11 Solicitor?

12 MR. SCOTT: No, sir, Judge, I don't think I have
13 anything else.

14 THE COURT: Okay. Thank you, Judge Tucker, for your
15 testimony. And you're free to leave.

16 MR. HOWE: Thank you.

17 (Witness excused.)

18 THE COURT: Mr. Howe, does the defense have any other
19 witnesses for this suppression hearing?

20 MR. HOWE: No, sir. Oh, wait a minute, Judge. Can
21 I -- I'm sorry I wasn't paying attention.

22 THE COURT: Just confer with Ms. McNeill.

23 (Discussion between defense counsel.)

24 MR. HOWE: No, sir.

25 THE COURT: Okay. All right. Are you ready to make

1 your argument?

2 **MR. HOWE:** Yes, sir.

3 (Court's Exhibit Numbers 1 and 2 were marked for
4 identification.)

5 **THE COURT:** Okay. I have gone ahead and, Mr. Howe,
6 marked as Court's Exhibit Number 1 your memorandum with
7 various attachments that you had provided to the Court
8 earlier and, Solicitor, your e-mail that you sent today
9 in response to the motion and memoranda I have had marked
10 as Court's Exhibit Number 2.

11 Mr. Howe, I'll be glad to hear from you.

12 **MR. HOWE:** Thank you, Judge. May it please the
13 Court? First of all, based on the memorandum we presented,
14 and I think even based upon the testimony of Officer Sweat,
15 I think that the -- I would contend the State should or
16 at least concede that the affidavit by itself does not
17 establish probable cause, the four corners of that
18 affidavit. And the Court's aware, of course, that that
19 was mentioned in our -- in our memorandum that we presented
20 to the Court. Then, you know -- so if the Court is
21 inclined to -- to accept our position concerning that,
22 then we think the Court right now would then have
23 sufficient basis to -- to deny and suppress the evidence
24 in this case based on the clear conclusionary and
25 insufficient affidavit that was done, so I'm -- so that

1 would be the first position that was stated in our
2 memorandum.

3 Secondly, Judge, if the Court does not accept that
4 position, our position is still that we should be entitled
5 to discoverable -- that anything that was orally done
6 should be discoverable and we should have been entitled to
7 it; particularly, Judge, in view of Judge Addy's order
8 where we were trying to ferret out what they were gonna do
9 and anticipating that oral testimony would have to be
10 submitted to the -- to the magistrate or, more importantly,
11 for you to review to decide whether or not this search
12 warrant should have been granted. We've made the case,
13 we think, to the Court that Judge Addy's order was
14 important and I know the argument is gonna be well, it's
15 not discoverable. It's not discoverable if it's just
16 oral testimony from -- from a witness; that it's not
17 discoverable, that there's nothing there.

18 I would contend, Judge, it is 2015 and -- and,
19 you know, it just -- it just would amaze members of the
20 defense bar that you can't discover that very important
21 information. You know, there are some states that don't
22 allow any oral supplementing, and for good reasons, because
23 how do you do it? I cited earlier, Judge -- for example,
24 if you want to take it to the full extreme, you could say
25 okay, I want a search warrant to search Ms. McNeill's

1 house period and then the rest of it is oral and we don't
2 know until we go to trial and then this court who's the
3 reviewing court has got to come back and say okay, what
4 was the magistrate told, what does the magistrate say the
5 magistrate was told, was that appropriate, and -- and so we
6 contend that it should have been discoverable and should
7 have been Brady material potentially as well; particularly
8 now that you've heard the testimony in this particular case
9 from -- from Judge Tucker.

10 Judge, we started talking about this case and what's
11 gonna happen then if there are no -- or if they're allowed
12 to come in and testify to what Judge Tucker's told. What
13 did we do? Well, we subpoenaed Judge Tucker and she was
14 kind enough to come on fairly short notice to do that and
15 testify and she doesn't have any records. She was totally
16 unclear on this other search warrant issue, which I still
17 hope, Judge, if you don't make your ruling today that you
18 will attempt to gather that additional information on the
19 other search warrant or search warrants before any final
20 decision is made before -- if you don't accept our
21 arguments so far.

22 Now the other issue that has now been raised that is
23 -- that I would like to raise here as a further reason why
24 you need to suppress this evidence, you know, the law
25 requires that the magistrate be neutral and detached.

1 Neutral and detached. And the law has a number of
2 requirements, the search warrant law, and I'm talking
3 specifically, Judge, about Code Section 17-13-140 and,
4 right behind that, 17-13-141. Now some of the case law
5 says these things are ministerial. The argument I heard
6 earlier, for instance, on the -- on the return is that,
7 well, we're told it can go to any magistrate. That's not
8 what it says. It says that if you as a circuit judge and
9 court of record issue a search warrant, then it can be
10 returnable to a magistrate having jurisdiction in the
11 county. That's a little different from what we have here.
12 And I would argue that it's important that the return be
13 made to the issuing magistrate so the issuing magistrate
14 would be able to review the matter, but here's -- but back
15 to the neutral and detached argument, Judge, I'd like to
16 make, and I would -- how could one find, I would submit,
17 that the magistrate is neutral and detached when the
18 magistrate has not complied with a code section that's
19 been around forever that requires the logs and I can
20 represent to this Court, and this Court may know that as
21 well, from experience after experience that magistrate's
22 do, in fact, maintain logs and reasons for issuing
23 warrants, for instance, that being the most important
24 thing here for somebody to come back and review it later
25 and for there to be a record of it to be reviewed.

1 When you've got a situation where the law is not
2 followed, where there is -- and I'm not suggesting that at
3 all that there be any kind of criminal penalty against
4 Judge Tucker, but it seems to me, and I'm gonna argue, that
5 what we get into is everybody gets a little too loose with
6 the rules because it's ministerial stuff and a little bit
7 too loose with the application of these things when that's
8 not what the law says. The law says must and even attaches
9 something as serious as a criminal penalty. And I'll
10 represent to the Court I've never heard of that being
11 charged and don't expect that to ever be and wouldn't wish
12 that on Judge Tucker or any magistrate, but at the same
13 time rules are rules that should be followed and how can
14 one be neutral and detached if you don't follow the simple
15 rules, again, most importantly so when we're here right now
16 before this Court that you can review the reasons why she
17 issued the warrant and -- and hear from her rather than us
18 just simply having to rely on what -- what's been testified
19 to without any opportunity to know and prepare ahead of
20 time in full as to what was represented.

21 Granted we had the control buy information and we had
22 the incident report, you know. Still we're scratching our
23 heads about the search warrant stuff, but the whole thing
24 is these rules are there for you really to -- so you can
25 review it and figure out are they right or are they wrong,

1 you know. She's already made her decision, so the only
2 person that can review that now is this Court.

3 And so with all that in mind, Judge, we're
4 respectfully asking that for all of these various reasons
5 that the -- our motion to suppress be granted because
6 this is important, you know, in this case, just like every
7 case. But let's say if we're gonna have these rules and
8 we're gonna have these requirements and let's -- let's
9 obey them, let's follow them, and not just have them out
10 there and say well, it's okay to -- to not follow them.
11 Let's actually follow them like the law says that's on the
12 books. Thank you, Judge.

13 **THE COURT:** Thank you, Mr. Howe. Solicitor.

14 **MR. SCOTT:** Thank you, Your Honor. Well, this is a
15 suppression hearing, so let's look at our duty here to
16 find out if the Defendant's Fourth Amendment rights were
17 violated. What's the testimony been? We're here
18 January 20th. Law enforcement's getting this information
19 from Fountain Inn about some heroin from some very -- a
20 very specific area. They knew it's from Hue Court, at
21 least that street. They get information from a CI who has
22 really built-in reliability because of his relationship
23 with this man with multiple purchases before. In fact, he
24 was one of the people who had OD'd. He was able to provide
25 specific information as to his physical appearance and a

1 nickname that every cross-reference comes back to him. He
2 was able to describe the house, which was corroborated by
3 law enforcement, and corroboration is very important here.
4 It's not just the CI saying this, that and the other, but
5 the law enforcement officer is checking up on him who
6 actually participates in the ride-along, participates in
7 the controlled buy. So we don't have to take the CI's word
8 for it, we can take the sworn officer who was just sitting
9 up on that stand a little while ago testifying to what he
10 saw, what he witnessed himself.

11 And then we get to the magistrate and he talks about
12 everything that the magistrate got to hear. I will
13 concede on its face the affidavit and the four corners of
14 the search warrant itself appear to be vague and lacking
15 and we would like to see more detail, but the law is very
16 clear as far as sworn oral testimony and he got on that
17 stand and he put his hand on the Bible and swore to what
18 he testified to Judge Tucker when he was under oath then
19 on January 21st when he was obtaining that warrant.

20 Now the -- I guess the secondary argument that goes
21 along with the sworn oral testimony, I have looked through
22 Brady, I've looked through Rule 5, and this is the first
23 I've ever heard of this argument. You heard Judge Tucker
24 say she's been a magistrate for thirty-eight years and
25 this is the first time she's ever been asked to come up

1 with logs and documents and recordings to track sworn
2 oral testimony. This is unprecedented. It's not required
3 by Brady or Rule 5. I've never been asked to do it in
4 my life and I dare say Your Honor has never heard that
5 argument before and that's why it's unprecedented. It's
6 not required, Your Honor.

7 So what's our probable cause? It's very clear
8 you have a man who's been given a hundred dollars in
9 documented funds, purchases five bags of heroin after
10 telling officers here's where I'm gonna go, I'm gonna
11 buy heroin from this location, from this man. Law
12 enforcement goes to the location and sees the man, sees
13 the heroin that he purchases. The next day they serve a
14 search warrant to the house. Who's there? It's Terrance
15 Stewart. What does he have in his pocket? All \$100 of
16 documented funds.

17 I think PC is abundantly clear, Your Honor. There's
18 case law that says even a properly conducted controlled
19 buy is probable cause enough. It's bolstered and it's
20 strengthened when you have law enforcement who rides
21 along with CI to perform the undercover buy, so that's
22 corroboration again. That's important when we're looking
23 at PC. Now I know I'm melding and meshing the two
24 arguments, but the Brady violation which basically says we
25 can't -- we need to throw out all that sworn oral testimony

1 because we weren't provided that. I want to get back on
2 that again for a minute. What did he testify to just now
3 on the stand today? He testified to what he told Judge
4 Tucker when he sworn out the oral testimony. What did he
5 testify to that hadn't been provided through discovery?
6 You asked him that yourself, Your Honor. You said well, is
7 there that's not in this incident report, that's not in the
8 video, that's not in the CI information, anything aside
9 from that that you would have told Judge Tucker? He said
10 absolutely not. So for them now to come in here and claim
11 some kind of prejudice is a little disingenuous I'd say,
12 Your Honor. It is a creative argument, but it's
13 unprecedented, it's not required.

14 I would argue as far as the return being on another
15 magistrate, a court of record shall be returnable to the
16 magistrate having jurisdiction of the area where the
17 property is located or the person who's searched is found.
18 As far as I know, Judge Copeland has jurisdiction in
19 Fountain Inn. I fail to see how any kind of prejudice can
20 be had by a separate magistrate who's on call the day they
21 try to serve the return. What prejudice -- I can't come up
22 with an example that Mr. Stewart would suffer. I mean, you
23 still have to have an officer swearing to the items that
24 were seized and then you have to have a magistrate
25 reviewing it and signing off on it. I would argue it's

1 ministerial. There's a ten-day -- what is it? A ten-day
2 time requirement. You've got to have the return back and
3 they've got to sign off on it within ten days. The courts
4 have decided that's ministerial if it's outside the ten
5 days. The courts have decided that failure to list all the
6 items on the return that were seized is ministerial. So I
7 -- I know it's sort of analogous, but I can't find anything
8 on -- in the cases that say you can't have another
9 magistrate sign off on the return. And I'm just sitting
10 here trying to come up with a way that Mr. Stewart's
11 prejudiced by that, so I find that to be a nonissue and
12 really -- and certainly not capable of suppressing a search
13 warrant.

14 And, Judge, I think that pretty much covers it. I'll
15 stand by my e-mail to you. It's got a lot of stuff in
16 there about sworn oral testimony and reliability of the
17 CI's and whatnot. But, Judge, it's one of the, you know,
18 more clearer cases that probable cause existed and if we
19 were to take Sweat's sworn testimony as to what he provided
20 in his oral sworn testimony, it's extremely difficult for
21 me to find a lack of probable cause. Under the totality of
22 circumstances test, that's what the magistrates have to
23 abide by now, she had plenty of probable cause to issue the
24 search warrant and I think rightfully did so.

25 **THE COURT:** All right. Thank you, Solicitor.

1 Mr. Howe, anything in brief reply?

2 MR. HOWE: Just briefly, Judge. Just a couple of
3 things. First of all, I think -- I think you even said
4 when you were asking the questions, you said other than the
5 search -- other search warrant information, was there any
6 other information that had not been given to Tucker. So
7 even -- you even noted, Judge, that Judge Tucker had not
8 given -- been given this other search warrant information.
9 Now Judge Tucker, as I understand the testimony, she says
10 that doesn't matter to her.

11 But, again, Judge, the key is not what you heard the
12 officer testify to about the circumstances. The key is
13 what Judge Tucker was told and you as the reviewing court
14 have to find whether or not there was a substantial basis
15 for that. And if she's saying she doesn't know, doesn't
16 recall, has no records to establish it, I would, again,
17 contend that how then can a reviewing court find that she
18 independently and -- served a -- neutral and detached
19 issued a proper search warrant, and I would contend that
20 you can't do that. And, again, it's what she was told,
21 not what you heard from the witness stand, not what this
22 officer told, what she was told, and what -- and she
23 doesn't -- can't tell you anything.

24 THE COURT: Okay.

25 MR. HOWE: Thank you, Judge.

1 **THE COURT:** Thank you very much. I appreciate the
2 hard work from both sides. I've given this a lot of
3 thought. It has been conceded that the written affidavit
4 from Officer Sweat was -- was deficient, therefore,
5 justifying the oral testimony from him to the magistrate,
6 which I will allow, and find that that was proper. And
7 based upon that, along with the written affidavit, I find
8 that there was probable cause for the issuance of the
9 search warrant. I think it's real important the fact that
10 Officer Sweat said that there's nothing that he told Judge
11 Tucker that's not revealed in either the incident report,
12 the videotape or the information on the -- on the CIs.
13 While I'm not ruling necessarily that it is or is not
14 discoverable in so far as the oral testimony is concerned,
15 the fact still remains that based upon the uncontradicted
16 testimony from the officer that has been provided.

17 Concerning the ministerial acts, Judge Copeland being
18 the magistrate to -- to receive the return and Judge
19 Tucker's inability to find the log, the case law is very
20 clear that there has to be prejudice shown by the Defendant
21 under U.S. v. Clyburn and under the, I think, Mollison
22 case, a state case, and I find that showing the prejudice
23 has not been -- has not been made in this case. And for
24 whatever it's worth, Judge Tucker never said that she'd
25 never made a log, she just cannot find one, so for whatever

1 that's worth. Taking everything into consideration, I will
2 respectfully deny the defense motion to suppress the
3 results of the search warrant that was issued.

4 Okay. It's about at the end of the day so there's no
5 need to get -- get started with anything, but let me just
6 see the lawyers out in the hallway for just a minute just
7 to kind of get a feel for tomorrow. We'll start back at
8 9:30 in the morning.

9 **MR. HOWE:** 9:30?

10 **THE COURT:** Yeah. All right. Off the record. We'll
11 be in recess until 9:30 in the morning.

12 (Off the record discussion.)

13 **THE COURT:** On the record? Let's go back on the
14 record.

15 **MR. SCOTT:** Yes, I have a problem with something.
16 Judge, I just want to bring this to the Court's attention.
17 I think it's the Defendant's brother. Now he sat right
18 here behind me for the first part of the morning and
19 he's huffing and puffing and sighing and making some
20 statements I can only assume are about the State, which
21 is inappropriate for a courtroom setting. As an officer
22 of the court, I would relay that to you. When he left
23 the room, he, against the Court's orders, and against --
24 what Mr. Howe specifically asked them not to do, was seen
25 talking with Tondalai Coleman, who was a sequestered

1 witness. And she is subpoenaed by the defense, she's
2 subpoenaed by the State, and what he was doing I would
3 relay to you was passing on testimony that he was in
4 here witnessing and passing on to her out in the hallway,
5 specifically against the sequestration order. And
6 Mr. Howe himself, and I never thought about this, but he
7 said we don't want anybody texting testimony to other
8 people and whatnot. Well, he went and basically recounted
9 everything Sweat and then -- and then Brian Bridges said
10 in the courtroom and all of our arguments, so it was
11 basically against the Court's order. I don't know if you
12 need to admonish him or what. It's distracting, I'll tell
13 you that with him talking right behind me, clearly aimed
14 towards us, but the other issue I did feel I needed to
15 bring to the Court's attention.

16 **THE COURT:** All right. We'll address that. Mr. Howe.

17 **MR. HOWE:** Judge, just for the record, that's the
18 first I'm hearing about that. We have not subpoenaed
19 Ms. Coleman, the State has subpoenaed Ms. Coleman. We
20 were gonna attempt to interview her to see if anything she
21 would say would have any bearing on this case. She is
22 actually represented by counsel because she's got pending
23 charges --

24 **MS. McNEILL:** Wayne Patterson.

25 **MR. HOWE:** -- Wayne Patterson in Greenville, but we

1 don't intent to call her as a witness.

2 **THE COURT:** Okay.

3 **MR. SCOTT:** She was sequestered. She was the one that
4 Mr. Howe pointed out that was in the back of the room.

5 **MR. HOWE:** Right. She was the State's witness, so I
6 felt like we needed to have her sequestered. That's
7 correct, Judge.

8 **THE COURT:** Yeah, I want to deal with it. Probably,
9 in all fairness, and I'm certainly not condoning whatever,
10 Solicitor, you claim that this -- you say the Defendant's
11 brother?

12 **MR. SCOTT:** I believe it is. They're saying yes.
13 He's out of the courtroom now.

14 **THE COURT:** Yeah, I'll probably just need to address
15 it with him. The Court probably did a poor job in -- in
16 explaining what sequestration means, notwithstanding
17 Mr. Howe's request that there be no e-mailing or texting
18 from inside the courtroom to outside the courtroom or
19 whatever, but I probably did not do a very good job to
20 explain to lay people what sequestration meant. So I'm
21 going to admonish him, but I'm not going to impose any sort
22 of sanctions, but I will explain to him if he wants to be
23 in this -- I assume he's not a witness because he was
24 allowed to remain in the courtroom, but for him to refrain
25 from making any comments or remarks or anything during the

1 course of this trial and, you know, if he continues to do
2 that, then, of course, the Court can deal with that. Is he
3 out? Okay. What's his name?

4 **THE DEFENDANT:** Jason.

5 **MS. BOYKIN:** I believe it's Jason Stewart.

6 **MR. HOWE:** Judge, I'll be happy to speak with him.

7 (Whereupon, Jason Stewart enters the courtroom.)

8 **THE COURT:** Let me just -- Mr. Stewart, I understand
9 that maybe you are the brother of the Defendant?

10 **MR. JASON STEWART:** Yes, sir.

11 **THE COURT:** Okay. Now you were here in the courtroom,
12 I guess, during the morning session. I remember seeing you
13 back there. I didn't know who you were. Is that correct?

14 **MR. JASON STEWART:** Yes, sir.

15 **THE COURT:** Okay. The Solicitor has indicated to me
16 that while you were here in the courtroom that you were
17 making comments and remarks and maybe said some things that
18 would not be appropriate to be said in a courtroom for all
19 to hear. I don't know who heard you, I certainly didn't
20 hear you, but I need to caution you, sir, that you're more
21 than welcome to remain in the courtroom during this
22 proceeding involving your brother, but I don't want you
23 saying anything whatsoever to anyone or just generally
24 making comments or remarks because if you continue to do
25 that, then I'm gonna have to deal with it, okay?

1 **MR. JASON STEWART:** Understood.

2 **THE COURT:** You understand? And I know this is a very
3 important matter; it involves your brother. I understand
4 that, I appreciate that, but you can't let your emotions
5 kind of overtake your -- your common sense and common sense
6 is keep your mouth shut while you're sitting in the
7 courtroom, okay?

8 **MR. JASON STEWART:** Yes, sir.

9 **THE COURT:** It's also been mentioned, and you may or
10 may not have been aware that you shouldn't have done this,
11 but we were told that during some break that you were
12 talking with a -- who, Solicitor?

13 **MR. SCOTT:** Tondalai Coleman, Your Honor.

14 **THE COURT:** -- Ms. Coleman, and relaying some
15 information to her as to some of the State's witnesses.

16 **MR. JASON STEWART:** Yes, sir.

17 **THE COURT:** And she is sequestered, which means she
18 cannot be aware through any means, whether hearing them
19 herself or from someone else, as far as anything that's
20 done in this courtroom until after she testifies. And the
21 purpose for that is that we want certain witnesses not to
22 be influenced or prejudiced in any way by what other
23 witnesses may testify to and we understand that you
24 conveyed some information to her. And it's possible that
25 you didn't quite really understand what a witness being

1 sequestered meant and so I'm not going to sanction you or
2 punish you in any way. But, again, any witnesses that are
3 sequestered, whether it's the State's witnesses, defense
4 witnesses, whoever, you can't, or anyone else in this
5 courtroom, can't have any communication with them at any
6 time. Do you understand that, sir?

7 **MR. JASON STEWART:** Understood.

8 **THE COURT:** Okay. All right. Very good.

9 Now, Mr. Stewart, if you want to address the Court --
10 he's raising his hand, Mr. Howe -- talk to your lawyer
11 first. You can just have a seat, sir.

12 (Discussion between Mr. Howe and the Defendant.)

13 **MR. HOWE:** Judge, he wants to address the Court and
14 I don't think it's going to be anything inflammatory.

15 **THE COURT:** All right. Well, before I hear anything
16 from him, I'm going to need to admonish him concerning his
17 -- his Fifth Amendment rights. Why don't -- why don't you
18 just take a moment to chat with him further before we --
19 and it may be a situation where if it's decided that he
20 wants to address the Court, and do it at this juncture,
21 then maybe we can do it first thing in the morning. That
22 would give you ample time for you and Ms. McNeill to talk
23 to him, okay?

24 **MS. MCNEILL:** Judge, he has two sentences to say
25 pretty much.

1 **THE COURT:** Okay. Mr. Howe, Ms. McNeill, do you want
2 him to hear from him?

3 **MR. HOWE:** Yes, sir.

4 **MS. McNEILL:** This -- and just for the record, this
5 is against our legal advise, but he wants to go forward.

6 **THE COURT:** All right. Well, what I'm gonna need to
7 do is place him under oath and I need to go ahead and
8 admonish him this is gonna be taken as testimony, so just
9 bear with me just a second.

10 If you will go ahead and swear him in, Madam Clerk.
11 Please stand, Mr. Stewart, if you would.

12 (Whereupon, Terrance Stewart was duly sworn by the
13 Clerk of Court.)

14 **THE COURT:** Okay. Mr. Stewart, please stand and
15 I'm gonna give you your rights. Even though it's a
16 two-sentence statement you want to make, I've got to make
17 sure that you understand what your rights are because I'm
18 gonna take this as I would take it as testimony if you were
19 to testify in this case as a witness from the stand. So if
20 you could, please, stand and I'm gonna instruct you on your
21 rights.

22 Mr. Stewart, at this time I'm going to explain to you
23 certain of your rights. If you do not understand anything
24 I say, please let me know that. If you want me to explain
25 anything in more detail, please let me know that as well.

1 Do you understand, sir?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Okay. Now you have the right to claim the
4 protections given to you by the Fifth Amendment to the
5 Constitution of the United States. This amendment states,
6 in part, no person shall be compelled in any criminal case
7 to be a witness against himself. This means that you
8 cannot be required to testify in this case. You have the
9 right to testify in your own behalf; however, no one can
10 make you testify. This is a personal right. No one can
11 waive this right except you, sir.

12 All right. Now even though, again, it's not like
13 you're on the witness stand testifying, but you are subject
14 to the same rules that govern other witnesses. And I
15 don't know if I would allow at this point in time any
16 cross-examination by the State, but possibly this could
17 open the door for bringing out any other convictions that
18 you may have involving dishonesty or a false statement or
19 for crimes punishable by imprisonment for more than one
20 year and if this Court determines that the probative value
21 of admitting this evidence outweighs its prejudicial
22 effect, possibly your record could be brought out. This
23 decision to make this statement, and, again, I'm
24 considering it as testimony, must be freely, voluntarily
25 and intelligently made by you with the knowledge of the

1 protections given to you by the Fifth Amendment and the
2 consequences of your decision to testify, okay?

3 **MS. McNEILL:** And, Judge, just to protect us on the
4 record, can you, please, inquire as to whether or not he
5 acknowledges this is against our legal advice?

6 **THE COURT:** Right. And it's been my understanding
7 you've had some discussion with Mr. Howe and Ms. McNeill
8 concerning your desire to address the Court and make some
9 sort of short statement; is that correct?

10 **THE DEFENDANT:** Yes, sir.

11 **THE COURT:** And as both Mr. Howe and Ms. McNeill
12 advised you as your attorneys you not to make any
13 statements -- at least at this point in time not to make
14 any statements to the Court?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** And has it been your decision to not
17 follow the advice of your attorneys and make a statement
18 to the Court?

19 **THE DEFENDANT:** Yes, it is.

20 **THE COURT:** Okay. And this decision you have made,
21 has it been made freely, voluntarily and intelligently?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Okay. All right. What would you like to
24 tell me, sir?

25 **THE DEFENDANT:** It doesn't seem like -- like I heard

1 it brought up during the -- during the proceedings, but at
2 the end it never got addressed that they never brought a
3 search warrant into my house. And then like other things I
4 was looking at about reasons for a case to be dismissed,
5 like material-wise, like there's a lot of things in the --
6 in the paperwork that don't add up to what they're saying
7 and I was -- I don't understand why it wasn't brought up
8 today. If this was the hearing to see if the case was to
9 be dismissed, I don't understand why it wasn't brought up,
10 and in my mind there's not gonna be another hearing about
11 dismissal, tomorrow is gonna be the trial, and it's whether
12 guilty or not guilty, but I've seen -- I've seen a lot of
13 other things that I felt like should have been brought up
14 that I -- me not knowing the law, I felt like they should
15 have been brought up that was not brought up that discredit
16 the officers and what they're saying. Like I understand an
17 officer of the law's word should be good, but in their own
18 paperwork there's stuff that discredits these guys like
19 missing money out of the house and all type of stuff, but
20 they did a lot of things that was against the law. I never
21 -- I never -- a search warrant was never brought into my
22 home. I never -- when they came to my home, they told me I
23 was under arrest, I had an arrest warrant. They took me
24 out of my house. They never showed me an arrest warrant,
25 they never showed me a search warrant. I seen a search

1 warrant three months after I was in jail. They never left
2 one at my house, nothing like that, and I don't -- I don't
3 understand what -- I don't understand what just happened.
4 It seems like at the end of the proceeding the only thing
5 that was talked about was was the search warrant valid
6 because of whatever reasons were they valid, instead of --
7 instead of was the search warrant ever even present during
8 -- during the situation.

9 **THE COURT:** Okay. Anything else you want to tell me?

10 **THE DEFENDANT:** No, I think that's it.

11 **THE COURT:** All right. Let me just address your
12 statement or are questions. Of course, all I had to -- as
13 far as the search warrant being presented to you, all I
14 had before me was the officer -- the testimony of Officer
15 Bridges. I had nothing else during the suppression hearing
16 to consider whether that was -- was done or not, so that's
17 all I had before me.

18 Secondly, whether things were brought out or not
19 brought out as it relates to the suppression of the search
20 warrant, that's a decision that your very capable attorneys
21 have decided to bring out or not to bring out. I don't
22 know what those things are that you're concerned about.
23 You'll just have to rely and trust on your two very capable
24 attorneys.

25 Thirdly, there will be another stage at this -- if

1 this matter goes forward to trial, there will be another
2 stage for the Court to consider a dismissal depending upon
3 whether or not the Court believes that there's been
4 sufficient direct evidence and substantial circumstantial
5 evidence for the case to go forward.

6 Now understand this, and we will address this once we
7 -- right prior to starting the actual trial of this case
8 concerning the decision that's been made for it to be a
9 bench trial; a bench trial meaning that I not only am I the
10 judge of the law, I now become the judge of the facts,
11 meaning that you've got a jury sitting here in a black robe
12 as well. But we'll address that once -- right prior to
13 starting the case to make sure that there has been a
14 voluntary waiver of your right to a jury trial, but there
15 will be another stage of this proceeding for the Court to
16 consider whether a dismissal is appropriate under the law.

17 Again, all I know about this case is what -- relates
18 to the search warrant. I know nothing else.

19 **THE DEFENDANT:** All right. I just didn't understand
20 that.

21 **THE COURT:** Okay. And your attorneys can do a whole
22 lot of better job of responding to your question and your
23 statement and your concerns that I can, so I would hope
24 that you'll spend a little bit of time easing your mind
25 about what you've indicated you have concerns with, okay?

1 **THE DEFENDANT:** All right. I was just under -- I was
2 just under the impression that if I didn't say nothing now
3 it would be too late, like I had -- I had to say something.
4 That's why.

5 **THE COURT:** Okay. Well, again, that's just something
6 you just need to talk with your lawyers about, okay?

7 **THE DEFENDANT:** All right.

8 **THE COURT:** Thank you, Mr. Stewart. You can have a
9 seat..

10 All right. Anything further on the record before we
11 -- we adjourn until 9:30 in the morning?

12 **MR. SCOTT:** Nothing from the State, Your Honor.

13 **THE COURT:** All right. Thank you very much.

14 Let me see the lawyers out in the hallway for just a
15 second, please.

16 (Proceedings were concluded at 4:50 PM.)

17 (The following proceedings were held July 28, 2015.)

18 **BAILIFF:** Let's all rise. The Court come to order,
19 please.

20 **THE COURT:** Thank you very much. Have a seat. Good
21 morning, everybody.

22 All right. As I understand, we're starting the trial
23 in the case of State of South Carolina versus Terrance
24 Edward Stewart, indictment numbers 2015-GS-30-958, 959 and
25 961.

1 Mr. Howe, you're standing, so do you have a matter for
2 the Court?

3 **MR. HOWE:** I do, Judge. Mr. Stewart, first of all,
4 has indicated -- has indicated that he wants us relieved
5 and wants to have somebody else represent him, first of
6 all.

7 **THE COURT:** All right.

8 **MR. HOWE:** And that's the first matter. I've just
9 been told through Ms. McNeill that apparently the State
10 has recovered a jailhouse conversation from last night
11 between Mr. Stewart and the sequestered witness,
12 Ms. Coleman. I think that's what I'm told. I just --
13 Ms. McNeill just told me that just a minute ago, and that
14 would have certainly been against anything that we would
15 have wanted him to do. I don't -- I don't want to move to
16 be relieved, but I don't know that we're -- I can repair
17 this situation right now with --

18 **THE COURT:** Well, before I hear from Mr. Stewart, what
19 -- what is your understanding for Mr. Stewart's indication
20 that he wants you -- I'll hear from you in just a minute.
21 What's your understanding, Mr. Howe, why Mr. Stewart wants
22 you and Ms. McNeill off his case?

23 **MR. HOWE:** Well, Mr. Stewart does not think that we
24 presented a solid argument yesterday on the suppression
25 motion, leaving out things that -- inconsistencies between

1 the officers' testimony and incident report information,
2 for instance. He doesn't feel like we did that and other
3 things that -- that he thinks that we failed to properly
4 cross-examine on with regard to those witnesses and point
5 to the inconsistencies in -- in what he contends things
6 that are not true to Your Honor for your ruling. And,
7 you know, we have had a difference of opinion as to what
8 was important and what was not important based on --
9 particularly me. I mean, Ms. McNeill's assisting, but
10 particularly on my professional judgment, or lack thereof,
11 on -- on what needs to be done. So he -- he's not happy
12 with that. And we talked about that last night and tried
13 to rectify that. I thought we were on pretty decent
14 footing last night, but this morning it seems to have taken
15 a turn for the worse.

16 And then the other issue that's come up is that now
17 Mr. Stewart is wanting a trial by jury, and he's certainly
18 entitled to that, Judge, he was always entitled to that. I
19 told him, and I just want to be candid with the Court, he
20 has that right, but -- but when I make a representation to
21 the State, I consider my word, you know, pretty reliable,
22 you know, from my -- I've been doing this for a while --

23 **THE COURT:** Sure.

24 **MR. HOWE:** -- and I don't want anybody to think that I
25 somehow sabotaged this thing because, you know, a jury can

1 come in tomorrow and we could start a trial, but I told him
2 that, you know, I'm gonna have to tell them now something
3 different and something that I didn't know until this
4 morning. And he's probably thinking then well, okay, you
5 know, he's -- he's not no longer got my best interest in
6 mind because he -- but it's certainly his right to have a
7 jury trial.

8 **THE COURT:** Sure, sure.

9 **MR. HOWE:** It was always his right. We've talked
10 about this from a trial strategy standpoint early on. He
11 first raised it actually about having a trial just in
12 front of the judge, but be that as it may, that's my
13 perspective --

14 **THE COURT:** Okay.

15 **MR. HOWE:** -- of where we are. I -- you know, I don't
16 -- I don't ever like to just move to get off cases. I just
17 don't -- I'm kind of -- I guess I'm gonna have to look to
18 the Court for guidance about what to do.

19 **THE COURT:** Okay.

20 **MS. McNEILL:** And, Judge, just to --

21 **THE COURT:** Sure.

22 **MS. McNEILL:** -- briefly tag team on what Mr. Howe
23 said, you know, I came on this case late in the game and
24 have been out to the jail with Mr. Howe to see Mr. Stewart
25 when breakdowns in communications have been occurring. My

1 main role in this case has always been to try to -- client
2 communication, and Mr. Stewart is at this point, in my
3 legal opinion, going against legal advice that Mr. Howe
4 and I have advised him for a while now. Yesterday he
5 made statements in open court that was against our legal
6 advice. He continued to talk on the phones at the jail
7 against our legal advice. He's now saying that Mr. Howe
8 and I are not working hard enough for him on his behalf.
9 I think he thinks that we are teaming up and railroading
10 him. I see, in my professional judgment, you know, this
11 is a very serious matter for him. I understand, you know,
12 he's facing a minimum of twenty-five. He's not comfortable
13 with us. I think -- I don't know that the communication
14 breakdown can be repaired at this juncture and I have to
15 be candid with the Court about that.

16 **MR. HOWE:** And, Judge, let me just give you one other
17 bit of perspective --

18 **THE COURT:** Sure.

19 **MR. HOWE:** -- just so the record is complete.
20 Mr. Stewart has received a fifteen-year sentence in Federal
21 court and -- but he has not been transported to a Federal
22 facility. And early on in one of those conversations he
23 indicated he felt like he took improper advice in pleading
24 guilty in that case because he got a sentence -- and I've
25 read the transcript. They had -- actually had a jury

1 waiting and he -- he thinks he got bad advice and entered
2 a plea because under the -- the Federal judge's sentence
3 departed from the guidelines and went upward and so that is
4 also -- in part because of these charges, judge. In fact,
5 I read the transcript. That was partly what Judge Herlong
6 based his sentence on.

7 So he, I think, doesn't have a complete trust period
8 in -- in the way things are going because we're in a
9 similar situation now, but I -- you know, I like Terrance,
10 but I don't know what I can do to make this right with him
11 because we've told him all along what -- you know, that the
12 suppression motion was probably the -- by far the most
13 important part of this case and he doesn't -- he doesn't
14 think we did a good job on that.

15 So that's everything I can tell the Court to be as
16 candid and make the record as complete as possible.

17 **THE COURT:** Okay. Mr. Howe and Ms. McNeill, thank
18 you very much.

19 Mr. Stewart, stand. Madam Clerk, would you swear
20 Mr. Stewart in, please.

21 (Whereupon, Terrance Stewart was duly sworn by the
22 Clerk of Court.)

23 **THE COURT:** Mr. Stewart, you just heard Mr. Howe and
24 also Ms. McNeill indicate that you are wanting them off
25 your case. Is that correct?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Okay. In your own words, why do you want
3 a new attorney or attorneys to represent you on these
4 charges?

5 **THE DEFENDANT:** I feel like -- in so many words, it's
6 like -- like just what he said. I don't feel like my fight
7 yesterday wasn't -- it wasn't -- it wasn't what I thought
8 it was supposed to have been. Before we came in, he told
9 me if I had questions write them down. He had asked me --
10 he wanted to be able to listen, so he wouldn't be able to
11 talk to me during what's going on, but when I'm writing the
12 questions and giving him the questions, they're not getting
13 asked. I don't know if he felt like they wasn't important,
14 but to me being that I'm the one looking at twenty-five
15 years, if you feel like this is not important, stop and let
16 me know why it's not important. I don't understand if it's
17 -- just, for instance, if the officer that testified and
18 his -- what he said and what the judge said was different,
19 the judge didn't remember what he was talking about, his
20 words stood up to be credible, but I'm looking through his
21 statement of what he said in his statement, he made other
22 statements that was contradictory. Like -- like how's his
23 word -- in my mind I'm saying how's this man's word
24 credible over a judge? And she's the judge. She don't
25 even remember saying none of this to you. You could be

1 just sitting here making this up. The reason I pointed
2 out that he could be lying about -- pointing out what he
3 lied or what he mis -- misquoted in other places in the
4 thing, it never made his word credible and I felt like
5 maybe if we would have showed that this man's word wasn't
6 credible, then it wouldn't have went that way. Like, okay,
7 maybe I believe the judge, maybe the judge is not just --
8 because she basically said I didn't -- I don't remember
9 him verbally telling me nothing. I didn't document him
10 verbally telling me nothing because I don't remember him
11 telling me nothing like and then when I talked -- when we
12 talked yesterday you said I have other chances to file
13 motions. Like tomorrow it will be another chance to file
14 motions. Well, from the conversation I'm having today, it
15 don't sound like there's no other chances to file. I don't
16 understand. Like, no, we're not filing no more motions
17 today. I thought we was filing motions today and they're
18 like no.

19 And then as far as me talking on the phone with my
20 girlfriend, I talk on the phone with my girlfriend every
21 day. I wasn't under the impression that I couldn't have a
22 conversation with her. I was under the impression that we
23 couldn't talk about the case and when I -- I did call her
24 last night and talk to her last night for like fifteen
25 minutes and out of frustration of what's going on, I

1 brought up like man, this is some -- this is some -- I
2 feel like this is some bull crap going on. She's like we
3 can't talk about it. And I called back and I stopped
4 talking. From there I said nothing else about the case.
5 I talked about -- I did tell her that I wanted to get
6 another lawyer, I think I wanted to it, and she said pray
7 on it, something like that like. But I don't feel like --
8 I don't feel like I'm -- I feel like I'm going down the
9 wrong way. Like I need -- I need an attorney that's -- I
10 feel like if he ain't -- if it ain't no fight, tell me it
11 ain't no fight. Like I'm not saying Chip didn't like --
12 at the beginning he's -- like he said, our best fight is
13 gonna be our suppression hearing. My thought about the
14 suppression hearing is not just was the search warrant
15 valid because it was never no -- it was never no search
16 warrant brought into my home, so I'm thinking my fight is
17 gonna be about there being a search warrant brought into
18 the home and the stuff they did during the search warrant.
19 Like I had three -- I got three pages of questions I had
20 wrote down that I thought I was gonna be able to ask like.
21 For some reason they not -- I don't know why they figured
22 them not to be good questions. I don't know why it's not
23 no more motions to be filed. If there's something later on
24 about some motions being filed, I don't understand. I'm
25 not understanding what's going on and instead of just

1 sitting back and just accepting twenty-five years, I'd
2 rather get another attorney that's gonna make me understand
3 something. I don't know how -- if my family can get me
4 one, I don't know if I've got to wait on the Court to get
5 me one or what I've got to do, but I'm already going to
6 jail for fifteen years, twelve years. It's not fifteen, it
7 was twelve years. Twenty-five -- two of the years was
8 because of this before I even got found guilty. Like I'm
9 already going to jail. I don't want to just sit here and
10 compound time on top of time. I'm thirty-seven years old.
11 I could have went to trial in fed court. I chose not to go
12 to trial listening to other legal advice saying I'm gonna
13 get five years, I'm gonna get you five years. I agreed to
14 it, wound up with twelve years. It's not just -- I feel
15 like I -- I'm the only one fighting for me right now and by
16 me not saying nothing I'm not fighting.

17 **THE COURT:** Let me ask you this, Mr. Stewart.
18 Mr. Howe indicated that you want a jury trial in this
19 case?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Okay. One thing that I was going to do
22 at the very outset was to examine you pretty thoroughly
23 about your decision to have a bench trial and if I was not
24 convinced that you were voluntarily waiving your right to
25 a jury trial, then I was not going to proceed forward with

1 a bench trial, so we can go ahead and take care of that
2 right now. You will get a jury trial, okay?

3 **THE DEFENDANT:** All right.

4 **THE COURT:** But let me -- let's go off the record
5 and let me speak with the lawyers in the back for
6 scheduling purposes and -- and then I'll come back and
7 I'll make a decision about the other issue about your
8 lawyers, okay?

9 **THE DEFENDANT:** All right.

10 **THE COURT:** Is there anything else you want to tell
11 me? I didn't want to cut you off. You think on it and
12 when I come back in if there's anything else you want to
13 tell me, I'll give you an opportunity to, okay?

14 **THE DEFENDANT:** Thank you.

15 **THE COURT:** Let me see the lawyers in the back for
16 just a second.

17 (Recess taken.)

18 **BAILIFF:** Let's keep your seats and come back to
19 order, please.

20 **THE COURT:** Okay. We're back on the record.

21 Mr. Stewart, was there anything else you wanted to
22 tell me?

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** Okay. All right. Well, let me -- let me
25 take care of the easier matter first. Even though you

1 represented to your lawyers, and I think maybe it was your
2 initial idea to have a bench trial, it was my plan all
3 along to -- to examine you pretty thoroughly about your
4 waiver of a jury trial and proceed on -- on a bench trial.
5 If you had indicated during that examination at any time
6 that you were not sure or whatever, then I was not going
7 to try this case at a bench trial because you have a
8 constitutional right to a jury trial, okay?

9 **THE DEFENDANT:** All right.

10 **THE COURT:** So I'm gonna give you the right to -- to
11 a jury trial. Now, and I'm going to grant your request for
12 a new lawyer, but I want you to hear me out and you listen
13 to me very carefully, okay?

14 **THE DEFENDANT:** Okay.

15 **THE COURT:** Don't be like a lot of people and blame
16 the lawyer when you lose something, okay? I've seen it
17 as a lawyer, I've seen it as a judge; that any time a
18 defendant loses a motion or loses an argument or loses
19 something in the case, it's always the lawyer's fault. I
20 know these lawyers very well. I've known Mr. Howe for
21 probably forty years and known Ms. McNeill for several
22 years and just because they didn't do everything you wanted
23 them to do, doesn't mean that they are bad lawyers, okay?

24 **THE DEFENDANT:** All right.

25 **THE COURT:** They're excellent lawyers and sometimes

1 you've just got to trust your lawyer and the manner in
2 which they want to proceed. I can tell you that they
3 raised some excellent arguments concerning the suppression.
4 They met with me in my office yesterday morning pretty
5 early, they provided me with their motion, their
6 memorandum, their case law, and I spent all morning long
7 studying on what they presented to me, as well as what
8 the State presented to me, and it wasn't just an automatic
9 open and shut case. Of course, I had to hear the
10 testimony, too, before I made a decision, but they raised
11 some excellent arguments in the suppression that really
12 made me think. So it wasn't like they just did a crappy
13 job in this suppression matter, okay?

14 Understand this, since I've already ruled, and I'm
15 gonna issue an order confirming my denial of the motion
16 for suppression, that's gonna be the law of the case.
17 You're not gonna get -- just because you're getting a jury
18 trial, another lawyer, that you're gonna get a second bite
19 at the apple concerning the suppression. That's the law
20 of the case, okay? I want you to understand that. And I
21 don't know who your new lawyer's gonna be, I don't know
22 that, but understand this; that if he doesn't, or she,
23 doesn't do exactly what you think needs to be done in the
24 case, don't think you can come back to this Court and get
25 another lawyer. It just doesn't work like that, okay?

1 **THE DEFENDANT:** All right.

2 **THE COURT:** All right. Now I want you to fully
3 understand this, too. If I appoint a new lawyer, which
4 I'm gonna do -- or a new lawyer will be appointed for you,
5 I don't know if I'll actually be involved in that, the
6 system will appoint another lawyer for you, that lawyer
7 is gonna need time to get -- get up to speed on this case
8 and prepare the case and do whatever needs to be done to
9 provide you with representation, okay? More than likely
10 when I talk with the lawyers about scheduling, it's
11 probably gonna be next year before we can get to your
12 case, okay? Because your motion for a speedy trial was
13 for a bench trial, okay? That can be done a lot quicker
14 and easier than having a jury trial. So I want you to
15 understand that there's just no way around it. It's
16 probably going to be next year before we can get to this
17 case and as I have been informed you're not receiving
18 any credit on your Federal sentence for the time you're
19 being here at the detention center awaiting trial on your
20 State charges. Certainly you would be given credit, if
21 you are found guilty at a jury trial, if you're found
22 guilty, then, of course, you would receive credit for the
23 time that you're here, but it's not helping you on the
24 Federal, okay?

25 All right. So my ruling is this. I'm gonna give

1 you a jury trial. More than likely because of scheduling
2 it's going to be next year sometime. I'm gonna relieve
3 Ms. McNeill and Mr. Howe as your attorney and one will
4 be appointed for you, whoever that may be, okay? And,
5 lastly, I'm going to issue an order confirming my ruling
6 of yesterday and the reasons for it; my denying your
7 motion for suppression, okay?

8 So do you have any questions whatsoever as far as
9 what I have told you, sir? Take your time to think because
10 I want to try to answer -- to the best of my ability try
11 to answer your questions.

12 **THE DEFENDANT:** It's more -- I've got more of a
13 statement than a question.

14 **THE COURT:** Okay. Okay.

15 **THE DEFENDANT:** I just feel like I wasn't -- I'm not
16 being explained to -- not by you. Like -- like you say,
17 he did his best, he did good with the -- with the hearing.
18 The -- the questions I be having to ask and the things I
19 be saying is I don't get the -- I don't get -- it's like
20 I'm frustrated with my questions when I keep asking --
21 when I don't understand, it's like it's more frust --
22 like I'm not getting -- I'm not getting a direct answer
23 or something. Like I don't know how to say it. Like I
24 can say it better by giving you an example. Like when I
25 talked to you and you said I'll be able to file other

1 motions --

2 **THE COURT:** Let me -- let me just stop and clarify
3 that. Yesterday when you used the word "dismissal" --

4 **THE DEFENDANT:** Yeah.

5 **THE COURT:** -- okay, there is a procedure that after
6 the State presents their case, a motion for directed
7 verdict is customarily made seeking a dismissal of the
8 case based upon the fact that there has not been presented
9 by the State any direct evidence or any substantial
10 circumstantial evidence to justify the case going forward,
11 so that's when I meant yesterday simply because you used
12 the word "dismissal" and I had to assume that after the
13 State presented their case that Mr. Howe and Ms. McNeill
14 would make a motion for directed verdict. So that's --
15 that's why I said that, okay?

16 **THE DEFENDANT:** Right.

17 **THE COURT:** If that makes any sense.

18 **THE DEFENDANT:** It makes sense.

19 **THE COURT:** Okay. All right.

20 **THE DEFENDANT:** It makes sense and -- so when I came
21 in this morning and asked them like, well, what motions is
22 we gonna file, the answer he gave me made me feel like it
23 was no -- it was no other motions. What was gonna happen
24 was I was just gonna -- they was gonna say their side of
25 the story, he was gonna say his side of the story again,

1 and there was gonna be a judgment. Like that's not no --
2 that's not no -- another motion coming. Like I just heard
3 the judge say I was gonna get another motion. Like I
4 didn't understand. I felt like no, I didn't want -- I
5 didn't want to do that.

6 **THE COURT:** Well, I can't speak for Mr. Howe and
7 I can't say what was going through his mind when he
8 responded, but I feel pretty certain that he would have
9 made all appropriate motions during the -- during the
10 trial.

11 **THE DEFENDANT:** All right.

12 **MS. McNEILL:** And, Judge, just to clarify, we did
13 explain what directed verdict meant to him.

14 **THE COURT:** I'm sure you did.

15 **THE DEFENDANT:** Thank you. That's all I have to say.

16 **THE COURT:** Are you sure?

17 **THE DEFENDANT:** Yeah.

18 **THE COURT:** Okay. Thank you very much.

19 All right. That's the order of the Court. This
20 matter's adjourned.

21 (Proceedings were concluded at 10:19 AM.)
22
23
24
25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 27th and 28th days of July, 2015.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

March 4, 2016

s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

State of South Carolina,

Plaintiff,

-VS-

Terrance Stewart,

Defendant.

) COURT OF GENERAL SESSIONS

)

) Case No(s) : 2015GS3000957,

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2015GS3000958,

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2015GS3000959

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TRANSCRIPT OF RECORD

March 28, 2016

Laurens, South Carolina

B E F O R E:

HONORABLE DONALD B. HOCKER, Judge.

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

DALE SCOTT, Esquire

MARGARET BOYKIN, Esquire

Attorneys for the Plaintiff

C. RAUCH WISE, Esquire

Attorney for the Defendant

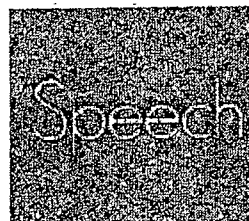
Teresa B. Johnson, CVR-M

Certified Court Reporter

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I N D E X

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EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

D-1	Transcript		23

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 28th day of March, 2016 at approximately 12:09 p.m.)

THE COURT: Alright. This is, uh, the matter of the State of South Carolina versus Terrance Stewart.

Uh, Mr. Wise, you have, uh, filed a motion to dismiss. I don't know if I actually have the motion. I know I've got your brief, but I don't know if I have an actual copy of your motion.

MR. WISE: I filed it with the clerk's office.

THE COURT: And I'm sure -- I'm sure you did.

MR. WISE: I don't know if I have a copy. It was filed back in...(Pause.)

Here's a copy of it.

THE COURT: Okay, and I can give it back to you.

MR. WISE: I don't -- I don't...(Pause.)

Attached to the motion, when I filed it with the clerk's office, is a copy of the transcript of the hearing in Greenville ---

THE COURT: Okay.

1 **MR. WISE:** --- in federal court. Well,
2 here is a copy of it also.

3 **THE COURT:** Okay.

4 **MR. WISE:** I would like to introduce the
5 transcript as Exhibit A or Exhibit 1 to that
6 motion. I forgot what I referred to it in the
7 motion.

8 **THE COURT:** Okay. We'll have it marked
9 at the conclusion of, uh, ---

10 **MR. WISE:** Okay.

11 **THE COURT:** --- motion hearing.

12 **MR. WISE:** Your Honor, the State has,
13 uh, noticed that they intend to try Mr. Stewart
14 on the charge of selling heroin and trafficking
15 in heroin. Both of those issues were presented
16 to the federal judge in Greenville at the time
17 of his sentencing. Testimony was taken from
18 Matt Veal, who was the investigating officer on
19 the case. The Court made a very specific
20 finding that, uh, they found that Mr. Stewart
21 did commit these acts.

22 As noted in my brief, South Carolina has a
23 relatively broad definition of a conviction, as
24 do -- as does Westlaw dictionary, that a
25 conviction basis is the finding of guilt in a

1 criminal prosecution. Certainly, sentencing in
2 federal court is a criminal prosecution, and a
3 finding by the judge that he had committed the
4 acts in the finding of guilt. If the judge had
5 found that he had not committed the acts, he
6 would have not been able to sentence him.

7 As a result of the finding of Judge
8 Herlong, the original guideline range in this
9 case was, I believe, 72 to 90 months. He took
10 away acceptance of responsibility; he added
11 more points for increased criminal history or
12 the criminal history not accurately reflecting
13 the seriousness of the crime; and ended up
14 sentencing Mr. Stewart to 144 months in jail,
15 so 12 years.

16 He went from a low of about 6 years to 12-
17 year sentence based upon the findings of the
18 judge of, uh, that he, in fact, committed these
19 two crimes in Laurens County. And, therefore, I
20 think there has been -- there has been, in
21 essence, a proceeding in a criminal case in
22 which Mr. Stewart has been found guilty by the
23 judge. Therefore, it's precluded under Section
24 44-53-410. And so what we're asking the court
25 to do here is simply to enjoin the state from

1 prosecuting Mr. Stewart in state court based
2 upon double jeopardy and the state court --
3 state statute, which, in essence, is a
4 complication of double jeopardy.

5 **THE COURT:** Okay. All right. Let me
6 take a look at this statute. If you will, give
7 me just a minute before we continue. (Pause.)

8 Okay. Solicitor Scott, Solicitor Boykin,
9 who's going to argue on behalf of the State?

10 **MR. SCOTT:** Your Honor, so what we've got
11 here -- I think it's kind of laid out.
12 Defendant does about 18 months up in Greenville
13 on an unrelated meth type plea. He gets out.
14 The feds indict him on a Conspiracy to
15 Distribute Heroin. He pleads guilty to it.

16 While he's awaiting sentencing, he gets
17 picked up here in Laurens on a distribution and
18 a trafficking. All right. He hadn't been
19 sentenced. He's pled guilty to the drug
20 conspiracy. He's awaiting sentencing. He's in
21 Laurens; and they catch him distributing
22 heroin; and then catch him with an amount of
23 heroin in his house that reaches trafficking
24 levels.

25 Thereafter, he has a sentencing date in

1 federal court on that initial drug conspiracy
2 charge. I just want to reiterate, I think it
3 is clear that that drug conspiracy on a federal
4 level is completely separate and apart from the
5 Laurens County trafficking and distribution.
6 They have no connection whatsoever other than
7 they are both heroin and the same defendant.

8 THE COURT: Right.

9 MR. SCOTT: Judge Herlong, when he is
10 sentencing Mr. Stewart, like Rauch said,
11 doesn't listen to testimony from Veal because
12 the US attorney up there mentioned it in
13 sentencing. Hey, this guy, while he's been
14 awaiting sentencing, got picked up on these new
15 charges.

16 Herlong took some testimony in camera from
17 Mr. Veal who just basically laid out the facts
18 and did a controlled buy. The next day, he did
19 a search warrant, found traffic in his trailer
20 -- trafficking amounts of heroin in his
21 trailer. Judge Herlong took that in
22 consideration in taking away his acceptance of
23 responsibility by showing that he has continued
24 to engage in criminal activity.

25 Further and separate from that was he went

1 to an upper variance based on the fact. He was
2 kind of, I guess, hit twice. He lost acceptance
3 of responsibility and engaging criminal
4 activity. And then the fact, I think, the judge
5 considered his criminal history coupled with
6 that continuing criminal activity, enhanced it.
7 So he had upper variance as well as loss of
8 acceptance of responsibility.

9 I think the gist of the argument is he has
10 been convicted based on Judge Herlong's
11 consideration of the new charges. If you look
12 at the transcript, we cited a number of times,
13 specific parts where Herlong has gone out of
14 his way to say you may not be convicted, you
15 may not ever be convicted of this state
16 charges, but I find under the sentencing
17 guidelines I can considering -- consider those
18 new charges in levying the sentencing or the
19 sentence about to levy against you.

20 I think we have provided applicable parts
21 of the federal sentence guidelines that allow
22 for that. What occurs to me is it's almost
23 like a probation violation. When you're
24 hearing a -- probation brings up a defendant in
25 front of you and you've given him probation on

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1 a prior charge; and then they say, well, hey,
2 Judge, just last week, he got picked up again
3 on a possession charge or whatever it is. You
4 are not convicting him when you give him a
5 revocation on that. You're considering the new
6 behavior whether it gets convicted some time in
7 the near future or not in revoking his current
8 probation. That's not a conviction. That's
9 not a sentence. It's really not even
10 punishment.

11 We cite case law here. We have got this,
12 uh, I think, the Witte case. It's Witte v.
13 U.S., 515 US 389. It's an interesting case.
14 They go back and they talk about the precedent
15 that, uh, is included all these cases that
16 predate the sentencing guidelines and how it is
17 affected when a judge considers criminal
18 conduct in a sentencing hearing for a separate
19 offense.

20 They say -- the court explains it with a
21 defendant in a situation like we're dealing
22 with here, when we punish for double jeopardy,
23 only for the offense in which the defendant is
24 convicted. Jeopardy is attached, obviously, in
25 the federal conviction but not the state

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1 charge.

2 I have got this Khan v. State too, Your
3 Honor. That's another one where the procedural
4 situation in that case is pretty spot on with
5 what we're dealing with here. That is a 694,
6 uh, -- is that Atlantic 2d -- A. 2d 485.
7 That's a 1996 case. I think it's pretty clear
8 that, for double jeopardy purposes, a federal
9 judge considering criminal conduct on an
10 unindicted or unresolved case does not result
11 in a conviction or punishment.

12 **THE COURT:** That's what Khan v. State
13 stands for?

14 **MR. SCOTT:** Yes, sir. Both of -- I list
15 Khan in there, Khan v. State. It's a Maryland
16 case just because it is of the striking
17 similarity of the procedural history on that
18 case. I'm just trying to pick out some -- this
19 is Khan, Judge.

20 The proposition of the State is we believe
21 that when a sentencing judge, i.e., Judge
22 Herlong, takes into account various aspects of
23 a defendant's background, including other
24 offenses committed in order to assess the
25 defendant's need for rehabilitation, the

1 sentence thereby imposed does not constitute
2 punishment for these aspects of the defendant's
3 background.

4 As to the subsequent prosecution argument,
5 the Court explained the lack of procedural
6 protections precludes a sentencing hearing from
7 being a prosecution of criminal conduct. In
8 other words, there's no real procedural
9 protections in Judge Herlong's consideration of
10 these unindicted at the time, certainly, not
11 convicted Laurens' charges. The courts are
12 saying there's a lack of procedural protections
13 to reach the level of even considering it a
14 prosecution. That's why we think that there's
15 never been any jeopardy whatsoever that's
16 attached in the Laurens case.

17 **THE COURT:** Let me ask you, is there any
18 disagreement as far as the effect of 44-53-10
19 -- assuming for the sake of argument that I
20 were to agree with Mr. Wise that Judge
21 Herlong's finding of guilt on the state charges
22 in some way does constitute a conviction, is
23 there any dispute as far as the effect that 44-
24 53-10 gives? Or is there some dispute as far --

25 **MR. SCOTT:** I think that specifically

1 deals with the drug statute. If there has been
2 a federal conviction on these Laurens County
3 drug charges, we would be precluded from --

4 **THE COURT:** Okay. So -- so that statute,
5 it's not in dispute as far as what it allows?

6 **MR. SCOTT:** No.

7 **THE COURT:** Okay. All right. Now, let's
8 talk a little bit about -- let's go one step
9 further from a scheduling procedural standpoint
10 insofar as whether or not -- is it agreed that
11 we're dealing with a double jeopardy issue
12 here? I know back in chambers, Solicitor, you
13 were not willing to concede that until you, you
14 know, read some cases. Are we dealing with a
15 double jeopardy issue, Number 1? And if so, if
16 that's not really in dispute, is it immediately
17 appealable?

18 I do recognize that the state provided me
19 with a couple of copies -- a couple of cases.
20 One, State versus Miller -- no, I'm looking at
21 the State versus Isaac, which specifically says
22 it's not immediately appealable. So let's just
23 back up. Are we in agreement that we are
24 dealing with a double jeopardy or potential
25 double jeopardy issue even though you're not

1 conceding that there should be?

2 **MR. SCOTT:** Yes, Your Honor. I think
3 issue raised by the defense is one that would
4 deal with jeopardy -- double jeopardy
5 protections.

6 **THE COURT:** All right. Now, Mr. Wise, I
7 know you've handed me some cases I haven't had
8 a chance to look at yet. But State versus
9 Isaac, that the state provided to me,
10 specifically says that double jeopardy is not
11 immediately appealable.

12 **MR. WISE:** I looked at State versus
13 Miller. It refers to an old statute dealing
14 with the definition of appeal. The statute was
15 modified in 1991. It's worded completely
16 differently now. I gather from reading the
17 opinion, the 1991 statute does not have
18 language that says a criminal cases is only
19 appealable from a conviction or from language
20 such as that. It's a little more than that. I
21 have not looked at in detail, to be frank with
22 you, to let you know for sure.

23 **THE COURT:** Okay.

24 **MR. WISE:** But I do see that the
25 language in the 1991 statute is -- was

1 substantially modified. It was done, in fact ,
2 uh, -- let me get to it.

3 **THE COURT:** What -- what statute are you
4 alluding to?

5 **MR. WISE:** I'm looking at Act, uh, 115,
6 which modified the statute 14-3-330 ---

7 **THE COURT:** Right.

8 **MR. WISE:** --- relating to appellate
9 jurisdiction of Supreme Court.

10 **THE COURT:** Right. Well, Isaac refers to
11 14-3-330.

12 **MR. WISE:** When was Isaac decided?

13 **THE COURT:** 2013.

14 **MR. WISE:** I haven't read that. Isaac
15 dealt with -- Isaac deals with the Castle
16 doctrine, which is an inherently factual issue
17 more -- much, much, much more so than a double
18 jeopardy argument. I don't the Castle doctrine
19 case should apply to a double jeopardy
20 argument.

21 **THE COURT:** Well --

22 **MR. WISE:** If they say anything like that
23 it would be a matter of ---

24 **THE COURT:** Well, uh, -- and again, you
25 haven't had an opportunity to read Isaac. I'm

1 just referring to one portion that says denial
2 of a request for immunity under the act, which
3 is, a Castle doctrine issue, is analogous to
4 the denial of the motion to dismiss a criminal
5 case on the ground of double jeopardy, which is
6 not immediately appealable.

7 **MR. WISE:** I do not know how well it was
8 argued. I do not know if they went back and
9 didn't catch the distinction what was passed in
10 1991 in reference to that. Without looking at
11 the briefing, I really couldn't tell you.

12 I personally can easily see a big
13 difference between the Castle doctrine and
14 double jeopardy. The simple explanation is if
15 you're right on the Castle doctrine, the jury
16 should acquit you and there will be no
17 appeal. You can be right on double jeopardy
18 and you could still be convicted in front of a
19 jury. So there's still a big difference
20 between the two.

21 **THE COURT:** Right. The Castle doctrine,
22 at one time, was immediately appealable. And
23 then they -- because of the, uh, use or abuse
24 or misuse of that procedure, it was changed to
25 where it could not be immediately appealable.

1 **MR. WISE:** The Isaac case was probably
2 the worst case to appeal from what I know about
3 it and argue that's immediately appealable.
4 I'll tell you that now. I really never thought
5 Isaac -- I never thought the Castle doctrine
6 was immediately appealable for the simple
7 reason that a defendant, under Castle doctrine,
8 has a much more effective remedy at the trial
9 level than a defendant in a double jeopardy
10 case.

11 **THE COURT:** All right. The State want to
12 play in on this argument as far as whether or
13 not --

14 **MR. SCOTT:** As it applied -- if you look
15 back at Miller, Judge, right there on the first
16 page, they cite Abney. This is a South Carolina
17 Supreme Court case, 1986. It comes after that.
18 So what the Supreme Court in this case is
19 saying, uh, the appellant however argued that
20 this rule has been overruled by a federal
21 decision, which holds that appeals on double
22 jeopardy grounds involve final judgments that
23 are directly appealable. The court specifically
24 state, uh -- cite Abney v. U.S. for that
25 proposition. Then they go on and say the cases

1 cited by appellant, Abney, have no application
2 to state court appeals. We adhere to our view
3 that under 14-3-330 that a criminal defendant
4 may not appeal until after sentence has been
5 imposed.

6 And Isaac goes back and they cite Miller.
7 Specifically, I point to the section that you
8 were referencing earlier. They're talking
9 about the Castle act right there -- is
10 analogous to the denial of a motion to dismiss
11 a criminal case on the grounds of double
12 jeopardy, which is not immediately appealable.

13 What Isaac's doing is they are going back
14 -- they are not creating that proposition that
15 double jeopardy is not immediately appealable.
16 They are saying that the Castle doctrine is
17 analogous to that accepted idea by our Supreme
18 Court that double jeopardy is not immediately
19 appealable. So they are really creating law in
20 Isaac. All they are really doing is comparing
21 their decision on the Castle doctrine and they
22 are comparing that to an accepted idea that
23 goes all the way back to '86 that double
24 jeopardy is not immediately appealable.

25 **THE COURT:** All right. Let me just --

1 again, from a scheduling procedural standpoint,
2 let's say I rule -- and I need to look at this.
3 I've got an idea how I'm going to rule, but I
4 need to look at all of this. If I rule that
5 there's not been a conviction to create a
6 double jeopardy issue, and while I may further
7 have the opinion that it's not immediately
8 appealable -- but Mr. Wise, you disagree, which
9 you would have every right -- is it going to be
10 a situation where a notice of intent to appeal
11 is going to be filed?

12 Anyways, right or wrong, I don't have
13 jurisdiction to proceed forward this afternoon
14 drawing a jury and starting the case. So, I
15 mean, -- so even though the state maybe very
16 adamant that it's not immediately appealable, I
17 may agree with the state that it's not
18 immediately appealable, Mr. Wise thinks
19 otherwise and he files that notice of intent.
20 Once that thing is filed, I lose jurisdiction.
21 So I'm looking at this from a realistic
22 practical standpoint with respect to
23 scheduling.

24 **MR. WISE:** I think that's correct, but I
25 want to put one thing on the record too.

1 14-3-330, to me as I read it, has obviously
2 been changed from what it was worded when
3 Miller was decided. Because there's no
4 language in the statute as it is worded today
5 that says a criminal appeal can only be from a
6 sentence. If that language was in the statute
7 originally -- and I hadn't researched the
8 history to find out. But if the language taken
9 from Miller was in the statute originally, it
10 has since been removed.

11 **THE COURT:** All right. So, if I rule
12 against you, would it be your plan, Mr. Wise,
13 uh, to file your notice of intent to appeal?

14 **MR. WISE:** That is correct. And to let
15 you know, I have a notice of intent to appeal
16 dated today if you rule today. And if you rule
17 tomorrow, I will bring one back dated tomorrow.

18 **THE COURT:** No, I'm going to rule today.
19 We need to -- if we don't go forward on this,
20 we need to schedule something else.

21 **MR. WISE:** Right.

22 **THE COURT:** So, Solicitor, you understand
23 that even though you adamantly disagree with
24 Mr. Wise's position, you understand that if he
25 files one, you know, you can disagree all day

1 long, I don't have jurisdiction if that notice
2 of intent to appeal is filed.

3 **MR. SCOTT:** And that's what -- the
4 defendant will sit in the Laurens County jail
5 for another two years, I guess, before the
6 Court of Appeals gets to decide on it probably.

7 **MR. WISE:** I think the transcript will
8 be relatively brief, so I don't think it will
9 be quite that long.

10 **MR. SCOTT:** That's typically what the
11 Court of Appeals, in my experience, seems to
12 pick up a case. He's been in the Laurens' jail
13 for two years.

14 **MR. WISE:** Unless the Feds pick him up.

15 **MR. SCOTT:** They won't do that. They've
16 assured me until the State's dealt with him,
17 they're going to leave him here in our jail.
18 I would appeal after the conviction. If I --
19 if I had -- of course, it's not up to me. But
20 I think that would be the wise course of action
21 after the sentence is imposed, should there be
22 one. If it's an acquittal, then it's done. But
23 I think that would be the wise course of
24 action.

25 **THE COURT:** Right. But you do agree that

1 I lose jurisdiction over this case once Mr.
2 Wise files that notice of intent to appeal.

3 MR. SCOTT: That's my understanding, Your
4 Honor.

5 THE COURT: Right. Okay. All right. So if
6 Mr. Wise is presenting to the court that that
7 would be his intention if I were to rule
8 against him, then -- for scheduling purposes,
9 then this case is not going to go forward.

10 MR. SCOTT: Unless I can find anything to
11 the contrary, Your Honor, that's my
12 understanding. I think again he just sits here
13 until we get some kind of ruling from the Court
14 of Appeals and then we'll figure it out then.
15 But that's my understanding as I stand here
16 right now, Your Honor.

17 MR. WISE: We can agree on two things,
18 that if you rule in my favor, it does end it;
19 and two, a notice of appeal does -- does
20 deprive the court of jurisdiction now. Now, we
21 disagree with everything in between those two
22 positions, but, uh, ---

23 THE COURT: Right. Okay.

24 MR. WISE: --- we would agree on those
25 two.

1 **THE COURT:** Certainly, over lunch if you
2 want to do any more research. And maybe during
3 lunch break, you can convince Mr. Wise
4 otherwise. But right now, unless I hear some
5 different, then I think we need to put
6 everybody on notice that this is not going
7 forward and, uh, we'll, uh, have to try
8 something else. Okay. Let's get back together
9 in here at, uh, at 2 o'clock. Okay?

10 **MR. WISE:** Okay.

11 **THE COURT:** All right. Thank you.

12 (WHEREUPON, a recess is taken from approximately
13 12:34 p.m. to 2:07 p.m.)

14 (WHEREUPON, Defendant's Exhibit 1 is marked for
15 identification purposes.)

16 **THE COURT:** Okay. Back on the record,
17 uh, in the State of South Carolina versus
18 Terrence Stewart. Anything further on the
19 record concerning the motion?

20 **MR. SCOTT:** Well, Your Honor, I did some
21 research on the effect of, I guess --

22 **THE COURT:** We'll discuss that in a
23 minute.

24 **MR. SCOTT:** Okay.

25 **THE COURT:** But as far as the motion

1 itself and then we can discuss concerning the
2 effect of whatever notice of intent to appeal
3 that he made --

4 **MR. SCOTT:** Yes, sir. I don't have
5 anything as far as ---

6 **THE COURT:** Okay.

7 **MR. SCOTT:** --- the double jeopardy
8 motion.

9 **THE COURT:** Okay. All right.

10 **MR. WISE:** I just want to clarify one
11 thing that I mentioned in my other comments. In
12 view of the fact that while it's akin to a
13 double jeopardy statute, a double jeopardy
14 provision under the state constitution, it is a
15 statutory --

16 **THE COURT:** I understand.

17 **MR. WISE:** I think it is more
18 appropriate that we can add that it would be
19 that we're asking the court to enjoin the state
20 from prosecuting -- a permanent injunction from
21 prosecuting this particular case. I think with
22 the statutory provision, I think we have to
23 look at it in terms of an injunction.

24 **THE COURT:** But it is -- I mean, at the
25 end of the day, it's a double jeopardy

1 argument.

2 MR. WISE: That's correct. That's
3 correct.

4 THE COURT: I understand.

5 MR. WISE: It's just how you approach it.

6 THE COURT: I understand.

7 MR. WISE: I think your constitutional
8 provision has different implications than a
9 statutory as far as what remedy you have.

10 THE COURT: Okay. I've read everything
11 that both sides have provided to me. I'm going
12 to dismiss, uh, -- deny the motion to dismiss.
13 I've done a little short order that I will
14 provide to you guys when we conclude this
15 hearing.

16 The -- concerning -- you know, concerning
17 Mr. Wise filing an appeal immediate to this
18 motion denial, I believe it is not an immediate
19 appeal. However, that's not for me to rule on.
20 You know, Rule 205 says that when the notice of
21 intent to appeal is filed, the appellate court
22 has exclusive jurisdiction, uh, of the case
23 except as to maybe some matters that would not
24 be subject to appeal. But this appeal would be
25 all-encompassing over the case. So whether I

1 have a strong belief that Mr. Wise is
2 incorrect, that's really not -- that's not for
3 me to decide. Once he files that notice of
4 intent to appeal, that's it.

5 I think the cases, Solicitor, that you have
6 emailed me over the lunch break all address the
7 issue of this not being an immediate appeal.
8 But that's not for my determination. He's
9 represented to me that if I deny his motion,
10 which I have, and he's got a notice ready to
11 get in the works, you know, then I've got to
12 accept that and find that I don't have
13 jurisdiction to proceed forward.

14 **MR. SCOTT:** There's no jur -- nobody has
15 jurisdiction then right now. Notice of appeal
16 doesn't immediately transfer until they take
17 the case on appeal. It's not directly
18 appealable -- immediately appealable. Who's
19 got jurisdiction as of right now?

20 **THE COURT:** Once he files that notice of
21 intent to appeal, all right, at that moment,
22 then the appellate court has exclusive
23 jurisdiction. Now, they could very well the
24 next day or a week for now or a year from now
25 say, Mr. Wise, this is not an immediate appeal,

1 you've got to appeal this issue at the end of
2 the case. They could very well say. But it's
3 going to be their call. It's not my call.

4 **MR. WISE:** I've read those cases too and
5 had some discussions with some people over
6 lunch. I think there's definitely some ways
7 around it, but we're going to find out.

8 **THE COURT:** Once he files the notice,
9 that's it, the appellate court has
10 jurisdiction. I do not.

11 **MR. SCOTT:** It just appeals to me --
12 appears to me, rather, that these cases stand
13 for the proposition that there needs to be a
14 final judgment or else any time there's any
15 kind of pretrial motion denied, it seems very
16 clear to me that it's not directly appealable.

17 **THE COURT:** Right. I think it's pretty
18 clear too, and I have to disagree with Mr.
19 Wise. But again, that's not my call. Once he
20 files that notice, which he --

21 **MR. WISE:** Oh, I will.

22 **THE COURT:** I think you just kind of --

23 **MR. WISE:** Just filed it.

24 **THE COURT:** Once he files the notice,
25 that's it. Rule 205 is perfectly clear that

1 once it's filed, the appellate court has
2 exclusive jurisdiction. The appellate court's
3 going to have to say, Solicitor, you are
4 correct; he should not have filed the notice or
5 they going to say, no, Mr. Wise, you are
6 correct; it's immediately appealable.

7 **MR. WISE:** What I did with one in
8 Greenwood is file a motion to dismiss and let
9 the court see if my argument is correct.

10 **MR. SCOTT:** What got me thinking was
11 Isaac. I recall that case. The defense raised
12 a Castle doctrine issue and everything. Judge
13 Newman said, no, I'm going to deny it. He was
14 ready to proceed after denying it.

15 **THE COURT:** Exactly.

16 **MR. SCOTT:** It was not the notice of
17 appeal. It was the Supreme Court that had an
18 emergency order. I think short of a grant of
19 stay or, I think, any kind of original writ,
20 short of that, I don't think it's transferred
21 out of your jurisdiction.

22 **THE COURT:** Well, I happened to be -- I
23 had just started on the bench when that case
24 was heard, and I was in Richland County when
25 Judge Newman heard that. Of course, he did, as

1 I'm doing, he -- once, uh, he ruled against the
2 defendant and the appeal was filed, then he
3 didn't proceed forward with the case. I think
4 he did recognize that in that particular case,
5 there was not a whole lot of merit to the
6 Castle doctrine motion. But be that as it may,
7 once the defendant immediately filed that
8 appeal, Judge Newman backed off and said I no
9 longer have any jurisdiction.

10 **MR. SCOTT:** I was mistaken. I thought
11 that he intended to go forward, and then Chief
12 Justice sent out that emergency order, I guess,
13 to take it up.

14 **MR. WISE:** They sent out an emergency
15 order to expedite the appeal, I think is what
16 they did.

17 **THE COURT:** And there may be a mechanism,
18 Solicitor that -- I don't know this. Mr. Wise
19 may very well know it -- a mechanism in which
20 this can be expedited, put on the fast track,
21 get some sort of determination to dismiss the
22 appeal if that's going to be the outcome as
23 decided by the appellate court. But, uh, --

24 **MR. SCOTT:** He sits in our jail. I don't
25 think he's going anywhere.

1 **MR. WISE:** Nope. He's not going anywhere..

2 **MR. SCOTT:** He'll be sitting there for the
3 time being.

4 **THE COURT:** All right.

5 **MR. WISE:** He'll still be sponging off
6 the county.

7 **THE COURT:** Okay. All right. This matter
8 is concluded. I have a copy of the order from
9 each for each one of you if you want to get it.
10 If you need it clocked in --

11 This is not on the record, Teresa.

12 **(WHEREUPON,** the proceedings conclude at
13 approximately 2:14 p.m.)

14

15

16

17

CERTIFICATE

31

STATE OF SOUTH CAROLINA)

COUNTY OF LAURENS)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Laurens, South Carolina, on this 18th day of May, 2016.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
)
-VS-)
)
TERRANCE EDWARD)
STEWART,)
)
DEFENDANT.)
_____)

CASE NO.: 2015-GS-30-957
2015-GS-30-958
2015-GS-30-959

TRANSCRIPT OF RECORD

DECEMBER 13 & 14, 2016
LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK ADDY, JR., JUDGE , AND A JURY

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

ATTORNEY FOR PLAINTIFF:

C. DALE SCOTT, ASSISTANT SOLICITOR
JIM TODD, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

RAUCH WISE, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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1 THE COURT: We're going to go back on the record in the
2 case of the *State vs. Terrance Stewart*. Mr. Stewart, I'm
3 Frank Addy. I'm a circuit judge. I don't think we've met
4 previously, but -

5 MR. WISE: You actually held a bond hearing on him,
6 what, a year -- over a year ago.

7 THE COURT: All right. I stand corrected, sir. I just
8 wanted to make sure you knew who I was since obviously I'm a
9 different judge from the one that picked the jury yesterday.
10 Okay?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: We are back on the record on this case.
13 I'm told that Maryann Nevers was the court reporter for
14 Judge Hocker who yesterday selected this jury. The jury is
15 present. Before the jury comes out, Mr. Wise, you wanted to
16 put a few matters on the record concerning pretrial issues?

17 MR. WISE: Your Honor, there are two pretrial hearings
18 in this matter. One was held before Judge Hocker back on
19 July 27th and 28th, 2015 involving the search warrant in
20 this issue. And then reviewing the order issued by Judge
21 Hocker in this matter I want to make two things clear on the
22 record. And I don't think they're addressed in Judge
23 Hocker's order, unfortunately, so I basically will have to
24 maybe ask the Court to review the transcript of the -- of
25 the suppression hearing held earlier.

1 The hearing itself addresses these issues. The order
2 doesn't, I don't think, or at least doesn't address them in
3 a manner that I would be confident that the Supreme Court is
4 going to say they were addressed. Let's put it that way.

5 The first is it was conceded at the suppression hearing
6 that the search warrant on its face was not sufficient, and
7 therefore they took additional testimony. The problem --
8 two problems I -- the one problem I have with that is Judge
9 Tucker, who is the issuing magistrate, testified that she
10 had no recall of information given to her in that hearing.
11 And that's in the oral testimony given at the time the
12 warrant was issued. She had no contemporaneous notes taken
13 down. It was not recorded. And therefore we -- you know,
14 she says, quite frankly, she didn't know what -- she didn't
15 remember what was said. The problem I have is that if
16 you're going to supplement a bad affidavit with oral
17 testimony, the criteria for appellate review should be what
18 did the magistrate hear. Because it matters not what the
19 officer said, it's what the magistrate heard that determines
20 probable cause. Not what the officer said. And if she
21 doesn't remember it then I don't think that probable cause
22 has been established at all.

23 Secondly, and this was mentioned at the previous
24 hearing, it was conceded at the hearing also that no one at
25 the house was given a copy of the warrant. And I would

1 point out to the Court that in Section 17-13-150 is a
2 statute that requires that a person's house who is searched
3 be given a copy of the warrant, and in the transcript no --
4 it stated that no warrant was issued, and, therefore, it
5 should be suppressed on that basis. And it may be easier
6 just to -- I've got a couple more, but let the State respond
7 to those two, if they care to.

8 THE COURT: All right. Mr. Scott, you want to address
9 those or speak to those concerns?

10 MR. SCOTT: I'm kind of scratching my head that we
11 didn't take this up in front of Judge Hocker yesterday who
12 has all the familiarity in the world with that hearing
13 because he's the one who ruled that the search was valid. I
14 was unprepared to argue search issues again because it was
15 decided well over a year ago.

16 THE COURT: Well, did Judge Hocker issue a written
17 order?

18 MR. WISE: He did, Your Honor.

19 THE COURT: May I see it?

20 MR. WISE: I wasn't reviewing it until last night. I
21 was not involved in the case when Judge Hocker issued that
22 order.

23 THE COURT: Mr. Wise, your motion is noted, and I would
24 like -- before I finally rule, I would like the opportunity
25 to perhaps review the transcript I think that you had

1 already filed, or someone, on --

2 MR. WISE: I have a copy and I'm trying to think --
3 mine's kind of marked up.

4 THE COURT: It doesn't matter to me if it doesn't
5 matter to them. I can --

6 MR. SCOTT: That's fine.

7 THE COURT: Thank you. As a threshold matter, Mr.
8 Wise, you raise an interesting point concerning the issue
9 about what the magistrate recalls. Do you have any
10 authority for the proposition? Because off the top of my
11 head I can't --

12 MR. WISE: Well, I'm reminded of the sage words of
13 Chief Justice Alex Sanders, that the legal system is the
14 only system that refuses to reward original thought because
15 no judge will do it unless another judge has done it first.

16 THE COURT: Certainly.

17 MR. WISE: I will be frank to say I do not.

18 THE COURT: All right. I can't think of anything off
19 the top of my head, and that's a very interesting motion.
20 The only concerns that the Court has with it is obviously
21 there could be circumstances where perhaps a magistrate or
22 an issuing officer either has a stroke, they have memory
23 problems, they simply don't recall for physical or mental
24 reasons, or simply don't recall because they're forgetful.
25 I don't know -- obviously it would be preferable if a record

1 were established at the time the oral testimony was given.

2 MR. WISE: My theory on it is this. You know, the
3 Courts have always said that we prefer a written document.
4 You know, if you've got a search warrant in writing, you
5 know, you're ahead of the game. Anything that encourages
6 law enforcement to put everything in that search warrant,
7 frankly, is a good policy. And that's -- you know, from a
8 policy standpoint, that's the way it should be done.
9 Otherwise, you go fill out a search warrant that says I
10 have probable cause to search this house, and then you sit
11 there with the magistrate and talk to the magistrate for 30
12 minutes and nobody knows, you know, really what's said. But
13 --

14 THE COURT: I understand your position. As a threshold
15 matter, and until I have a chance to review the transcript,
16 I would --

17 MR. WISE: Secondly, we also previously filed a motion
18 back in March of 2016, I filed this one, to dismiss the
19 charges on grounds that it violates the code section of
20 South Carolina -- let me get that code section for you.
21 It's the section in the South Carolina code that says if you
22 prosecute in federal court you can't be prosecuted in state
23 court. It's --

24 THE COURT: Is that under Title 14?

25 MR. WISE: 44. 44-53 -- it's in the motion. It's in

1 the -- do you got it? Mr. Stewart's got it. He can
2 probably find it quicker than me. 44-53-10, which basically
3 says that if you're convicted in Federal Court you can't be
4 convicted in State Court. We submitted at that time a
5 transcript of a sentencing hearing on Mr. Stewart in Federal
6 Court where Judge Herlong -- and I -- where Judge Herlong
7 took testimony from the officers involved in this case and
8 ruled that he did commit those crimes and, therefore,
9 increased his sentence. That was heard before Judge Hocker.
10 We took an appeal to the Supreme Court. The Supreme Court
11 held in a case this year that they went back -- well, they
12 stuck with their position. You can't appeal double
13 jeopardy before a trial. So I just want to make sure that
14 issue is on the record. And I believe the transcript of
15 that hearing of the federal hearing was introduced back in
16 March, and I just want to incorporate all that into it also.

17 THE COURT: Okay. But that has been ruled -- that has
18 been ruled upon?

19 MR. WISE: That's been ruled on. There's nothing for
20 the State to respond on that.

21 Thirdly, at the suppression hearing the State
22 introduced a lot of testimony about people having overdoses
23 of heroin and that's one reason they were going after Mr.
24 Stewart. I would move to exclude any such testimony in this
25 trial as it simply is more prejudicial than probative. I've

1 learned that one of the great definitions of more
2 prejudicial than probative is when a fact would cause a jury
3 to decide the case on an improper basis. Whether or not
4 anybody died on an overdose of heroin simply is not relevant
5 to the issue of whether or not Mr. Stewart sold heroin, and
6 if you bring in a bunch of testimony about people overdosing
7 from heroin, the jury could decide this case based upon the
8 -- what they hear about overdosing of heroin and not on
9 whether or not whether or not Mr. Stewart did, in fact, sell
10 these drugs. And I would move to exclude any reference to
11 anybody having any overdose of heroin. And that's -- in the
12 video that they have there is some conversation about that
13 and a phone call that I would move to exclude.

14 THE COURT: All right. Mr. Scott, what's the State's
15 take on that, or how are you all planning on presenting
16 this?

17 MR. SCOTT: Well, just as an explanation. I think we
18 can handle that and not mention that specifically. But it
19 is kind of how the Sheriff's Department got involved in the
20 case. There was a call from, I think, the Fountain Inn
21 Police Department to a narcotics agents in Laurens that they
22 were having multiple overdoses. Heroin was being sold up
23 there mixed with something called fentanyl. Your Honor is
24 familiar with what that is. They had information they
25 passed on to the Sheriff's Department that kind of led them

1 to conduct an undercover buy with Mr. Stewart. And, in
2 fact, he did sell the CI five packets of heroin laced with
3 fentanyl which led to a search warrant the next day and
4 there was a large quantity of heroin mixed with fentanyl in
5 his home. The CI, Your Honor, I fully expect in these type
6 cases that, you know, Rauch is going to do everything he can
7 to make it seem like the CI has maybe an ax to grind against
8 Mr. Stewart or whatever. But one of his main motivations
9 was that he did, in fact, OD on some of this heroin that he
10 bought from Mr. Stewart, and when they found him he was
11 passed out outside of a convenience store with a needle in
12 his arm. He was arrested on paraphernalia charges, but he
13 indicated to them that he would like to help catch Mr.
14 Stewart because he bit off more than he could chew when he
15 bought that -- the heroin that he thought was pure heroin
16 but was mixed with the fentanyl.

17 Having said that, I think -- I think we can explain how
18 law enforcement came to send CIs over to Mr. Stewart's house
19 without mentioning that there was a rash of overdoses in the
20 upstate. But I would -- I would probably reserve the right
21 to talk about the CI's state whenever law enforcement found
22 him. It's just -- it naturally tends to leave the jury to a
23 better understanding of how law enforcement -- they're not
24 just picking on Mr. Stewart. There was a chain of events
25 that led them to his doorstep. But I think historically

1 that we don't have to talk about the -- I think something
2 like six or seven overdoses in the upstate around the short
3 period of time that put him on their radar. But we don't
4 have to mention that, if that makes any sense.

5 THE COURT: I assume they were not all fatal, correct?

6 MR. SCOTT: That's right.

7 THE COURT: Was there --

8 MR. SCOTT: Also, the CI's wasn't. And Mr. Veal could
9 probably --

10 THE COURT: Was there only one fatality? I use -- I
11 shouldn't modify that with "only". But, I mean, was there a
12 single fatality or two fatalities or --

13 MR. SCOTT: I don't think there's any fatalities.
14 There were just people who were getting really sick off this
15 heroin.

16 THE COURT: I misunderstood then what Mr. Wise was
17 saying. I was under the impression you were saying it was
18 fatal. But --

19 MR. WISE: I assume, based upon the State's
20 representation, that they're not going to use this anyway.
21 But the CI, in a conversation with my client, makes
22 reference to the fact that his girlfriend died.

23 MR. SCOTT: No, she -- she did not.

24 MR. WISE: I know, but he made reference to it.

25 MR. SCOTT: If you watch -- in the video, she's

1 actually in the video.

2 MR. WISE: Right, but he made reference to it in a
3 phone call. And I assume, therefore, I don't have to worry
4 about that phone call.

5 THE COURT: Let's handle it this way. If you feel like
6 they're going a little bit too far afield, Mr. Wise -- I
7 feel like they're entitled to, under the law, give context
8 for the investigation. What they undertook to investigate
9 these incidents involving heroin. And obviously your client
10 is charged with trafficking in heroin, as well as
11 distribution. I'm assuming that the distribution is for the
12 sale to the CI. The trafficking is probably related to the
13 quantity that was seized at the house. But certainly
14 they're able to give context to how law enforcement came to
15 investigate Mr. Stewart, and that's particularly true in
16 light of what I anticipate you putting forward as a defense
17 or how you're handling -- or how you're going to handle this
18 on cross. So it sounds like they're going to stay away from
19 it. It sounds like it's not a problem. If it becomes more
20 than just a passing reference then --

21 MR. WISE: I would assume they could make a general
22 statement like I got some bad heroin and wanted to do
23 something. But, I mean, without going into detail beyond
24 that.

25 THE COURT: I'll see how they handle it, and if you

1 feel like they're getting far afield, or too far afield
2 that they illicit something that's inappropriate, please
3 object and I'll be more than happy to give the jury a
4 limiting instruction or a curative charge.

5 MR. WISE: One last issue. And I will conceded to the
6 Court that I don't think the facts quite some under *State*
7 *vs. Brown*, but I think the analogy is pretty -- is pretty
8 good. In *State vs. Brown* the Court held that you cannot
9 prosecute somebody for possession with intent to distribute
10 and distribution, and granted the narrow facts in that one
11 were the guy showed up with like four ounces of dope and the
12 guy ended up buying two and then they later charged him with
13 possession with intent for the other two. I think this is
14 somewhat analogous though because they do -- the State's
15 theory is that it's all part and parcel of one deal. That
16 the trafficking heroin found at his residence was basically
17 part of what they bought less than, I think, 14 hours
18 before. And therefore I think the same general principals
19 would apply that the State would be required to elect as to
20 whether or not they're going to charge him with possession
21 with intent or just possession of -- excuse me. Charge him
22 with distribution or charge him with trafficking.

23 I would point out to the Court that by statute
24 possession with intent is a lesser included of trafficking,
25 so that would make it similar analogous, I think, to *Brown*,

1 although the facts are otherwise not quite the same.

2 THE COURT: May I suggest that perhaps the better
3 course, Mr. Wise, is for that to be -- that question to be
4 addressed at the directed verdict stage after the close of
5 the State's case so that the Court can be familiar with what
6 they are alleging in terms of what was gotten when from who
7 and under what circumstances. So let me just suggest that
8 you reserve that for your motion at the close of the State's
9 case.

10 Anything else housekeeping-wise? Solicitor, how many
11 witnesses do you all have in terms of the State's case and
12 when you expect it to be done?

13 MR. SCOTT: Let me see, Your Honor.

14 THE COURT: Ballpark, how many do you think you're
15 going to call?

16 MR. SCOTT: Seven. I'm going to call Matt twice though
17 because he's on the distribution and the search of the
18 house. It'll make since just chronologically. But seven, I
19 think.

20 THE COURT: Okay. Am I correct, Mr. Wise, that you're
21 arguing a case with the Supreme Court tomorrow or am I --

22 MR. WISE: Yes, that's correct. And I think they have
23 some logistical problems and I kind of figured 2:00 would be
24 a good time to start back tomorrow. I thought I was the
25 second argument and I'm the third argument. So even -

1 THE COURT: So you'll go around 11:00 or so?

2 MR. WISE: Even though it stays 10:00, it's not going
3 to start at 10:00.

4 THE COURT: All right. I'll just explain that to the
5 jury when we break for the day that you've got an argument
6 tomorrow that you have to make. Let's take five minutes for
7 ourselves and that way we can hit the ground running when we
8 bring the jury out. All right?

9 (Whereupon, a recess was held from 10:22 a.m. to 10:28
10 a.m.)

11 THE COURT: Let's go ahead and bring the jury out,
12 please.

13 MR. WISE: I got something to tell you real quick.

14 THE COURT: I'm sorry. Yes, sir.

15 MR. WISE: And I meant to say this earlier. In looking
16 over the discovery last night I noticed that the rap sheet
17 on the confidential informant is -- the date on it was
18 January of last year, and I assume they can get me an
19 updated rap sheet before he testifies.

20 THE COURT: I'm sure they'll be more than happy to
21 accommodate that request. Let us have the jury, please.

22 (Whereupon, the jury entered the courtroom at 10:29
23 a.m.)

24 THE BAILIFF: All jurors are present, Your Honor.

25 THE COURT: All right. Let the record reflect that the

1 jury is back and seated. Ladies and gentlemen of the jury,
2 first order of business is probably introductions. Okay?
3 My name is Frank Addy. I know that Judge Hocker, you met
4 him yesterday and he explained to you that he was simply
5 unavailable for the rest of this week. And so, I've come
6 over from Greenwood, which is my hometown, to complete the
7 term of court that Judge Hocker began yesterday. Okay? And
8 I want to thank you for your willingness to be here and
9 participate in this process as jurors. I know that you were
10 here about an hour ago and I apologize for keeping you
11 waiting back there. Just so that you know that we weren't
12 out here twiddling our thumbs or cooling our heels. The
13 reason I had to keep you waiting, first there was a wrongful
14 death settlement involving a motor vehicle accident that
15 took place in December of 2014. There were three fatalities
16 in that accident, and I needed to get that settlement
17 approved so that we could get that off the trial roster of
18 cases for Laurens County here. So that took a little piece
19 of time. Additionally I was handling just some pretrial
20 matters, procedural issues on this particular case. And by
21 handling them on the front end I think hopefully it will
22 make the case proceed a little bit more quickly.

23 Logistically going forward I want to let you know that
24 we're going to reconvene when we break for today -- I do
25 anticipate this case going at least into tomorrow. But

1 tomorrow we're going to reconvene at 2:00 because Mr. Wise
2 has oral argument on a case before the South Carolina
3 Supreme Court tomorrow morning. So he needs to attend to
4 that. And so, we're going to reconvene this case when we
5 break for today for tomorrow afternoon around 2:00. Okay?
6 And I simply mention that to you in the event that you have
7 something scheduled for tomorrow morning so that you don't
8 cancel it. All right?

9 Now, ladies and gentlemen, we're about to resume the
10 trial of the case of the *State of South Carolina vs.*
11 *Terrance Edward Stewart*, and my first order of business this
12 morning is to appoint a foreperson. Judge Hocker
13 recommended -- and so, don't blame me. But Judge Hocker
14 recommended that I appoint Robert L. Ferguson as foreperson.
15 Who is Robert L. Ferguson?

16 (Whereupon, Juror raise a hand.)

17 THE COURT: Mr. Ferguson, if you'd be willing to serve,
18 I'd like for you to act as the foreperson of this jury.
19 Okay? It doesn't involve any heavy lifting. Basically your
20 primary responsibility is once the case is submitted to the
21 jury you would be the person who makes sure everybody has
22 their chance to have a fair say in the deliberations, and
23 obviously you'd be the jury spokesperson in Court to the
24 extent it's necessary. So if that's okay, I'd like to
25 appoint you as the foreperson. All right?

1 THE FOREPERSON: Yes, sir.

2 THE COURT: When we reconvene, if you'll have a seat
3 where the lady in the garnet top is sitting. Who are our
4 alternates? We have two alternates? You guys hang on to
5 those seats. Okay? The rest of you can feel free to move
6 about as you want to or need to. If at any point during the
7 trial you have any difficulty hearing any of the testimony,
8 I want you simply to raise your hand. That will be my cue
9 to ask the attorney or the witness to speak a little bit
10 more loudly. Okay? So if you cannot hear, hand goes up,
11 I'll ask them to speak up. Additionally, if you need a
12 comfort break, restroom break, whatever the case may be at
13 any point during the trial, just get my attention. Raise
14 your hand or something like that and we'll take a brief five
15 or 10 minute break for you. All right?

16 Now, ladies and gentlemen, obviously before we begin
17 this trial I want to let you know that this trial is going
18 to be a bit different from what you've come to expect from
19 seeing trials depicted on TV or in the movies, reading about
20 them. From what you see in popular culture you often get
21 the idea that trials are filled with intense drama or
22 riveting action and that everything's neatly wrapped up in
23 an hour or two. And certainly I have tried cases that only
24 lasted a few hours. But more often than not trials take a
25 lot more time than that. Obviously this is real life. This

1 case is important to all the parties concerned and it's not
2 for your entertainment. Your service today is part of your
3 civic duty. Your jury service is no different than having
4 to show up and pay taxes or show up every couple of years
5 and vote. It's something that you simply have to do because
6 you're a citizen who lives in a great country. I know that
7 this is inconvenient to you. I apologize at the outset for
8 this inconvenience and I promise you I'm going to do
9 everything I can to move this trial along efficiently and
10 hopefully make this as comfortable an experience for you as
11 possible. I want to thank you again for your willingness to
12 serve as jurors in this case. And with that, I'll ask that
13 you stand where you are and simply raise your right hand so
14 that the clerk can administer your oath to you as jurors.

15 Madam Clerk.

16 (Whereupon, the jury was duly sworn at 10:34 a.m.)

17 THE COURT: Ladies and gentlemen, what I now say to you
18 is intended to serve just as an introduction to the trial of
19 this case and these remarks are not an instruction on the
20 law. I'll instruct you on the law at a later point in time
21 when you retire to deliberate your verdict. Again, this is
22 just an overview of the procedure that we'll use going
23 forward so that you can better understand what's going to
24 happen.

25 Now, at any point during the trial, ladies and

1 gentlemen, if you want to take notes, that's perfectly fine.
2 Simply let the Bailiff know and we'll provide you with a
3 small notebook and pen or pencil. Just a couple rules about
4 note taking. Okay? First, those notes are your private
5 property. So keep them, except for any time that you're on
6 break. At those breaks you'll give your pads to the
7 Bailiff. They'll safeguard them overnight during the break.
8 They'll be returned to you the next day. Additionally,
9 don't let the taking of notes distract you from the
10 testimony. And when the case is done, if you'll take with
11 you any notes that you did take, throw them, put them in a
12 scrapbook. Do what you will with them. Okay? But they are
13 your property, so look at them as such.

14 Now, ladies and gentlemen, the Defendant in this case,
15 Mr. Stewart, is charged by three indictments filed with this
16 Court with the offenses of possession with intent to
17 distribute oxycodone, distribution of heroin and trafficking
18 in heroin. And I'll explain the elements of these
19 particular charges to you at a later point in time. Again,
20 ladies and gentlemen, these indictments are merely the
21 formal written instruments that contain the charges made
22 against Mr. Stewart. They are the means by which a case is
23 brought to trial, or brought into Court, and Mr. Stewart has
24 pled not guilty to these charges. That plea puts the burden
25 of proof on the State to prove each and every element of

1 these indictments beyond a reasonable doubt. It will be
2 your duty, ladies and gentlemen, to determine whether the
3 State has met that burden. Now, your purpose as jurors is
4 to find and determine the facts. Please understand that
5 you're the sole judges of the facts. So if at any time I
6 make any comment concerning the facts you have to disregard
7 that comment. The law does not permit me to have any
8 opinion about the facts since you are the sole judges of the
9 facts. You're to determine the facts from the testimony
10 that you hear and the other evidence which is presented
11 during the trial. It's up to you to determine what
12 inferences you feel could properly be drawn from the
13 evidence presented.

14 Now, ladies and gentlemen, it's especially important to
15 perform your duty of determining the facts diligently and
16 conscientiously, because ordinarily there is no way to
17 correct an erroneous determination of facts by a trial jury.

18 Ladies and gentlemen, the same law that makes you the
19 judge of the facts makes me the judge of the law. The law
20 as given by the Court is the only law that you can consider.
21 You'll have to accept it and apply it even though you may
22 disagree with it. Again, I'm not permitted to tell you what
23 the facts are and you're not allowed to disagree with me
24 about what the law is and what the law should be. Your job
25 will be to take the law as I give it to you and apply it to

1 the facts as you find them to be and thus render your
2 verdict under the oath that you have just taken as jurors.

3 Now, until I advise you to begin your deliberations,
4 please don't discuss this case with anyone, including
5 friends, family members, anyone involved in this case.
6 After the case is submitted to you you can discuss it only
7 in the jury room. I will let you know, ladies and
8 gentlemen, I have been involved in a handful of cases where
9 people have attempted to contact jurors while the case is
10 going on. That's very unusual. It does not happen very
11 often. I'll let you know that if at any point in time
12 during any break, whether it's overnight or over a lunch
13 break, if anyone tries to contact you, approach you or
14 discuss this case with you I want you to immediately give
15 what information you can. If they call you at home, try and
16 get the phone number. If they're calling you from -- if you
17 have one of those -- I forget what you call them. The
18 displays that pop up the phone number. If you can get that,
19 that's great, and then simply hang up, dial 911. Let the
20 911 dispatcher know that you're a juror on a criminal case
21 that's going on here in Laurens County. They'll send a
22 deputy out and get that information. Okay? So no one
23 should try to contact you, and I don't think anyone will.
24 But if someone does, that's what you're supposed to do.
25 Okay? Again though, please don't discuss the case with

1 anyone. If on a break you happen to see one of the lawyers
2 or one of the parties coming or going from the courthouse
3 and they don't say hello to you, please understand they're
4 not being rude. They're just following my instructions
5 which is to have no contact with you while the case is going
6 on. Again, the reason for this is if the other side were to
7 see one of the lawyers talking to you, they could get the
8 impression that that's an effort at jury tampering. So the
9 easiest way to keep that issue from coming up is just to say
10 the jurors are off limits while the case is going on.

11 Now, ladies and gentlemen, during the trial I don't
12 think there's going to be any media coverage of this case.
13 But, please, of course, don't watch or read anything about
14 this case while the case is going on. Don't engage in any
15 kind of independent discovery. Don't Google peoples' names.
16 I've been involved in cases before I've become aware where
17 jurors have decided they're going to investigate things on
18 their own. They go home, they go online, they start Google
19 stuff, they start finding out things about the case. Ladies
20 and gentlemen, that would be a violation of your oath and it
21 would probably land you in trouble with me, because again,
22 the stuff that's put out online, the stuff that's put in the
23 paper, it has not rules. It has no filter. And rules of
24 evidence are designed to give you the best most reliable
25 information possible. The same can't be said about what is

1 placed online. You know that. So please don't put me in a
2 position of having to address that by doing any kind of
3 independent research. You'll get the information you need
4 to judge this case from the testimony and the evidence
5 presented.

6 Now, of course, while the case is going on keep an open
7 mind. Don't decide any issue until all the evidence has
8 been presented, you've heard the closing arguments of
9 counsel and you've received my instruction on the law. It's
10 your solemn responsibility, ladies and gentlemen, to
11 determine the guilt or the innocence of the Defendant and
12 your verdict must be based solely on the evidence presented
13 and the law as I instruct you.

14 Now, in a moment the Solicitor and the attorney for Mr.
15 Stewart, Mr. Wise, will make an opening statement to you in
16 which they'll tell you what the issues are. At least what
17 they believe the issues are in this particular case.
18 They're opening, of course, is not evidence. The evidence
19 will be presented from the witness stand. But you should
20 certainly pay attention to their opening because it's kind
21 of an overview or a roadmap of what they contend will be
22 proven or won't be proven.

23 Again, ladies and gentlemen, from time to time it might
24 be necessary to take breaks during this trial while I take
25 up an issue of law with the attorneys, and during those

1 times I'll ask that you step out of the courtroom so that I
2 can discuss that issue of law with the lawyers. The reason
3 I'm asking that you leave the courtroom is that sometimes in
4 ruling on an issue of law I have to comment on what evidence
5 has been presented, what testimony has been -- has been
6 presented, and I don't want any comment that I make about
7 the facts to have any effect or any bearing on what you
8 ultimately determine those true facts to be. Okay? So
9 that's the reason I ask that you step outside during those
10 breaks so that I can have a candid discussion with the
11 attorneys. Of course, please don't speculate about what I'm
12 saying concerning the facts. As I said before, the law
13 doesn't permit me to have any opinion about the facts.

14 Ladies and gentlemen, in deciding what the true facts
15 are you have to decide whether or not the testimony of
16 witnesses is believable or not. It's my responsibility to
17 rule on whether certain testimony is admissible. But once
18 it's admitted, whether you choose to believe it is solely
19 for you to determine. In deciding whether to believe a
20 witness you can consider the interest of any witness, the
21 bias of that witness, the prejudice of the witness, the
22 opportunity for the witness to have seen the matters and
23 things about which they testify, and you may consider the
24 way they act while on the witness stand. You can consider
25 anything that's in the record in this case that will help

1 you evaluate the testimony of the witnesses, and it's your
2 duty to pay close attention to them, listen to them, observe
3 them. Pay close attention to the attorneys and the Court
4 and try and keep your thoughts from wondering so that at the
5 conclusion of the trial, ladies and gentlemen, you'll be in
6 as best a position as possible to render your verdict under
7 the oath that you have just taken.

8 Now, in order to preserve everyone's rights, I'll give
9 the lawyers an opportunity to object to anything I've said
10 to you during these opening remarks and then we'll proceed.
11 Any objections from the State?

12 MR. SCOTT: No, Your Honor.

13 THE COURT: None from the Defense?

14 MR. WISE: No, Your Honor.

15 THE COURT: Very good. We'll now begin the trial. Mr.
16 Scott, you are -- or, I'm sorry. Counsel you are recognized
17 for your opening, sir.

18 MR. TODD: Thank you, Judge.

19 OPENING STATEMENT

20 BY MR. TODD: Good morning. My name is Jim Todd and I am a
21 lifelong resident here in Laurens. Born and raised.
22 Graduated from Laurens 55 High. Went to Presbyterian
23 College. So I've been in Laurens my whole life, and I'm
24 happy to be back here and working in my hometown. I've got
25 over here at the table Dale Scott. He's the Deputy

1 Solicitor. He prosecutes cases in Laurens and Newberry
2 County. Walter Bentley, an investigator in our office for
3 Laurens County, and Matt Veal, Laurens County Sheriff's
4 Department in the Narcotics Division.

5 So what's this case about? This case is about heroin.
6 This case is about on January 21st, 2015 Terrance Stewart,
7 who you will later learn is Cheddar, sitting right over
8 there, was selling heroin out of his house, in
9 Fountain Inn. This case is about on January 22nd Terrance
10 Stewart trafficking heroin at
11 South Carolina. This case is also about possession with
12 intent to distribute oxycodone. Once again, January 22nd at
13 , Fountain Inn.

14 How did we get here? How are we here today? Well,
15 let's just start from the top. You're going to hear
16 testimony from Matt Veal, who I just introduced you to, and
17 Steven Sweatt, an officer then at Laurens County Sheriff's
18 Department, now at Laurens Police Department. You're going
19 to hear about how they started getting some information,
20 some tips about possible heroin usage in the upper part of
21 Laurens County. Fountain Inn area. You're going to hear
22 information that was gathered from law enforcement in
23 Laurens that eventually led to a man named Lawrence
24 Cheatham. Lawrence Cheatham is a self-admitted heroin user.
25 He comes in contact with law enforcement and they begin

1 discussing the heroin, and that entails a controlled buy is
2 what we call -- and you'll learn about it from Matt Veal's
3 testimony what a controlled buy is. Basically Lawrence
4 Cheatham is going to be a confidential informant, or a CI.
5 What Lawrence Cheatham does is he goes to Laurens Sheriff's
6 Department and they wire him with audio and video and give
7 him pre-documented money. Okay? This is money that the
8 Laurens County Sheriff's Department provides with the serial
9 numbers on each bill. All that's recorded. They give those
10 bills to Lawrence Cheatham, and Steven Sweatt, who I've
11 mentioned, rides with Lawrence Cheatham up to
12 Terrance Stewart's house, and they do a buy. And in this
13 buy, it's on camera, it's on audio, Terrance Stewart sells
14 Lawrence Cheatham five bags of heroin, 100 bucks. So you
15 can do the math on what each bag costs.

16 So that was on January 21st. And Laurens Police
17 Department get that heroin back and they start saying to
18 themselves, man, if they've got five bags of heroin out of
19 this guy just on that incident, he's got to have more in his
20 house. So with that information and those heroin bags they
21 go to Laurens Magistrate and get a search warrant that same
22 day of a controlled buy. Following that, January 22nd, the
23 next morning at 7:00 a.m., armed with that search warrant
24 they go back to Terrance Stewart's house.
25 He lived there with a girlfriend. They open the door. They

1 find Terrance Stewart asleep on the couch. They get
2 Terrance Stewart up to secure him, make sure there's nothing
3 that can harm the officers there, and Terrance Stewart
4 doesn't have any pants on. So he asks the officers, hey,
5 man, can I at least get my pants on. They're right there
6 sitting next to the couch. So Matt Veal and some of the
7 other officers pick those pants up. But before giving him
8 those pants they search it to make sure there's nothing
9 harmful that's going to, you know, hurt them. Well, what is
10 in that pants pocket? Money. And guess what is in that
11 pants pocket with that money? The five \$20 bills that were
12 premarked from just 12 hours earlier from that controlled
13 buy. Right there in the pants pocket that he wants to put
14 on. My pants. Well, they continue to look around this
15 house, search in all the crevices and looking to see what
16 else they can find with that search warrant, and on top of
17 the frig, or around the kitchen area, they find a large bag
18 of heroin. About 23 grams. We're going to have someone
19 here to give you the exact weight of what that heroin bag
20 contained. Therein lies the trafficking heroin.

21 Now, when I say trafficking, this is not getting heroin
22 and driving around in a car with it and trafficking. I
23 don't know why they call it trafficking. It's just one of
24 these words they use in describing weight differentials with
25 heroin. So he's charged with trafficking heroin just on

1 finding that bag right there in his house. Continue the
2 search, looking around. What else do they find? They find
3 a little tinfoil ball. In that tinfoil ball they've got
4 over 50 oxycodone right there in this little tinfoil ball.
5 So right there, boom, possession with intent to distribute
6 oxycodone. He's charged with that.

7 You're going to hear and get to see the pills, the
8 heroin. All that's going to be part of evidence. You're
9 going to hear from David Craig, who was evidence custodian
10 at the Laurens Sheriff's Department who made sure to keep
11 the integrity of that evidence as soon as they collected it
12 at Terrance Stewart's house and then put it into the
13 sheriff's evidence locker and then goes on down, which leads
14 to our next witness and the reason why she's being called.
15 I'm telling you it's heroin, I'm telling you it's oxycodone,
16 but how do we know? How do we know it's oxycodone and
17 heroin? Well, you're going to hear from Shana Sorrells.
18 And she's an important witness here and I want you all to
19 pay extra and close attention to her testimony. Real smart
20 girl, and she is a toxicologist, as well as a chemist and an
21 expert in identification of drugs and what the drugs
22 contain, and will help identify and we'll go through that
23 process with her in her testimony. Listen to her testimony
24 and she'll give you a breakdown of what actually the heroin
25 contained and all that. You'll hear something about being

1 cut with fentanyl, the heroin itself, and we'll get into
2 more of that later. But just listen to her testimony and
3 also understand when I mentioned the weight and trafficking
4 a minute ago. Shana Sorrells is also going to be able to
5 give you an exact weight of these drugs that were found.
6 Okay? So just keep that in mind. Because remember, in
7 trafficking we have to have a weight, certain number. So
8 just keep that number in mind when she tells you.

9 Now, what else? We're going to introduce -- or intend
10 to introduce a little kicker here where testimony is going
11 to elicit that after Terrance Stewart's arrest he admits the
12 drugs are his. Just make sure you listen to that and listen
13 to jail calls on Tracy Miller who is the jail administrator
14 at the Laurens County Detention Center. She's going to tell
15 you and explain the whole jail process and how each inmate
16 gets a PIN number and how they can make phone calls from the
17 jail. Who's listening. How they can, you know, interpret
18 these phone calls, and also testify to the content of it.
19 You're going to hear that. You're going to hear what I've
20 just described, and also hear the word reasonable doubt.
21 And you're going to hear a definition from the Judge and
22 he'll explain to you what reasonable doubt means. But I'm
23 going to intend, and Dale Scott is going to intend, on
24 presenting you with all this evidence, all the testimony,
25 audio, video, all the testimony from this witness chair,

1 that at the end of the day you're going to be firmly
2 convinced beyond a reasonable doubt that Terrance Stewart is
3 guilty of trafficking heroin, possession with intent to
4 distribute oxycodone, and distribution of heroin. The three
5 indictments that Judge Addy read to you earlier. I'm
6 believe you're going to be firmly convinced after you hear
7 all the testimony and everything that I've told you, that
8 you will be returning three guilty verdicts for Terrance
9 Stewart. I appreciate your patience. I appreciate your
10 attention. And I thank you.

11 THE COURT: Mr. Wise, you're recognized, sir.

12 OPENING STATEMENT

13 BY MR. WISE: Mr. Foreman and ladies and gentlemen of the
14 jury, the Judge told you that you're the sole judges of the
15 facts. Let's talk about what that means really in the
16 context of a criminal trial. There was a friend of mine who
17 was a lawyer who later became a judge and he used to say
18 this and he would instruct the jurors this. The sole
19 purpose of a criminal trial is to determine whether or not
20 the State can prove its case. When you consider all the
21 evidence at the end of the day, that is the sole question
22 you answer. Has the State proven its case beyond any and
23 all reasonable doubt. Obviously, if they have you have a
24 verdict of guilty. But if you have some question about it
25 or you don't know literally what the true facts are then the

1 verdict is not guilty, because they haven't met their burden
2 of proving the case beyond any and all reasonable doubt.
3 Now, listen carefully to the testimony in this case and
4 listen carefully to the videos they show you. They're going
5 to attempt to show you that Terrance Stewart sold some
6 heroin. They're going to fail on that. They have a witness
7 named Lawrence Cheatham. You're going to find Lawrence
8 Cheatham, I think, a very interesting character, to say the
9 least. Needless to say, somebody in his situation has some
10 problems with his life, and he certainly has had his
11 problems with his life. I think you're going to find that
12 he really is not that credible. He's not that believable.
13 And one of the reasons we kind of know that even law
14 enforcement doesn't give him that much credibility is they
15 try to wire him up. And you would think it would be an easy
16 thing if you have a video camera to go actually look at and
17 see a drug transaction, but you won't see it in this case.
18 You'll see some money. Yes. But you won't see a drug
19 transaction. You're basically going to have to rely upon
20 the credibility of Lawrence Cheatham for that, and that's
21 not going to be sufficient to carry the day. You'll also
22 find that Mr. Stewart was not in this house by himself.
23 When you talk about the evidence, the Judge will also
24 instruct you about the lack of evidence. Did they do
25 everything they could to prove that this heroin in that

1 house was, in fact, the heroin that Terrance Stewart handled
2 and possessed. And I think you'll find that they fail in
3 that, too. So I think when you look at all the testimony in
4 this case and consider it carefully you will find that the
5 State has not met it's burden of proving this case beyond
6 any and all reasonable doubt and the proper verdict would be
7 not guilty. Thank you.

8 THE COURT: Thank you, Mr. Wise. Mr. Scott, Mr. Todd,
9 call your first witness, please.

10 MR. SCOTT: Your Honor, the State calls Matt Veal.

11 MATT VEAL, having been first duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION .

14 BY MR. SCOTT:

15 Q Mr. Veal, where are you employed?

16 A I work for the Laurens County Sheriff's Office.

17 Q And how long have you been there?

18 A I've been at the Sheriff's Office nine and a half
19 years.

20 Q Specifically what unit are you assigned to at the
21 Sheriff's Department?

22 A I am a sergeant in the Narcotics Division, part of
23 criminal investigations.

24 Q So primarily is it safe to say you consume yourself for
25 the most part with drug cases?

1 A Every day. Yes, sir.

2 Q There was talk in both the opening statements about
3 undercover buys or CIs. Tell us, explain to the jury what
4 an undercover buy is and how that -- how that's used by your
5 office.

6 A As in law enforcement, what we do is -- myself, after
7 I've been in narcotics for eight years, I can't myself go
8 out and buy street level drugs.

9 Q Why not?

10 A Everyone kind of knows -- they know me. I'm known in
11 the neighborhood, I guess you would say.

12 Q And tell us some of the difficulties if you just showed
13 up at [redacted] and said, "Can I get some heroin?"

14 A He wouldn't sell it to me. What we call drug dealers
15 are familiar with the people that buy from them. They're
16 only going to sell to the people that they're comfortable
17 selling to for this reason so that they don't get lured in
18 and charged with some type of crime.

19 Q So I interrupted you, but you were getting at -- let's
20 say that there was a home where you had some indication that
21 drugs were being sold from that home. Explain to the jury
22 how you would use a confidential informant to see if they
23 were, in fact, dealing drugs from that home.

24 A We would take an individual. We would ask them if they
25 would be willing to cooperate with law enforcement. We

1 would give them documented funds. And what I mean by
2 documented funds is standard \$20 bills. We would write down
3 the serial numbers, document serial numbers, and give it to
4 the informant. Also, we would give them some type of
5 camera, some type of listening device where we could hear
6 them in real time, and we would send them to a location.
7 But before we would send them we would search them. Make
8 sure that they don't have anything on their person or in
9 their vehicle or anything to that nature to make sure that
10 the credibility of the purchase. So we would give them the
11 documented funds. We would monitor them. We're in that
12 same neighborhood as them. They're only out of our sight
13 just for, you know, the duration of the buy. We go back to
14 where our meeting place is. We take the narcotics from the
15 informant. We seal them in an evidence bag. We search him
16 again and make sure that the informant hasn't taken any, or
17 make sure that they didn't drop any, or make sure that he
18 didn't do any other thing than what we asked him is to go
19 buy the narcotics and bring them back to us.

20 Q Now, typically is it safe to say that these CIs are
21 either paying them money, or sometimes they've got some
22 criminal charges that are against them that they might catch
23 some breaks on if they help you out?

24 A I would say it's 50/50 versus -- we do get individuals
25 in the drug business that want to, what they call "come

1 clean", and they're willing to assist law enforcement for
2 monetary gains. And then sometimes we have situations where
3 we make a normal traffic stop or, you know, they end up
4 having some type of illegal narcotic on them. They don't
5 want to go to jail. They don't want to interfere with their
6 life before for law enforcement. And so, we give them the
7 opportunity, as what we call helping themselves out, and we
8 ask them to go buy from whoever -- in a normal situation
9 whoever they would buy from on a daily basis, or wherever
10 they got the narcotics that they had at the time. And then
11 we would in turn either not charge them or ask the
12 Solicitor's Office to help them with the charges, if there's
13 any charges outstanding or current charges that will be
14 brought.

15 Q Okay. So you're describing using lower level drug
16 offenders to try to go up the chain to get --

17 A We're always trying to go to the next level. So, I
18 mean, we're not going to -- we're not going to try to find
19 somebody with \$20 worth of drugs and try to get somebody
20 with \$5 worth of drugs. We're always going to try to take
21 the next -- the next level.

22 Q I heard the Defense attorney in his opening statements
23 talking about it seems to him that it would be very easy to
24 capture the whole drug transaction on video. Did you hear
25 that?

1 A Yes, sir. I did.

2 Q Approximately how many undercover buys have you been
3 involved in, as far as working with the CI and wiring and
4 sending them in there to do a drug transaction?

5 A Hundreds if not over 1,000.

6 Q Do you find that it is exceedingly easy to find CIs who
7 are able to capture the whole entire transaction on video?

8 A We get some. But you got to understand that that
9 person is probably nervous. They may not shift their body
10 where the camera the may be pointed. All they're thinking
11 about is, okay, they wanted the drugs. I got to get the
12 drugs. You know, you get some people that are more focused
13 on listening to what you're saying versus just the end
14 result. So sometimes we do get -- the goal is to get
15 everything on video throughout the entire process. But
16 again, that's why we search the individuals. That's why we
17 search them before and after. We don't give them any other
18 funds than what we provide them. They're monitored from the
19 time we start to the time we end, so -- to keep the
20 integrity of the buy. So there's no ifs about where the
21 drugs came from or, you know, what money was used.

22 Q Is that why it's called a controlled buy, because
23 you're trying to control as much of it as you can?

24 A Trying to control the entire thing.

25 Q I know you don't want to give too much away, but it's

1 not -- the CI's not in there with a camcorder just filming
2 everything, is he?

3 A No, sir.

4 Q Where he's got the view finder?

5 A No, sir.

6 Q Typically where's the camera? I mean, I know you've
7 got different ways to do it, but --

8 A We have numerous ways. I mean, it's -- with today's
9 technology we have -- like you said, I don't want to give it
10 away, but we have different methods of -- you have pinhole
11 cameras. You have button cams. You have cameras of all
12 shapes and size. You have listening devices that transmit
13 through clothing. So, I mean, it's nothing that they an
14 antenna on their back or have to carry a backpack or
15 something to that nature. It's more of a -- something
16 that's real small. It can be stuck in a pocket or, you
17 know, put in a coat pocket.

18 Q So really you're just hoping they're aiming their body
19 in the right place at the right time, I guess.

20 A Yes, sir.

21 Q January 2015, let me just ask you. Did you receive
22 some information from some law enforcement in Fountain Inn?

23 A We work really well with the Fountain Inn Police
24 Department and they had received information in reference to
25 --

1 Q Let me ask you this. Did you receive some information
2 from Fountain Inn that there was some heroin being sold in
3 the Fountain Inn area of Laurens County?

4 A Yes, sir. We did.

5 Q My colleague is from Laurens County. I'm not.
6 Fountain Inn, does that go into Greenville County?

7 A It does. There's a very small portion of Fountain Inn
8 city limits that are inside Laurens County. I mean, a very
9 small portion of it. They have jurisdiction in both
10 counties, so they were able to assist.

11 Q So the information though as far as the heroin was the
12 Laurens County portion? Is that what you're describing?

13 A Yes.

14 Q As a result of the information they gave you, did you
15 learn through investigation of an individual you had hoped
16 to investigate?

17 A We did. Like I said, the information we received lead
18 us to --

19 MR. WISE: Your Honor, I would object to that to be
20 basically evoking some sort of hearsay.

21 THE COURT: The answer is yes to that question then?

22 THE WITNESS: Yes, sir.

23 THE COURT: You may proceed, Mr. Scott.

24 MR. SCOTT:

25 Q Through your own personal investigation, who was the

1 individual that you began to want to investigate?

2 MR. WISE: Your Honor, I would object to that because I
3 think it is unnecessarily injects character-type evidence
4 and it's not necessary.

5 THE COURT: Why don't you back up, Solicitor, and lay a
6 foundation for that. How basically this witness came to
7 have contact with the Defendant. I know where you're going,
8 but get a little bit more of a foundation, if you will.

9 Q So what was the information you got from Fountain Inn
10 Police Department?

11 A We received information --

12 MR. WISE: That would be clearly hearsay and would be
13 inadmissible.

14 Q Who is Lawrence Cheatham?

15 A Lawrence Cheatham was an individual that was found by
16 the fire department and Fountain Inn Police Department,
17 found unresponsive to an overdose of heroin at a convenience
18 store --

19 MR. WISE: I have an objection, Your Honor.

20 THE COURT: Approach real quick, you all, if you could.

21 (Whereupon, a sidebar was held in the presence of the
22 jury, but outside of the hearing of the jury.)

23 THE COURT: The objection is noted, overruled. Mr.
24 Scott, go ahead, please.

25 Q So Mr. Lawrence Cheatham unresponsive. And where was

1 he? Where was he found?

2 A He was found at a convenience store on Highway 418 --
3 from my understanding at 418 just inside Laurens County. I
4 believe the name of the store is Sav-Way or Save -- I'm not
5 familiar with the name of it right off.

6 Q Were you able to interview him?

7 A We were. Yes, sir. Not the same day that he -- that
8 he overdosed, but we were able to interview him after he
9 received treatment in the hospital.

10 Q Now --

11 A I'm not sure what day the overdose occurred on. I'm
12 not sure. All I know, that we were -- we were asked by
13 Fountain Inn to come up to -- you know, to talk with -- I
14 mean, it was within a day or so. I mean, I don't know the
15 exact time of the overdose.

16 Q January 21st, 2015. Do you remember that date?

17 A Yes, sir. I do.

18 Q Did you have an opportunity to speak with Lawrence
19 Cheatham that day?

20 A Yes, sir. I did.

21 Q What was -- what was the reason for getting together
22 with Lawrence Cheatham on that day?

23 A We were going to interview him due to the nature that
24 was -- there was some narcotics found with him. Found by
25 Fountain Inn. They were under the -- they had spoke with

1 him and he had -- I guess what we were talking about
2 earlier. He was wanting to help himself out due to having
3 -- had gotten a hold of some bad heroin, is what he called
4 it, and was willing to assist law enforcement into taking
5 the individual that sold him the drugs -- take them and --
6 you know, trying to help us get the guy in custody.

7 Q So then what you described earlier with using a
8 confidential informant. What I'm getting at, were you using
9 him as a confidential information on --

10 A We did sign him up as a confidential informant, you
11 know, with the city of Fountain Inn and the Laurens County
12 Sheriff's Office.

13 Q What did you do to prepare him for sending him to do
14 the undercover buy?

15 A You're asking what we did to him?

16 Q Yeah.

17 A When we got there we started speaking to Mr. Cheatham
18 and advised -- he was asking us -- or we were asking him,
19 rather, you know, who are you buying the drugs from and he
20 gave us a name Cheddar.

21 MR. WISE: Your Honor, I would object to that.
22 Obviously hearsay. It would be improper.

23 THE COURT: I'll sustain it. Is Mr. Cheatham going to
24 testify though at some point?

25 MR. SCOTT: He is.

1 THE COURT: Okay. Please continue, Mr. Scott.

2 Q So you wired him with a camera?

3 A We did. We wired him with audio and video.

4 Q Did you, I guess, go over general instructions with him
5 on how the undercover buy was supposed to work?

6 A Yes, sir. I did.

7 Q And what was the address that he was being sent to?

8 A We didn't know an actual address other -- he kind of --
9 we'd use a generalized location. We use like the Fountain
10 Inn Police Department. He would kind of tell us, okay, we
11 would go down, you past the store, you know, bear off to the
12 right. We didn't know an exact address because we didn't
13 know who the exact individual we were dealing with at the
14 time. We had a good idea. So that's why we utilized Steven
15 Sweatt who is a -- at the time was a narcotics investigator
16 with the Laurens County Sheriff's Office as well.

17 Q This is another law enforcement officer who worked in
18 your department?

19 A He was my partner at the time. Worked with him every
20 day, five days a week. Sometimes six, seven days a week.

21 Q So how did he assist Mr. Cheatham in doing the
22 undercover buy?

23 A Sergeant Sweatt at the time, he was a plain clothes
24 officer, he wasn't wearing a uniform, had a vehicle. We had
25 an undercover vehicle, or another vehicle. He drove Mr.

1 Cheatham to the incident location and Sergeant Sweatt was
2 able to give us a detailed --

3 MR. WISE: Your Honor, I would object to what Sergeant
4 Sweatt did. He's not on the stand right now. Sergeant
5 Sweatt would have to testify to that.

6 THE COURT: Are you offering this for purposes of the
7 truth of the matter or were you --

8 MR. SCOTT: No. Your Honor, I'm trying to just lay the
9 foundation of what happened that day. He's not describing
10 anything Mr. Sweatt did. He's describing Mr. Sweatt's
11 involvement at his direction.

12 THE COURT: Overruled. Go ahead.

13 Q So -- all right. I've got to keep starting over. So
14 you wire Mr. Cheatham. You give him an audio device. And
15 that's all for the purpose of trying to document this
16 controlled buy?

17 A Yes, sir.

18 Q And you said you sent him with a law enforcement agent
19 who drove him to the location?

20 A Drove him to the --

21 Q Is that what you said?

22 A Yes, sir.

23 Q And let me ask you what's been marked as State's No.
24 29. Do you recognize that?

25 A Yes, sir. I do.

1 Q And what is that?

2 A These are the documented funds that we gave Mr.
3 Cheatham to buy. It's 100 -- it's five \$20 bills. It was
4 given to him to purchase \$100 worth of heroin.

5 Q So you say here's the money, Mr. Cheatham, and I want
6 you to go to this address and I want you to buy \$100 worth
7 of heroin?

8 A Yes, sir.

9 Q And were you there whenever -- was there any kind of
10 phone contact between Mr. Cheatham and Mr. Terrance Stewart?

11 A He made a phone call to him just saying, "Hey, man. I
12 want to come by and see you."

13 Q So you were able to listen to the arrangement being
14 made?

15 A Yes, sir.

16 Q And where were you whenever Mr. Cheatham and Deputy
17 Sweatt went to the address?

18 A We were in another vehicle. We followed Mr. Sweatt and
19 the informant to the location. And then once they get close
20 we kind of branch off and go a separate way so that way no
21 one's able to see two vehicles making the same exact moves,
22 you know, throughout, you know, Fountain Inn. But we were
23 close enough to be able to still hear the conversations that
24 were being made at the time, because we knew when the
25 incident started and when the incident ended and was able to

1 go back to a meeting location.

2 Q And where did you next meet with Deputy Sweatt and Mr.
3 Cheatham?

4 A I believe we went back to the police department there
5 in Fountain Inn.

6 Q Did you help search Mr. Cheatham after he returned?

7 A I did.

8 Q Did he have any money left on him?

9 A He had no money left over. No, sir.

10 Q Now, was he able to buy any heroin, to your knowledge?

11 A He was. He --

12 MR. WISE: Objection, Your Honor. That is definitely a
13 conclusion. He wasn't there with Mr. Cheatham when anything
14 took place.

15 THE COURT: You can testify as to perhaps what he --
16 what Mr. Cheatham returned with after the buy, et cetera. I
17 think that's fine. Go ahead.

18 Q Let me show you State's No. 27. Do you recognize that?

19 A Those are the five baggies that Mr. Cheatham returned
20 to the police department with and was -- Sergeant Sweatt
21 signed the bag saying that he actually sealed the evidence
22 bag. But I was able to observe it while it -- while we were
23 -- we were all there.

24 Q So you search him beforehand and all he's got on him is
25 the money you gave him. Is that what you're saying?

1 A Money and the equipment we provided to him, yes.

2 Q And when he returned your testimony was he had no money
3 but he suddenly has five packages of heroin?

4 A He has five packages of -- it's like a greyish brown
5 colored substance. It was five individual baggies.

6 Q And did you take the equipment off of him that he wore
7 then for the surveillance?

8 A Yes, we did.

9 Q And you already said you searched him afterwards. Did
10 -- was he able to generate any video and audio documentation
11 of his controlled buy?

12 A He was.

13 Q Have you reviewed it?

14 A I have.

15 Q State's No. 20. You reviewed that. And is it -- is
16 this what you received? Is this what you downloaded from
17 the equipment that Mr. Cheatham had?

18 A Yes, sir. What we do is we have -- we have to download
19 it to our computers and then we put it on a disk for
20 prosecution of the cases. Yes, sir.

21 MR. SCOTT: Your Honor, at this point I would offer
22 State's No. 20 for admission.

23 THE COURT: Any objection?

24 MR. WISE: I do, Your Honor. I don't think this
25 officer is the proper person to introduce a video that he

1 wasn't there at all when it was done. I think Mr. Cheatham
2 could probably identify it, but I don't think this officer
3 could. Maybe Officer Sweatt, but not this officer.

4 THE COURT: Was it live streamed at the time that it
5 was being taken or was this --

6 THE WITNESS: No, sir. It's not live streamed. But I
7 put the camera on him, took the camera off of him and
8 downloaded it myself.

9 THE COURT: Mr. Scott, do you want to speak to his
10 objection?

11 MR. SCOTT: Just what occurred to me is almost like
12 sometimes we'll get the game camera evidence. There's a
13 game camera out in the woods. An officer sets it up, comes
14 back the next day and takes it off and downloads it. Of
15 course, he wasn't there to watch what went on that night,
16 but he would be the proper person to testify to its
17 authenticity.

18 THE COURT: The objection is noted and overruled.
19 State's 20 is in evidence.

20 (Whereupon State's Exhibit No. 20 was admitted into
21 evidence.)

22 MR. SCOTT: Your Honor, at this point we're going to
23 publish State's No. 20.

24 THE COURT: Subject to Mr. Wise's objection you may
25 proceed.

1 MR. WISE: Your Honor, in order for Mr. Stewart to see
2 it we're going to have to --

3 THE COURT: Sure. If you all can --

4 MR. WISE: We're going to move to the first row.

5 THE COURT: Certainly. Feel free.

6 (Whereupon, State's Exhibit No. 20 was published for
7 the jury.)

8 MR. WISE: Your Honor, can we stop and approach a
9 minute? Can we stop and approach a minute?

10 THE COURT: Pause it for just one second. Come on up,
11 Mr. Wise.

12 (Whereupon, a sidebar was held.)

13 THE COURT: We can fast forward a little bit. But, Mr.
14 Scott, do you want to get some context for background so
15 that we can move forward.

16 MR. SCOTT: Yeah. If I can just do some proffer of Mr.
17 Veal.

18 Q So what we're seeing here, kind of the briefing period?
19 Is that what it is?

20 A It looks like this is where he is getting ready to make
21 the phone call to set up the arrangement for the drug
22 transaction.

23 Q And if we listen to it you just kind of narrate that
24 it's -- that says January 22nd, but it was January 21st was
25 the distribution; is that right?

1 A The video here, we were under the impression that the
2 time -- it's time stamped through the computer. And somehow
3 the camera got -- it's approximately 12 hours off, ahead.
4 So actually the date is the 21st, but it's showing that it's
5 6:09 a.m. where the time is actually in the p.m. on the
6 21st. It's 12 hours off.

7 Q Okay. But what I'm going to do just to streamline
8 things, I'm going to fast forward. But I wanted to explain
9 as he's fast forwarding that there's a briefing process and
10 you do the search and everything, and then you filmed all
11 this because you want to document everything.

12 A Yes, sir.

13 Q It's also got Sweatt driving out to the address of
14 ?

15 A Yes, sir.

16 MR. SCOTT: All right. Walter, would you go to --
17 would you go to approximately six minutes and 27 seconds.

18 (Whereupon, State's Exhibit No. 20 was played for the
19 jury.)

20 Q I'll show you State's 1, 2, 3 and 4.

21 A Yes, sir.

22 Q Do you recognize those?

23 A These are still shots taken from the video of the
24 subject in question and the money -- several pictures of the
25 money. The transaction being done and several face shots of

1 Mr. Stewart.

2 MR. SCOTT: Your Honor, State offers State's 1, 2, 3
3 and 4, which the testimony is they're still shots from the
4 video that was just shown, State's No. 20, I think.

5 MR. WISE: No objection.

6 THE COURT: Without objection, 1 through 4 are in
7 evidence.

8 (Whereupon, State's Exhibit Nos. 1, 2, 3 and 4 were
9 admitted into evidence.)

10 THE COURT: You want to get them from Mr. Wise?

11 MR. SCOTT: We've got them up here, so we can publish
12 them.

13 THE COURT: Okay. The actual exhibits. I was just
14 making sure we don't - stick them over here at the table or
15 do something with them.

16 MR. WISE: Yes.

17 (Whereupon, State's Exhibit Nos. 1, 2, 3 and 4 were
18 admitted into evidence.)

19 Q This is a still shot -- what is that, State's No. 1?
20 And you're saying this is a still shot from the video we
21 just watched?

22 A Yes, sir. It is.

23 Q Go to State's No. 2. The same? You're saying that's a
24 still shot from the video we just saw?

25 A Yes, sir.

- 1 Q That's State's No. 3, and let me show you State's No.
- 2 4. Did you -- I just want to -- put State's No. 4 back.
- 3 I'm sorry. I want to cover something real quick. Did you
- 4 have an opportunity to see Mr. Stewart in person on January
- 5 22nd?
- 6 A On January 22nd? Yes, sir. I did.
- 7 Q And I've noted he's got a very kind of unique hairstyle
- 8 maybe, or at least you don't see that every day. Did he
- 9 have that hairstyle?
- 10 A He did not.
- 11 Q Matter of fact, let me show you State's 23.
- 12 A Yes, sir.
- 13 Q And you're going to testify again later. But for now,
- 14 just the -- he was arrested on January 22nd?
- 15 A He was.
- 16 Q And anytime anybody's arrested, whether it's for
- 17 driving under suspension or shoplifting they got to do a
- 18 booking photo?
- 19 A Any time they go into the Detention Center their
- 20 picture is taken.
- 21 Q And did he have to get a booking photo done?
- 22 A Yes, sir. He did.
- 23 Q And does that fairly and accurately represent his
- 24 appearance on that day, January 22nd?
- 25 A It does. This was the picture that was removed from

1 his booking -- booking report at the time of -- he was
2 booked into the Laurens County Detention Center.

3 MR. SCOTT: Your Honor, State would offer State's No.
4 23 for admission into evidence.

5 MR. WISE: No objection.

6 THE COURT: Without objection 23 is in evidence.

7 (Whereupon, State's Exhibit No. 23 was admitted into
8 evidence.)

9 MR. SCOTT: I'm going to publish it to the jury. We
10 don't have it on a Smart Board.

11 THE COURT: Go ahead.

12 Q But was his hair -- I guess how would you describe his
13 hairstyle back then?

14 A Just short like braided tight, you know, near the ear
15 -- ear level.

16 Q So more short braids instead of an Afro. I'm going to
17 ask you one thing. So , South
18 Carolina, what county is that?

19 A It's Laurens County.

20 Q Did -- after this undercover buy, after you saw the
21 video and collected the heroin and -- what was the next
22 plan? What did you all decide to do as a result of that
23 undercover buy?

24 A After speaking to lieutenants and the Chief of Police
25 in Fountain Inn and our Captain and our command staff we

1 spoke with a Laurens County Magistrate and obtained a search
2 warrant for , Laurens County.

3 Q And were you involved in that search?

4 A Involved in the search? Yes, sir. I was.

5 MR. SCOTT: And again, I think I'm going to recall you
6 later to describe that, because we've got a couple other
7 witnesses in between. But I think that's all I have for you
8 right now. Would you please answer any questions Mr. Wise
9 has for you?

10 THE WITNESS: Yes, sir. Sure will.

11 CROSS-EXAMINATION

12 BY MR. WISE:

13 Q Mr. Veal, when you wire somebody up you instruct them
14 basically how to use this -- or how to keep it so that the
15 person they're going to see is in front of them? In front
16 of the camera?

17 A Wherever we place the camera we try to tell them to
18 keep that part of their body -- because, I mean, we put it
19 all over someone's body different places. But wherever --
20 you know, wherever we have the camera we instruct them to
21 point the camera toward the individual.

22 Q Right. So you get the best picture possible?

23 A Yes, sir.

24 Q You said that sometimes people turn their body because
25 they're nervous?

1 A Just natural reaction, or put in a position to where
2 they're not able to -- because if the camera is on their
3 body and they have to stand sideways, or they're sitting in
4 a car and they deal with the gentleman or a female, or the
5 subject that their dealing is, it out the window, they're
6 not able to get the video, if it's on their body.

7 Q So a person would know, you instruct them at least, the
8 range of view that that camera would have from where you put
9 it on their body?

10 A Yes, sir.

11 Q And they would know that they turn this way and they
12 were talking to you, that you would not be in the picture,
13 if they turned sideways?

14 A We tell our informants a lot of things, and a lot of
15 things are going through their mind. Due to circumstances,
16 we don't expect them to remember everything. But we try to
17 tell them on different occasions that, you know, hey, we
18 need you to face towards -- when you're doing the
19 transaction we need you to face them.

20 Q But they know generally the range of view of the camera
21 that's on their body?

22 A They should. I mean, they know --

23 Q You instruct them?

24 A Yes, sir.

25 Q Let me rephrase that. Let me rephrase it. At least

- 1 you tell them?
- 2 A We tell them multiple times to --
- 3 Q What they know -- what they may or may not know is
- 4 another story?
- 5 A But they actually do by what we tell them. Not
- 6 everybody does what they're told, so...
- 7 Q But that is part of your instruction?
- 8 A That is part of my instruction.
- 9 Q And you instructed Mr. Cheatham that way?
- 10 A Yes, sir.
- 11 Q Now, you've looked at this video?
- 12 A Yes, sir.
- 13 Q And you've looked at it more than once?
- 14 A More than one.
- 15 Q And you've got the best stills you could find out of
- 16 that whole video?
- 17 A We tried to find the best ones --
- 18 Q Right.
- 19 A -- you know, that are possible. Yes, sir.
- 20 Q Right. And you don't have a still of any small
- 21 marijuana -- small heroin packages being handed to your
- 22 informant?
- 23 A No, sir. There is no video of him handing them where
- 24 we could clearly see them, where an individual bag is.
- 25 Q Only some money being exchanged?

- 1 A I can offer an opinion, but I -- but no, it's not in
2 the video of the actual five baggies being handed over.
- 3 Q But you do have it where the money is exchanged?
- 4 A Yes, sir.
- 5 Q You did get that one?
- 6 A Yes, sir.
- 7 Q Now, Mr. Sweatt was part of this process' also?
- 8 A Yes, sir.
- 9 Q And he initially searched Mr. Cheatham?
- 10 A He did.
- 11 Q Now, who got together the documented funds?
- 12 A It was myself and Sweatt. I had the money and I
13 documented the funds..
- 14 Q And did you write down the serial numbers?
- 15 A We write down the serial numbers.
- 16 Q Have you got down the paper that you wrote down the
17 serial numbers on?
- 18 A I know they're wrote down. I apologize. I have a lot
19 of paperwork.
- 20 Q Just flip through them carefully.
- 21 A I have the control buy sheet right here. And where it
22 is listed \$20, each individual \$20 bill is laid out.
- 23 Q And this was filled out --
- 24 A It is a time -- each incident, or each -- like when the
25 investigators left the scene, when the officers left the

1 scene, when the CI left the scene, when he arrived in the
2 drug area, when he left the drug area. Every time is
3 documented, including the officers that were involved with
4 the -- involved with the controlled buy along with --

5 Q Who completed this out?

6 A That is my handwriting.

7 Q Okay. And it's got two different types of ink on it,
8 black and blue?

9 A Yes, sir.

10 Q You didn't take a picture of the money with the date
11 stamp or anything, did you?

12 A No, sir. I didn't.

13 MR. WISE: Thank you. Give me one second. Thank you.

14 THE COURT: Sir, you can step down. No additional
15 questions?

16 MR. SCOTT: Well, just one thing, Your Honor. Just the
17 --

18 REDIRECT EXAMINATION

19 BY MR. SCOTT:

20 Q Do you have a copy of the incident report up there?

21 A The distribution. Yes, sir. I do.

22 Q On page two, if you could flip to that.

23 A Yes, sir.

24 Q That's a search warrant, incident report. Do you have
25 that?

1 A I do. Give me just one second. As soon as I -- yes,
2 sir.

3 Q You've documented the serial numbers there, too?

4 A They were documented there as well, which was on the
5 22nd.

6 Q Yeah, you documented it after you -- okay, got you.

7 A Yeah.

8 MR. SCOTT: Thank you. Nothing further.

9 MR. WISE: Just one question.

10 RECROSS-EXAMINATION

11 BY MR. WISE:

12 Q Did you take a picture of the five \$20 bills when you
13 seized them?

14 A I don't think we did.

15 MR. WISE: Thank you.

16 THE COURT: Sir, you can step down.

17 THE WITNESS: Thank you.

18 (Whereupon, the witness stepped down from the witness
19 stand.)

20 THE COURT: Ladies and gentlemen of the jury, we're
21 going to take a brief break. While we're on break, of
22 course, don't talk about the case. If one of you needs to
23 step outside and have a cigarette the Bailiff will take you
24 outside. Just let them know. We'll be back on the record
25 here in about 10 minutes. So adjourn to the back, if you

1 would, and don't talk about the case.

2 (Whereupon, the jury exited the courtroom at 11:37
3 a.m.)

4 THE COURT: We'll be at ease for about 10 minutes.

5 (Whereupon, a recess was held from 11:37 a.m. to 11:58
6 a.m.)

7 THE BAILIFF: All jurors are present, Your Honor.

8 THE COURT: The record will reflect that the jury is
9 present and seated. At this point, Solicitor, if you'll
10 call your next witness.

11 MR. SCOTT: Thank you, Your Honor. The State calls
12 Steven Sweatt.

13 STEVEN SWEATT, having been first
14 duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q Officer Sweatt, where are you employed now?

18 A Laurens City Police Department.

19 Q Back in January of 2015 you were with the Sheriff's
20 Department?

21 A Yes, sir.

22 Q And if I recall, was it narcotics that you worked in?

23 A Yes, sir.

24 Q Do you remember January 21st of 2015?

25 A Yes, sir. I do.

1 Q Did you have an occasion to go out to in
2 Fountain Inn?

3 A That's correct.

4 Q What was your involvement and how did you come to be in
5 that location?

6 A On the 20th I had gotten information --

7 Q Wait a minute. Actually, you know what, we've covered
8 that with the last witness. But let me --

9 A You asked how I got there, so...

10 Q Yeah, I know. We covered that through the last
11 witness. But did you come to be in an office car -- or a
12 Sheriff's Department issued automobile with Lawrence
13 Cheatham?

14 A Yes.

15 Q And I guess that was an unmarked Sheriff's Department
16 car?

17 A It was provided by Fountain Inn city, actually.

18 Q Okay. But unmarked though?

19 A Yes, sir. It was a Chevrolet Camaro.

20 Q And did you drive it?

21 A I did.

22 Q And Lawrence Cheatham, he was a confidential informant
23 you guys had?

24 A Yes, sir.

25 Q Were you there when he was wired and searched

1 beforehand?

2 A That's correct. Yes, sir.

3 Q So you witnessed that?

4 A Yes, sir.

5 Q And were you able to witness him receiving government
6 documented funds?

7 A Yes, sir.

8 Q So tell us what happened. Describe leaving, I guess,
9 the meeting location and driving out to ?

10 A Essentially he -- Mr. Cheatham was a confidential
11 informant. He got in the car after being searched and
12 everything, given documented funds. And me, him, and I
13 believe it was his girlfriend, she had to be with him for it
14 to look right, we went out to which is up
15 there off of in Laurens County. We went there
16 to meet an individual who we identified -- his nickname was
17 Cheddar, and we identified him as Terrance Stewart, who was
18 allegedly distributing heroin. Once we got there, no one
19 was there yet.

20 Q Speak up a little bit.

21 A Sorry. Once we got there Mr. Stewart, the Defendant,
22 wasn't there yet. We sat out in his front yard for a few
23 minutes. And he eventually arrived in a white colored
24 sedan. He was in the passenger side of the car wearing a
25 blue shirt. Once he got there he got out of the car. Mr.

1 Cheatham got out and they went around the back of the single
2 wide mobile home just out of my view. Mr. Cheatham returned
3 to me after allegedly receiving the five small baggies
4 containing a white substance. Kind of a powder like
5 substance. Of course, he relinquished those to me. We left
6 that location. And while we were leaving Mr. Cheatham told
7 me we need to stop by the -- I think the Sav-Way off of 418
8 right there near Durbin Road. I asked him why. He said,
9 well, the Defendant is supposed to come behind us after we
10 left. And I said, well, it won't look right if I'm not
11 sitting here. So I went along with it and I pulled into a
12 parking space there at the gas station. Sure enough the
13 same white sedan the Defendant just showed up in came
14 rolling down Durbin Road there at 418. Went by. When he
15 went by we left out. Went back to Fountain Inn PD. Got all
16 the packages that the CI had allegedly obtained from the
17 Defendant. Field tested them there at the PD. They did
18 give a positive indication for the presence of heroin in the
19 substance. Of course, he was again searched. Nothing was
20 found on him. We got the equipment back. And that's pretty
21 much what happened that day.

22 Q So just to be clear though, you rode with the CI out
23 there?

24 A Correct.

25 Q And you're telling us you actually saw Mr. Stewart as

1 he pulled up to ?

2 A That's correct.

3 Q In a white sedan, you said?

4 A Yes, sir.

5 Q Did you guys -- I'm not asking for the specific
6 location of y'all's briefing spot, or y'all's meeting spot,
7 but was that in Fountain Inn?

8 A Yes, sir. It was.

9 Q After leaving the Fountain Inn meeting spot to go to,
10 was there any stops in between?

11 A I recall that I needed to bring a pack of cigarettes
12 with me over there to the -- to . I cannot
13 remember if I stopped prior to while we were en route or if
14 I went and got them before we left with the CI.

15 Q Well, was there any point where the CI, Lawrence
16 Cheatham, left your presence in between the meeting spot and
17 getting to ?

18 A No.

19 Q And he -- let me just cut to the chase. You get there
20 and you see Mr. -- do you know who the driver of the white
21 sedan was?

22 A No, I don't.

23 Q But Mr. Cheatham -- I mean, Mr. Stewart passes you and
24 you were able to get a visual on him? You were able to look
25 at him and see him?

1 A Yes, sir.

2 Q Do you see the person here in Court that you saw that
3 day?

4 A Yes, sir. He's sitting right there.

5 (Whereupon, the witness identified the Defendant.)

6 Q Let me show you State's 5 and State's 6. Do you
7 recognize those?

8 A That is the house we went to, ...

9 Q Both of them are depictions of that house?

10 A Yes, sir. They are.

11 THE STATE: Your Honor, the State would offer State's 5
12 and 6 for admission.

13 THE COURT: Show them to Mr. Wise and see if there's an
14 objection.

15 MR. WISE: No objection.

16 THE COURT: Without objection, 5 and 6 are in evidence.

17 (Whereupon, State's Exhibit Nos. 5 and 6 were admitted
18 into evidence.)

19 Q Go back to the other one. This is State's 5 I'm
20 showing you. So do you mind stepping down?

21 MR. SCOTT: Your Honor, if he speaks real loud can he
22 step down and demonstrate?

23 THE COURT: Sure. Just make sure you speak up so that
24 the court

25 THE WITNESS: Yes, sir.

1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 Q Try not to block it from the jury but stand close so
4 you can see. Show the jury where you pulled the Camaro?

5 A I ended up parking somewhere in this area right around
6 here. The vehicle facing kind of towards the wood line.

7 Q And do you remember on what side of you that Mr.
8 Stewart passed whenever he pulled into the driveway?

9 A The driver's side. My left.

10 Q So you're parked in the driveway right here. He pulls
11 and goes around you?

12 A That's right. He went by me and kind of parked in
13 front of me to my left.

14 Q So you all get to the before Mr. Stewart
15 does?

16 A Yes, sir.

17 Q And then after that you said Mr. Cheatham got out of
18 the car?

19 A Yes, sir.

20 Q And where did he proceed?

21 A He went where the Defendant was, Mr. Stewart.

22 Q Where was that?

23 A At the car. And then they went together over here
24 towards the back of the house around this corner just out of
25 my view.

1 Q So you see them walk together to the back of the house
2 and you lost sight of them for that period of time?

3 A Yes, sir.

4 Q And you stayed in the Camaro the whole time?

5 A Yes, sir.

6 Q Thank you. You can take a seat.

7 (Whereupon, the witness returned to the witness stand.)

8 Q Do you know about how long they were back behind the
9 trailer? So you're sitting right here in the driveway and
10 then they go along the back to the backside. Do you know
11 how long they were out of your sight?

12 A Around two minutes.

13 Q Then once he -- once Mr. Cheatham got back in the car
14 did he give you anything?

15 A Yes, sir. He ended up relinquishing -- it was five
16 small plastic bags that had a white powder substance in
17 them.

18 Q Let me show you State's No. 27. Do you recognize that?

19 A Yes, sir. That was them.

20 Q What did you do once you recovered those from Mr.
21 Cheatham?

22 A Once we got back to Fountain Inn PD, of course I kept
23 -- we got back to Fountain Inn PD I ended up having to do a
24 chemical field test. It's packets the department provides
25 to where you take a little bit out of one, you put it in the

1 packet and you break open the chemical vials and if the
2 presence of the suspected drug is in them it will turn a
3 certain color. I cut open one of the bags, put it in the
4 field test kit for heroin, and we ended up getting a
5 positive indication for heroin.

6 Q And then after that what did you do with the -- what
7 did you with the heroin?

8 A I packaged the four that hadn't been opened into one
9 evidence bag and then the other one was packaged separately
10 and they were sent off to SLED for a drug analysis.

11 Q I want to ask you, just to make clear. Where did you
12 retrieve the heroin from Mr. Cheatham? Was it at the scene
13 or was it back in Fountain Inn?

14 A It was in the car. I can't remember if it was going
15 down the road, if it was right there as soon as he got in or
16 if it was at the gas station. But it was in the car.

17 Q But you're saying it was before you arrived at your
18 next destination?

19 A Yes, sir. It was before we got back to the PD.

20 Q Did you -- what is the procedure whenever you returned
21 to the Sheriff's Department with the drugs? Did you put in
22 a drop box, do you remember, or did you give it to the
23 evidence custodian?

24 A Once we get back to the Sheriff's Office you got to go
25 and fill out the paperwork for what's called a BEST Pack.

1 It's the packaging that you got to send to SLED. There's
2 several forms involved with it and you end up putting some
3 of that paperwork in the bag. It goes down to SLED. And
4 then you seal that and place it into a temporary evidence
5 locker where the evidence custodian will retrieve it and
6 take it from there.

7 Q Let me show you State's No. 4, if I can. You said that
8 you -- correct me if I'm wrong. You said you saw Mr.
9 Stewart wearing a blue shirt. Is that what your
10 recollection was?

11 A Yes, sir.

12 Q In a white sedan? Do you recognize this what I'm
13 showing you? This is what's been admitted as State's No. 4.

14 A That looks like a still from the video surveillance
15 equipment that we equipped Mr. Cheatham with.

16 Q But is that -- does that fairly and accurately
17 represent how you perceived him that day?

18 A Yes, sir.

19 MR. SCOTT: All right. Thanks, Mr. Sweatt. Answer any
20 questions Mr. Wise has.

21 CROSS-EXAMINATION

22 BY MR. WISE:

23 Q Mr. Sweatt, was Mr. Cheatham's girlfriend in the car
24 with you all?

25 A Yes, sir. She was in the backseat.

- 1 Q She was in the backseat?
- 2 A Yes, sir.
- 3 Q And she was down at the police department before you
- 4 all went over to , correct?
- 5 A Yes, sir, Circle. Yes, sir.
- 6 Q And do you recall who searched Mr. Cheatham?
- 7 A No, I don't.
- 8 Q You don't?
- 9 A No, sir.
- 10 Q Do you recall who got the buy money together?
- 11 A No, sir. Again, I don't. That was documented on a
- 12 separate form. I'd have to have it in front of me to tell
- 13 you.
- 14 Q You were involved in that?
- 15 A I was there for it, but I don't -- I couldn't tell you
- 16 exactly which one of us did it.
- 17 Q And some of the video that's boring -- y'all sat in the
- 18 Fountain Inn Police Department for 30, 40 minutes or more?
- 19 A I know it took a while for us to end up going over
- 20 there. I couldn't tell you, again.
- 21 Q And in some of that video Mr. Cheatham and his
- 22 girlfriend are together?
- 23 A Yes, sir.
- 24 Q She was there the whole time?
- 25 A Yes, sir.

1 Q She was there with Mr. Cheatham?

2 A They were there. I think a couple of times we may have
3 separated them. I'm not -- I'm not sure. I just know that
4 they were there together at certain points.

5 Q And you didn't get the tag number of the car that
6 showed up, right?

7 A If I did, I didn't write it down.

8 MR. WISE: Give me one second. Thank you very much.

9 THE WITNESS: Thank you.

10 THE COURT: Sir, you can step down. Thank you. Call
11 your next witness.

12 MR. SCOTT: The State calls Lawrence Cheatham.

13 LAWRENCE CHEATHAM, having first
14 been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q Mr. Cheatham, I see you're incarcerated right now.

18 A Yes, sir.

19 Q We brought you down from the Greenville jail; is that
20 right?

21 A Yes, sir.

22 Q What are you in on right now?

23 A Probation violation.

24 Q I was looking at your rap sheet and you don't deny that
25 you've had your run-ins with the law before.

- 1 A Huh-uh.
- 2 Q I've got it going back to '99. I see a conviction for
- 3 forgery. Do you remember that?
- 4 A Yes, sir.
- 5 Q And also financial transaction card fraud?
- 6 A Yeah.
- 7 Q Simple possession marijuana. In 2002 I see two counts
- 8 of grand larceny?
- 9 A Yes, sir.
- 10 Q 2005 I see a magistrate level resisting arrest. Do you
- 11 remember that?
- 12 A Yes, sir.
- 13 Q '06 I'm starting to see where you're getting into some
- 14 more of the drug convictions. I see possession of a
- 15 controlled substance. Do you remember that?
- 16 A Yes, sir.
- 17 Q Two counts, as a matter of fact, and then a grand
- 18 larceny. I see a possession of crack in 2012. You don't
- 19 dispute that, do you -- or meth. It's either meth or crack
- 20 is showing up. You got three years suspended and three
- 21 years probation, 2012?
- 22 A Yeah.
- 23 Q Do you remember that?
- 24 A Yeah.
- 25 Q Shoplifting enhanced in 2015, as well as another grand

- 1 larceny enhancement. You don't dispute that, do you?
- 2 A No.
- 3 Q Tell me, is there -- what's the root of the criminal
4 behavior? I mean, would you classify yourself as a drug
5 addict?
- 6 A Yeah, definitely.
- 7 Q And how did you get started in drugs?
- 8 A I don't know.
- 9 Q You don't know?
- 10 A I don't know. It's just being around -- just people
11 I've been around, you know, doing drugs, you know.
- 12 Q It's a disease, isn't it? Could you stop tomorrow if I
13 just said please, Lawrence, stop doing the -- what is your
14 drug of choice?
- 15 A Meth, heroin, or any -- you know. It's nothing I can
16 stop. I definitely need help.
- 17 Q I understand. And I'm not trying to embarrass you.
- 18 A No, you're all right.
- 19 Q You understand that.
- 20 A I understand.
- 21 Q But I am trying to -- you don't disagree with me that
22 you're a drug addict?
- 23 A Yeah, I don't.
- 24 Q Would you explain -- just because I don't know, and I
25 don't know if the jury does. But what is it like to be sick

1 and really need to get the heroin? What does that feel
2 like?

3 A I don't know. It's just nothing like you never felt
4 before. You know what I'm saying? You can't do nothing.
5 Your body really basically just shuts down from everything
6 else that you could normally do. You just don't do it
7 because you got to have what you got to have, you know, your
8 fix.

9 Q It's that desperate?

10 A It is. It's bad.

11 Q You're physically hurting. Is that what you're saying?

12 A Yeah.

13 Q Do you physically get sick?

14 A Yeah.

15 Q I see here, you know -- what is your probation
16 violation right now? Is it for possession of stolen goods;
17 is that right?

18 A Yeah.

19 Q And I noticed, I went through some forgeries and some
20 larcenies and stuff. Tell us why you would steal things.

21 A Just so I could have, you know, to get -- you know, so
22 I wouldn't be sick, you know.

23 Q To get money to get drugs?

24 A Yeah.

25 Q Have you had instances where you've got a hold of some

1 heroin that instead of making you feel better made you sick
2 as well?

3 A One time. That's it.

4 Q When was that?

5 A That time I got a -- I died. I don't know. It's the
6 only time I've had any bad experience from heroin.

7 Q Are you describing the time up in Fountain Inn?

8 A Yeah.

9 Q Do you know how the police found you?

10 A They said I was purple. But I just -- I don't know.
11 When I came to I was looking up at people and they were just
12 talking to me, but I couldn't hear them, you know, so I know
13 I wasn't coherent at the time until...

14 Q Did you get a possession of drug paraphernalia charge
15 from that incident?

16 A Yeah.

17 Q You know you had a needle hanging out of your arm?

18 A I didn't. Actually I -- never mind. It doesn't
19 matter.

20 Q Do you remember speaking to law enforcement as a result
21 of that?

22 A Yes, sir.

23 Q Did you describe to them where you got the heroin?

24 A Yeah.

25 Q At some point did you agree to work with them?

- 1 A Yeah.
- 2 Q And they said they would try to help you with that
- 3 paraphernalia charge, didn't they?
- 4 A Yeah.
- 5 Q Did you describe for them where you got the heroin?
- 6 A Yeah.
- 7 Q Do you remember January 21st meeting with Sergeant Veal
- 8 and there was another deputy, Steven Sweatt, and I think
- 9 your girlfriend was there and they talked with you. Do you
- 10 remember that?
- 11 A Yeah.
- 12 Q And did they put a camera on you?
- 13 A Yeah.
- 14 Q And they -- did they give you some money?
- 15 A Yeah.
- 16 Q Do you remember how much it was?
- 17 A No.
- 18 Q Do you remember what car you rode in with them to go
- 19 out to the scene?
- 20 A Yeah.
- 21 Q Do you remember what kind of car it was?
- 22 A It was a Camaro.
- 23 Q Who went with you?
- 24 A One of the officers.
- 25 Q What happened when you got to the location?

- 1 A Just do what they asked me to do, you know.
- 2 Q Wait a minute. You got to speak up.
- 3 A Just do whatever I do. I went get some drugs.
- 4 Q You went to go get some drugs is what you said?
- 5 A Yeah.
- 6 Q Let me show you that State's No. 5. Do you recognize
- 7 this? You've probably never seen it from this view, but do
- 8 you recognize where this is?
- 9 A No.
- 10 Q You don't recognize it? I'm going to show you State's
- 11 No. 20. This is what's been introduced into evidence.
- 12 (Whereupon, State's Exhibit No. 20 was published.)
- 13 Q I'm sorry. Who was that?
- 14 A That was me.
- 15 Q That's you?
- 16 A Yeah.
- 17 Q So do you recognize this as the video that you
- 18 recorded?
- 19 A Yeah.
- 20 Q Okay. That's fine.
- 21 (Whereupon, State's Exhibit No. 20 was published.)
- 22 Q Who were you talking with there?
- 23 A What? That -- I don't -- I don't -- I don't know what
- 24 happened just now.
- 25 Q Do what, now?

- 1 A I said I don't know what just happened right now.
- 2 Q Do you recognize that voice?
- 3 A That sound like me.
- 4 Q Do you recall who you were speaking with?
- 5 A Huh-uh.
- 6 MR. SCOTT: Press play.
- 7 (Whereupon, State's Exhibit No. 20 was published.)
- 8 Q Do you remember that?
- 9 A Yeah.
- 10 Q And you were talking about a -- you were talking about
- 11 an incident at the gas station? Do you remember talking
- 12 about that?
- 13 A Yeah. I was saying -- I was basically telling him we
- 14 OD'd at the gas station. You know what I'm saying? What
- 15 happened. I mean, 'cause --
- 16 Q Who was that you were speaking with?
- 17 A Cheddar.
- 18 Q You nervous to be here today?
- 19 A I mean, I just -- you know what I mean? I mean, he
- 20 never did nothing bad to me. You know what I'm saying? You
- 21 know what I'm saying? I just --
- 22 Q Didn't you say you almost died?
- 23 A I almost died. I mean, that's it. You know what I'm
- 24 saying? I mean, I guess that's good enough for me, I guess.
- 25 But, you know.

1 Q Do you -- if you have any knowledge, what does that
2 mean when he said I gave you a little bit extra this time?

3 A I don't know. I was trying to hurry and get in there
4 and get back through. You know what I'm saying? Because I
5 had them out in the car waiting. You know, she's out there
6 and the police out in the front yard, too. I was just
7 trying to get there and get on through.

8 Q What's going through your mind when you're doing the
9 undercover buy?

10 A I don't know. That's what I'm saying. Like, I ain't
11 never did nothing like that before. Never did nothing like
12 that before. You know what I'm saying? It was just - I
13 don't know.

14 Q I'll show you State's No. 27. Do you recognize those?

15 A Yeah.

16 Q What is it?

17 A It looks like heroin.

18 Q Do you recognize that as the heroin you got that day?

19 A Yeah.

20 Q Afer you got it what did you do with it?

21 A Just took it to the car.

22 Q You took it to the car?

23 A Yeah.

24 Q Who did you give it to?

25 A To the police in the car.

1 Q Have I made any deals with you today?

2 A No.

3 Q Are you telling the truth?

4 A Yeah.

5 Q Who's the individual on that? The video that we just
6 watched. Who's the individual who sold you the heroin?

7 A Cheddar.

8 Q Do you know the real name of Cheddar?

9 A I don't.

10 Q Do you see Cheddar sitting in the courtroom today?

11 A Yes, sir.

12 Q Where is he?

13 (Whereupon, the witness points at the Defendant.)

14 Q You got to -- indicating over here?

15 A Yes, sir.

16 THE COURT: The record will reflect that the witness
17 has identified the Defendant.

18 MR. SCOTT: Thank you. Answer any questions Mr. Wise
19 has. Okay?

20 THE COURT: Cross?

21 CROSS-EXAMINATION

22 BY MR. WISE:

23 Q Mr. Cheatham, what time did you get up with the law
24 enforcement officers that day?

25 A That afternoon, morning. I can't remember.

- 1 Q You can't remember?
- 2 A No, sir. Not exactly.
- 3 Q Your girlfriend with you?
- 4 A No, she wasn't.
- 5 Q She wasn't with you?
- 6 A Huh-uh.
- 7 Q You were by yourself?
- 8 A Yeah.
- 9 Q Excuse me?
- 10 A Yes, sir.
- 11 Q They asked you about bringing your girlfriend along as
- 12 cover?
- 13 A When the police -- when I got to the police station she
- 14 was already there.
- 15 Q She was already there?
- 16 A Yeah.
- 17 Q So your girlfriend was with you?
- 18 A She wasn't with me. She was already at the police
- 19 station.
- 20 Q She was at the police station?
- 21 A When I got there, yeah.
- 22 Q She didn't arrive with you?
- 23 A No.
- 24 Q But she was -- she was there with you, correct?
- 25 A Yeah.

- 1 Q Did she get there before you?
- 2 A Yeah.
- 3 Q So you had been arrested like the day before with a
- 4 drug charge?
- 5 A No.
- 6 Q You were arrested the day before in a paraphernalia
- 7 charge?
- 8 A I was on the scene of a crime, but I didn't know I was
- 9 arrested.
- 10 Q Excuse me?
- 11 A I didn't know I got arrested that day. I got arrested
- 12 the day of when I seen the police.
- 13 Q You didn't know if you'd been arrested?
- 14 A I got arrested the day I seen the police.
- 15 Q Now, when you got there what did they -- what did they
- 16 do with you? That's a bad question. Let me rephrase it.
- 17 All right? They wired you with a video camera, correct?
- 18 A Yes, sir.
- 19 Q Did they tell you about how to use it?
- 20 A Yes, sir.
- 21 Q And they told you it's in front -- you going to keep
- 22 things in front of you? Words to that effect?
- 23 A They just showed me where the camera was.
- 24 Q Well, you knew where the camera was on your body?
- 25 A There was no camera on my body. It was on a phone.

- 1 Q Excuse me?
- 2 A It was on a phone.
- 3 Q It was on a phone?
- 4 A Yeah.
- 5 Q So you were carrying a phone in your hand with a
- 6 camera?
- 7 A At some point, yeah. I had it on my person.
- 8 Q In your pocket or what?
- 9 A Yeah, it was in my pocket.
- 10 Q So what time -- you don't recall what time you arrived
- 11 at the station that day?
- 12 A No.
- 13 Q Correct?
- 14 A I don't.
- 15 Q And you don't recall how long you were there?
- 16 A Huh-uh.
- 17 Q And you don't recall being searched?
- 18 A Where?
- 19 Q At the station.
- 20 A Yeah. Got searched at the station like three or four
- 21 times.
- 22 Q Do you remember who did it?
- 23 A I can't remember. It's different officers there. They
- 24 all pulled me out to search me when I got there, searched me
- 25 before I left.

1 Q And you went over to _____?

2 A I guess. I don't know the address.

3 Q You don't know the address? You know it was Mr.
4 Stewart's house?

5 A Yeah.

6 Q Okay. And you were sitting there in the driveway and
7 Mr. Stewart wasn't there, correct?

8 A Right.

9 Q When you were at the police station was there some
10 conversation about scratch off cards?

11 A Yeah.

12 Q What was the scratch off cards about?

13 A I was supposed to went to the store and got him some
14 scratch off cards the day before -- or the day of. But I
15 never made it back because I was in the hospital the next
16 day.

17 Q So you owed Mr. Stewart some scratch off cards?

18 A Yeah.

19 Q And you wanted to go get them so you could give them to
20 him?

21 A Well, the police had them.

22 Q I understand. But didn't you talk to the police about
23 going to get scratch off cards?

24 A They were asking me about where the scratch off cards
25 come from and I told them I just -- they were his, you know.

- 1 He wanted me to go get them.
- 2 Q So Mr. Stewart, you're saying, had talked to you
- 3 earlier about going and getting some scratch off cards --
- 4 A Yeah.
- 5 Q -- for him?
- 6 A Yeah.
- 7 Q Correct?
- 8 A Yeah.
- 9 Q And did you do that?
- 10 A The next day.
- 11 Q Excuse me?
- 12 A The next day.
- 13 Q The next day. So you went and got the scratch off
- 14 cards for him on the, what, 21st or 22nd?
- 15 A Whatever day he seen in that video --
- 16 Q I didn't mean to interrupt you. Whatever day that
- 17 video was made is the day you got the scratch off cards,
- 18 correct?
- 19 A Exactly.
- 20 Q And he had talked to you the previous day about getting
- 21 him some scratch off cards?
- 22 A Right.
- 23 Q Correct?
- 24 A Right.
- 25 Q Now, you went over to Mr. Stewart's house, correct,

- 1 with the officer?
- 2 A Yes, sir.
- 3 Q And was your girlfriend in the backseat?
- 4 A Yes, sir.
- 5 Q Now, the police have helped you out with some charges
- 6 that were pending against you at this time, haven't they?
- 7 A No.
- 8 Q They haven't? They didn't dismiss some charges?
- 9 A Not that I know of.
- 10 Q And since this incident you've gotten in more trouble?
- 11 A Just violated my probation. That's all.
- 12 Q Well, didn't you get charged with distribution of meth
- 13 on March the 8th of this year?
- 14 A Yeah. That's no longer --
- 15 Q Excuse me?
- 16 A That's no longer there no more.
- 17 Q That's --
- 18 A That's been dismissed.
- 19 Q That's been dismissed?
- 20 A Yeah.
- 21 Q All right. And didn't you get charged with receiving
- 22 stolen goods in October this year?
- 23 A Yeah. That's the violating my probation.
- 24 Q Has that been dismissed yet?
- 25 A Not yet.

- 1 Q And you also got charged with possession of a firearm
2 by a convicted felon?
- 3 A That's been dismissed, too.
- 4 Q That's been dismissed, too?
- 5 A Yeah.
- 6 Q So you got a distribution charge that was -- that was
7 -- when was it dismissed?
- 8 A I don't know. Here a couple months ago. I know in
9 court last week and it said it was no longer there. And
10 that was just Friday.
- 11 Q And that was what?
- 12 A I went to court Friday.
- 13 Q Friday?
- 14 A Yeah.
- 15 Q And you have a possession of drug charge pending from
16 back in May of last year?
- 17 A What was that?
- 18 Q A possession of drug charge that's pending from back in
19 May of last year.
- 20 A No.
- 21 Q May 22, 2015?
- 22 A I was in jail May 22, 2015.
- 23 Q Correct. That's when you were arrested?
- 24 A No. I was in jail then.
- 25 Q And you also have a pending charge of receiving stolen

- 1 goods back from January of 2015? January 21st.
- 2 A That's what I'm on probation for.
- 3 Q That's what you're on probation for?
- 4 A Yeah.
- 5 Q Have you been sentenced on these charges that are
- 6 pending?
- 7 A This charge -- the receiving stolen goods I haven't
- 8 been sentenced on. And my probation, like I said, was --
- 9 that was it. And them other charges were dismissed.
- 10 Q So the possession of stolen goods here in Laurens
- 11 County from January 21st of 2015 you say has been dismissed?
- 12 A I didn't say that.
- 13 Q It hasn't been dismissed?
- 14 A Possession of stolen goods from October 24th of this
- 15 year hasn't been dismissed.
- 16 Q What about Laurens County from January 21, 2015?
- 17 A I don't know that charge.
- 18 Q What about a drug possession charge when you were
- 19 arrested on May 22, 2015?
- 20 A I guess. I don't --
- 21 Q In Laurens County?
- 22 A I guess.
- 23 Q It's still pending?
- 24 A I guess not.
- 25 Q You guess not?

- 1 A I mean, I don't know.
- 2 Q You don't know?
- 3 A Huh-uh.
- 4 Q You're obviously not worried about it?
- 5 A What you mean I'm not worried about it? That's not the
- 6 thing. I just don't know about it.
- 7 Q Well, if you were worried about it, wouldn't you know
- 8 about it?
- 9 A All my charges I'm worried about. You know what I'm
- 10 saying? I'm just not in the know of them charges.
- 11 Q You just don't know if they're pending or not?
- 12 A I'm pretty sure they're still pending.
- 13 Q You talked to your girlfriend at the police station
- 14 while you had that -- while that camera was around, didn't
- 15 you?
- 16 A Yeah.
- 17 Q Correct?
- 18 A Yeah.
- 19 Q And did you ever talk to her about keeping any of the
- 20 dope?
- 21 A No.
- 22 Q You didn't?
- 23 A No. Like I said, we had a police officer with us.
- 24 Q At all times?
- 25 A At all times.

1 Q Sitting next to you?

2 A Right next to me. From the two feet from his house to
3 the car. The car was sitting right there. They were in the
4 backyard with us. Right around the corner, to the police
5 station, searched, to the back room, searched, to back out.
6 Before we left searched again.

7 Q But you don't remember who searched you?

8 A I don't remember, but I know it was a police officer
9 though.

10 Q But you don't now which one?

11 A It's been a minute.

12 MR. WISE: Thank you.

13 MR. SCOTT: Let me check something.

14 REDIRECT EXAMINATION

15 BY MR. SCOTT:

16 Q On your Greenville charges, you understand I have no
17 jurisdiction in that circuit?

18 A Yes, sir.

19 Q You understand that, right?

20 A Yeah.

21 Q So I'm not even capable of making any deals with any
22 Greenville charges you have.

23 A Right.

24 Q But the Defense attorney was reading you off a bunch of
25 Greenville charges, wasn't he?

1 A Right.

2 Q Just to be clear. I just want to make sure that --

3 A Yeah.

4 Q -- we understand that's a different circuit. I think
5 the bottom -- the threshold question is have I made you any
6 promises?

7 A Huh-uh.

8 Q Are you telling the truth here today?

9 A Yes.

10 Q And what we all see with our eyes on the video, that's
11 what you're saying you personally witnessed?

12 A Yeah.

13 MR. SCOTT: Thank you.

14 THE COURT: Sir, thank you. You can step down.

15 (Whereupon, the witness steps down from the witness
16 stand.)

17 THE COURT: Solicitor, do you have another witness that
18 we can end in 15 minutes or do you think --

19 MR. SCOTT: No, sir. Probably a lunch break is --

20 THE COURT: Very good. Ladies and gentlemen, we're
21 going to go ahead and take a break for lunch. I'm going to
22 ask that you reconvene in the jury room at 2:00. That
23 should give you enough time to grab a bite to eat. Just so
24 that you know, we're going to be breaking sometime this
25 afternoon around 5:00. Okay? So for planning purposes just

1 be back in the jury room at 2:00 and know that you will be
2 done by 5:00. Okay? Don't discuss the case with anyone
3 while you're on break. And again, I'll see you back at
4 2:00. Thank you.

5 (Whereupon, the jury exited the courtroom at 12:42
6 p.m.)

7 THE COURT: We'll be at ease until 2:00.

8 (Whereupon, a lunch recess was held from 11:42 a.m. to
9 2:15 p.m.)

10 THE COURT: Let's have the jury, please.

11 (Whereupon, the jury entered the courtroom at 2:15
12 p.m.)

13 THE BAILIFF: All jurors are present, Your Honor.

14 THE COURT: All right. The record will reflect that
15 the jury is back. Defendant is present with counsel. At
16 this point, of course, we're still in the State's case in
17 chief. Solicitor, if you'll call your next witness, please.

18 MR. SCOTT: Your Honor, the State recalls Matt Veal.

19 THE COURT: You are still under oath, Sergeant.

20 THE WITNESS: Yes, sir.

21 MATT VEAL, having been previously
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. VEAL:

25 Q Sergeant Veal.

1 A Yes, sir.

2 Q We heard from you earlier, and you've been in the
3 courtroom the whole time. Chronologically going about it,
4 we've covered the distribution aspect of the case. You
5 mentioned as a result of the distribution earlier that you
6 guys, the Sheriff's Department, obtained a search warrant
7 for Mr. Stewart's house.

8 A Correct.

9 Q And when was that search warrant executed? By that, I
10 mean, when did you do a search on Mr. Stewart's home?

11 A It was the -- January 22nd, which was the following
12 morning approximately 7:00 a.m.

13 Q So the distribution that we saw the video of, that's
14 January 21st, and then the next morning you're saying you
15 showed up with a search warrant to search Mr. Stewart's
16 home.

17 A Correct.

18 Q Are you talking about the address?

19 A Yes, sir. Laurens County.

20 Q Tell me -- well, tell me how it goes. Once you arrived
21 there I assume it's with other deputies.

22 A We actually used our SWAT team to make entry into the
23 residence at the Once we arrived we made
24 entry into the residence. Found Mr. Stewart, Ms. Coleman,
25 and her kids. We secured -- secured the residence and made

1 sure that everyone was in handcuffs. Talked with everyone
2 in the residence and made sure that Mr. Stewart got his
3 pants on, because he was asleep.

4 Q Hold on one second. I'm going to stop you. You
5 mentioned a Ms. Coleman. Who's that?

6 A I won't pronounce her name correctly. I believe it's
7 Tondalai Coleman. I believe it was the girlfriend of Mr.
8 Stewart.

9 Q Do you see her in the courtroom right now?

10 A I do.

11 Q You do?

12 A Yes.

13 Q Where is she?

14 A I believe that's Ms. Coleman there. The second row.

15 Q I'm going to show you State's No. 22, Sergeant Veal.
16 Do you recognize that?

17 A Yes, sir. It's a blowup model of the single wide model
18 home where we executed the search warrant at

19 Q Well, let's --

20 MR. SCOTT: Do you have a Sharpie back there?

21 Q Sergeant Veal, help me orient the jury. Am I holding
22 it right? You got the -- I see couch labeled here and the
23 kitchen here. Which would be the front of the house?

24 A The front of the house is the kitchen side. So
25 actually that would be correct. If you were facing Sullivan

1 Road, .

2 Q Front and back?

3 A Yes. Yes, sir.

4 Q Front door. Did you say you gained entry through the
5 front door or the back door?

6 A Actually, when the team went to the house they
7 originally went to the back door. Since it was an outward
8 opening door the team made the determination to do an
9 alternate entry. They went through the front door and could
10 not make it -- access to the house. So they actually had to
11 go back to the rear door and pry the door open and get into
12 that way.

13 Q Do you remember why you call couldn't make entry
14 through the front door?

15 A It was -- they had a two-by-four barricading the front
16 door. I'm assuming it was some type of locking mechanism
17 for --

18 Q You were getting there. But tell me where you first
19 encountered Terrance Stewart? Where was he?

20 A He was on the couch.

21 Q Right here?

22 A Yes, sir.

23 Q I'm going to label Terrance Stewart. Did you mention
24 -- where was Tondalai Coleman?

25 A At the initial entrance of the home I don't know where

1 Ms. Coleman was. But she was in the kitchen when I was --
2 when I got inside. She was sitting in the kitchen, yeah.

3 Q You mentioned Terrance Stewart was on the couch. Go
4 from there. And I'm going to probably label some stuff as
5 you describe it. What was he doing when you encountered him
6 on the couch?

7 A I assume he was sleeping but -- due to it being 7:00 --
8 7:00 a.m.

9 Q And you mentioned something about -- what did he say,
10 or what did you say to him?

11 A I advised him that I was Sergeant Veal with the
12 Sheriff's Office and that we had a search warrant for his
13 residence. And he asked me if he could put some clothes on,
14 which I had no problem with. He was being cooperative at
15 the time. He said that his pants were laying in the floor
16 in front of the TV. Picked up the pants. I went through
17 the pants and located some money and a few other items, you
18 know, that was in his pocket. And once they were -- made
19 sure that there was no contraband or weapons inside his
20 pants, he was given his pants and he was allowed to put them
21 on.

22 Q I'm going to show you State's No. 17. Do you recognize
23 what that's a picture of?

24 A That is a picture of the livingroom. Couch on the
25 right -- or the left-hand side of the picture. TV going

1 back towards the bedroom with the front door in the far
2 right-hand corner of the picture.

3 MR. SCOTT: Your Honor, the State calls for 17 for
4 admission.

5 THE COURT: Mr. Wise, I assume you object based on all
6 pretrial motions, et cetera, and you have continuing
7 objections?

8 MR. WISE: Correct.

9 THE COURT: Would that be acceptable?

10 MR. WISE: That would be correct.

11 THE COURT: You don't have to renew the objection then
12 subsequently. Do you need to look at 17 again?

13 MR. SCOTT: That was the one I just handed you.

14 MR. WISE: Yeah.

15 THE COURT: Okay. Very good.

16 MR. SCOTT: Publish -- No. 17 offered for admission.

17 THE COURT: 17 in evidence subject to all pretrial
18 objections.

19 (Whereupon, State's Exhibit No. 17 was admitted into
20 evidence.)

21 Q This is the couch that's in the diningroom, but that's
22 the couch you first saw Terrance Stewart on? Is that what
23 you're saying?

24 A Yes, sir.

25 Q And then where were the pants located?

1 A They were located in front of the TV stand kind of --
2 there's a brown -- like some boots there, like in the
3 corner. They look like -- if you're looking at the TV
4 stand, left-hand in the floor. Yeah, like right in there.
5 Yeah.

6 Q And -- okay. So you said before giving them to him you
7 searched and you found some cash --

8 A Yes, sir.

9 Q -- in his pockets? Let me show you just for ID State's
10 No. 29 and State's No. 25. 25 and 29, what are these?

11 A State's 25 is \$1,023 minus \$100 of buy money that was
12 found in the front pocket of his jeans, and 29 is the \$100
13 of documented funds that -- where we had previously
14 documented the funds. Went back through the money that we
15 found in the pocket and were able to match the serial
16 numbers from the five \$20 bills that we documented the day
17 before. We were able to find them in his front pants
18 pocket.

19 Q Let me see State's No. 8. What is that?

20 A That is the money. Once I searched his pockets I took
21 everything out of his pockets and laid it on the corner of
22 the TV stand. It was just documented as how I took it out
23 of his pants pocket.

24 Q So that's the cash you pulled out of his pants pocket?

25 A Correct.

1 Q And am I right that 25 and 29, is that cash money?

2 It's just packaged separately?

3 A It's packaged separately due to it being the documented
4 funds we had used.

5 Q You separated the documented funds --

6 A We separated it, yes.

7 Q -- which is State's No. 29?

8 A Correct.

9 Q But all and all your testimony is \$1,223 in his
10 pockets?

11 A It was, I believe, \$1,123 total. It's just we
12 separated 1,023 and 100. So that way, for evidentiary
13 purposes, that way our system is not showing the same \$100
14 in both spots.

15 Q All right. I'm trying not to beat a dead horse, but I
16 want to make it clear though. Some of that money, \$100 of
17 it, which is State's No. 29, you were able to review the
18 serial numbers and determine that this was the same money
19 that you had given the CI the day before to buy the heroin?

20 A Correct.

21 Q At that time was Mr. Stewart placed under arrest?

22 A He was. He was advised that he was under arrest. We
23 had a distribution warrant on him -- or we were -- we had
24 made the determination that he was under arrest. Yes.

25 Q Did you begin searching the house more thoroughly after

1 you detained him?

2 A We did. We detained him and took him outside after he
3 was dressed. We left Ms. Coleman inside because of the -- I
4 believe there was two small children. So she was able to
5 stay inside with the kids. The SWAT team and a couple other
6 investigators, including myself, were -- searched the
7 residence after.

8 Q Walk us through some of the things you found. Did you
9 find anything in the kitchen area?

10 A Once we started searching -- once we started searching,
11 if anyone finds anything we kind of hold what we're doing
12 and we start taking pictures. But we were -- top of the
13 refrigerator there was like a white pullout drawer that you
14 would normally use in a --

15 Q Let me stop you there. I'm sorry.

16 MR. WISE: Your Honor, can I inquire. I've heard him
17 refer to a lot of exhibits as identification and not admit
18 them yet. And I just want to make sure I haven't missed
19 anything.

20 THE COURT: So far the only -- at this time the only
21 thing I've got in evidence is State's 17. The photo of the
22 den.

23 MR. WISE: Photo of the den?

24 THE COURT: Correct. That's the only thing I've got in
25 evidence thus far. 29, 25 and 8 are not.

1 Q Let me show you State's No. 11, 12 and 13, and No. 9.

2 Do you recognize those?

3 A Yes, sir. I do.

4 Q And they -- does that depict the kitchen that you were
5 describing?

6 A No. State's Exhibit 11 is a picture of the top of the
7 refrigerator with the white pullout. Kind of like a bottom
8 drawer on top of the refrigerator. Once it was pulled out
9 we found the baggy. There was a large baggy of -- I guess
10 you would call it a greyish powder that was kind of wrapped
11 up in a corner of a bag that was tied off. Also we found a
12 tinfoil ball of pills that were -- they had a specific
13 number. We use just Drug dot com, some type of pill
14 identification to determine that those were oxycodone. And
15 that was picture -- Exhibit 13. and Exhibit No. 9 is a set
16 of black digital scales with a powdery residue on it.

17 MR. SCOTT: Let me show this to the Defense attorney.
18 Before we -- before I minimize, I do want to offer State's
19 No. 8 for admission into evidence.

20 MR. WISE: Subject to our previous position. And I
21 assume, for the record, that that would be preserved, all
22 the exhibits that introduce --

23 THE COURT: There is. If there is any additional -- it
24 is preserved for any additional exhibits that he seeks to
25 introduce subsequently. But if you have a new objection you

1 need to let me know aside from that. Okay?

2 MR. WISE: Aside from the pretrial .

3 THE COURT: All right. State's 8 is in evidence. Are
4 you moving 11, 13, 9 and 12 at this point?

5 MR. SCOTT: I am, Your Honor.

6 THE COURT: All right. Those would be in evidence as
7 well subject to --

8 MR. SCOTT: And 12.

9 THE COURT: Sorry?

10 MR. SCOTT: And 12.

11 THE COURT: And 12. 11 through 13 and 9 are in
12 evidence.

13 (Whereupon, State's Exhibit Nos. 8, 9 and 11,12, and 13
14 were admitted into evidence.)

15 Q Let me publish State's No. 11. So -- and you were
16 describing it and as you were looking at pictures up there.
17 But this is obviously the refrigerator?

18 A The refrigerator in the kitchen. Yes, sir.

19 Q What's the significance of this white box?

20 A During the search we located a large baggy. The baggy
21 I was describing earlier. We located it in that -- we
22 located that in the white container there and we took a
23 photo of it.

24 Q And the tinfoil as well?

25 A The tinfoil, yes.

1 Q Let me show you State's No. 12. What is that, Sergeant
2 Veal?

3 A That is the tinfoil ball that had the -- I believe it
4 was 56 oxycodone tablets.

5 Q State's 13?

6 A That's been opened. We opened the -- to see what was
7 inside.

8 Q That's the same -- that's the last picture but you
9 opened it up and there's all the oxycodone?

10 A Correct.

11 Q I don't --

12 MR. WISE: No, that's fine. We have a standing
13 objection.

14 Q State's 14.

15 A That is the large baggy that we located as well inside
16 that container to the right. To the left is our heroin test
17 kits that we buy from a company that is certified saying
18 that it's the presence of heroin. And if you see up
19 underneath it, it'll say that it's either white, brown,
20 black tar. There's different types of heroin. But it would
21 change the -- to the green color if there's a presence of
22 heroin, which in this picture here it indicates that there
23 was a presence of heroin in that bag. It's only a field
24 test.

25 MR. SCOTT: The State offers 14 for admission into

1 evidence, Your Honor:

2 THE COURT: In evidence subject to prior rulings.

3 (Whereupon, State's Exhibit No. 14 was admitted into
4 evidence.)

5 Q I don't have a picture of it in there, but your
6 testimony is that that was found with tinfoil in the white
7 tray?

8 A Yes, it was. It may have just been an oversight on my
9 part for not taking a picture of that inside. But yes, it
10 was located in that white drawer as well.

11 Q In the kitchen that Ms. Tondalai was standing in?

12 A She was sitting in it, I believe, in a chair.

13 Q State's No. 9. What's this?

14 A That is aluminum foil. Also in the middle there. If
15 you can see there, there's a set of black digital scales
16 with a -- in the middle there with a powder residue on the
17 screen.

18 Q Scales -- you're talking about scales to weigh
19 something?

20 A Yes. Most residence I go into you it's commonly found
21 is a set of scales to weigh -- weigh up a product, you know,
22 to make sure that they're selling the correct -- no more, no
23 less.

24 Q 16 and 15 is what I'm showing you now. Where were
25 these located? These are Ziploc bags. These are legal to

1 have, aren't they?

2 A They're legal. It's just -- we took a picture of them
3 due to the fact that the drugs were found -- kind of looked
4 like a corner of a Ziploc bag and that we had found two
5 boxes, I believe, in the kitchen. And that's just why the
6 picture was taken.

7 Q Do you know where in the kitchen they were?

8 A Not right offhand I don't.

9 Q Moving through the house, what else noteworthy did you
10 find?

11 A We also found a pistol. As soon as you go in the back
12 door, the washer and dryer is when you go in the back door,
13 there's a shelf above it. We located a handgun.

14 Q Let me show you State's 18 and 19.

15 A Yes, sir.

16 Q What is that?

17 A 18 is a picture of a handgun wrapped in a green towel.
18 19 is a picture of the gun. We just removed the towel just
19 a little bit to show the actual weapon.

20 MR. SCOTT: Let me see 18.

21 Q That's -- this is -- what is this? Is that anything?

22 Is that a pistol?

23 A I can't --

24 MR. SCOTT: Well, go to 19 then.

25 Q Is that the same shelf?

1 A Yes, that is the same shelf. Like I said, we just
2 removed the green towel to get a better picture of it.

3 Q Let's do this.

4 A If you're coming in the back door --

5 Q Wait a minute. Let me go back though. Is that the
6 refrigerator?

7 A That's the refrigerator.

8 Q So we're going to say heroin and oxycodone.

9 A Correct.

10 Q And the pistol, do you see where that would be here?

11 A This is the back door. The shelf is kind of above the
12 washer and dryer. It would have been in the corner. If
13 you're standing in front of it, it would be the far left
14 going through the back door.

15 Q And you said over here were his pants with the money?

16 A Yes.

17 MR. SCOTT: Judge, I apologize. I'm kind of -- I'm
18 going through a lot of pictures, but I am offering them for
19 admission into evidence. Those last two --

20 THE COURT: It's 18 and 19.

21 MR. SCOTT: 18 and 19.

22 THE COURT: And then also, I assume 15 and 16?

23 MR. SCOTT: Yes, Your Honor.

24 THE COURT: All right. Subject to the earlier
25 objections, those are in evidence, 15, 16, 18, 19.

1 (Whereupon, State's Exhibit Nos. 15, 16, 18 and 19 were
2 admitted into evidence.)

3 Q Continue with -- what is this a picture of? Let's see.
4 I've got it as State's No. 10, which we'll offer for
5 admission into evidence.

6 A This is a picture of a shelf. If you go into the -- if
7 you're going in the backdoor and you take a right there's a
8 bedroom. I guess behind the wall of where the washer and
9 dryer is there's a bathroom here (indicating). When you go
10 into the bathroom there's a self that was here, and there
11 was two stacks of -- well, it was in one stack, but it was
12 bundled with rubber bands of currency.

13 Q State's No. 24. Do you recognize this?

14 MR. SCOTT: Your Honor, I am offering State's No. 10
15 for admission into evidence.

16 THE COURT: In evidence.

17 (Whereupon, State's Exhibit No. 10 was admitted into
18 evidence.)

19 A That is the money that was located and it was counted
20 as \$2,730.

21 Q Let's see. 2,700 and what?

22 A Thirty.

23 Q Anything else that you can recall? Any other drugs or
24 -- well, any other -- to the extent of the heroin and the
25 oxycodone, those were in the kitchen. And then just cash

1 and a pistol?

2 A Yes. There was a little bit of cash, I believe, on a
3 night stand inside the bedroom. I think it was like \$25 as
4 well. But all the drugs was contained, you know, to the top
5 of the refrigerator. And there was money in his pants
6 pockets, bathroom and bedroom. And the pistol was found in
7 the laundry room hallway.

8 Q This is State's No. 28.

9 A This is a bag of a powdery substance. Of course, it
10 was transferred over into a -- this says bag added due to
11 SLED removing from the baggy that it was found in and they
12 put it inside theirs. And the bag on the right is the pills
13 identified as oxycodone.

14 Q So State's 13 and 14, once y'all seized the oxycodone
15 and once you seize the heroin, what did you guys do with it?

16 A We -- like I said, the heroin -- what we thought was to
17 be heroin we field tested. Did get the -- we get
18 confirmation that the heroin as present we immediately take
19 these and seal them in evidence bags. And once we seal the
20 evidence bag we get back to the Sheriff's Office and we fill
21 out a BEST Kit, I believe what Officer Sweatt had testified
22 to. It's a BEST Kit. It's a standard kit that SLED
23 requires us to fill out and we seal it, and also the bag is
24 in here. Fill out proper paperwork, submit it online,
25 saying what we need done to it. In this case we needed drug

1 analysis done to it.

2 Q But after you all seized the drugs from the house, and
3 I understand the field test and everything, but you all take
4 it back to your evidence locker?

5 A We do. Once we fill out the BEST Kit and all the
6 paperwork it's put in a temporary evidence locker and the
7 evidence custodian removes it and sends it to SLED -- or he
8 takes it to SLED himself.

9 Q To be tested?

10 A To be tested, yes. And then later picked up, you know,
11 by one of those guys.

12 Q Who seized this?

13 A The evidence bag says that -- and the way we go about
14 this is we list the subject as the initial person. I
15 believe Sweatt picked it up first, but then immediately
16 handed it to me right there at the kitchen. So that's why I
17 -- he was listed and then I was listed at -- subject to
18 Sweatt, Sweatt to Veal, Veal to evidence is how -- and it
19 was in my custody until it it was placed into evidence.

20 Q But it's your testimony that 13 and 14, in those
21 pictures is what you packaged in State's No. 28?

22 A Correct.

23 Q This is not to scale, is it?

24 A Definitely not to scale.

25 Q But does it give a fair kind of representation of the

1 general area where these items were found?

2 A Yes, it does.

3 MR. SCOTT: Your Honor, the State offers 22 for
4 admission.

5 THE COURT: Without objection.

6 (Whereupon, State's Exhibit No. 22 was admitted into
7 evidence.)

8 THE COURT: Answer any questions Mr. Wise has for you.

9 THE WITNESS: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. WISE:

12 Q Mr. Veal, when you send these items to SLED you can
13 request different types of tests to be conducted?

14 A Yes, sir. We can.

15 Q You can request that they be checked for DNA?

16 A It's very rare that we would ask for DNA. I mean, I've
17 never ask for it in nine years.

18 Q You can request that it be checked for DNA?

19 A Yes.

20 Q And, in fact, there have been cases where DNA has been
21 obtained off of plastic bags?

22 A I assume so.

23 Q You can also check and see if there are fingerprints?

24 A Correct.

25 Q And there's a method of detecting fingerprints on

1 plastic bags?

2 A Yes, sir.

3 Q And none of these items were sent for either DNA or
4 fingerprint analysis?

5 A No, they were not.

6 Q Now, where is -- look at State's Exhibit 27. You have
7 recognized that earlier as what Mr. Cheatham says that he
8 got that day.

9 A Correct.

10 Q Correct?

11 A Those are -- yeah, those are the five baggies.

12 Q And those are small bags?

13 A Correct.

14 Q They're not cut off of a bag, they're actual complete
15 bags?

16 A Yeah, they are. They're small -- it looks like some
17 type of jewelry Ziploc baggy.

18 Q And in your search of Mr. Stewart and Ms. Coleman's
19 trailer did you ever find any bags that resembled those?

20 A No, sir. I don't recall seeing any.

21 Q And you were looking for stuff like that, I assume?

22 A Yes, sir. We were looking at any and all evidentiary
23 value.

24 Q Because that would help tie the case up?

25 A It would have helped.

1 Q But you didn't find any?

2 A No, sir.

3 Q Now, how much money did you say was found that day?

4 Excuse me. That was a bad question. How much money was
5 discovered in the pants of Mr. --

6 A In total I believe it was \$1,123. It was \$1,023 in one
7 baggy and \$100 in the other one I believe is what -- I don't
8 have it in front of me.

9 Q I'm going to hand you an incident report, and what does
10 that -- what did you put in the incident report?

11 A Seventy -- \$1,273. That is what was put in the -- in
12 the incident report. What was wrote on the evidence bags.

13 Q You said 1,000 --

14 A It's in the top right-hand -- or -- yeah.

15 Q So in Defendant -- State's Exhibit 25 how much money is
16 actually in that bag?

17 A It actually says 1,000 -- I said 23 but it's actually
18 \$1,073. Because the original -- we all have someone helping
19 us write and that is, I believe, Brian Bridge's
20 handwriting, but mine's filling out the rest of it. He
21 wrote 1,173 cash and then I put in parenthesis, minus \$100
22 buy money, which a new total of \$1,073.

23 Q And that's in 29?

24 A Yes.

25 Q And you don't know where your \$1,273 came from in your

1 incident report?

2 A It could have been just a typo. I mean, it's not -- I
3 can take it out and count it again, but --

4 Q You don't have to do that. So your incident report is
5 probably wrong?

6 A I would -- I mean, I don't know if the incident report
7 is misprinted. But I would say that the incident report has
8 a misprint in it versus the evidence bag. I'd be willing to
9 say that what's wrote on the evidence bag is correct.

10 Q Did you count the money in front of Mr. Stewart?

11 A I believe Mr. Stewart was already gone at the time.

12 Q So you didn't -- I mean, you didn't count it -- I mean,
13 you found it before he left obviously because you found it
14 in his pocket?

15 A We laid it on the table and it was put -- once the
16 search had continued and things have kind of calmed down a
17 little bit, that's when we got our case file and started
18 looking for the documented funds.

19 Q Hold on one second. Let me find one more. You didn't
20 count it in front of Ms. Coleman either?

21 A I would think that the money was counted -- I don't
22 think she was standing like right over us when it was
23 counted, but I would assume that she was in the house.

24 Q When you -- and the money that you found on the shelf,
25 you didn't count that in front of her either?

1 A No, sir.

2 MR. WISE: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q Did you take any of his money?

6 A No, I did not take any of his money.

7 MR. SCOTT: That's all.

8 THE COURT: Thank you, sir. You can step down.

9 THE WITNESS: Thank you.

10 (Whereupon, the witness stepped down from the witness
11 stand.)

12 MR. TODD: The State calls David Craig.

13 DAVID CRAIG, having been first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. TODD:

17 Q Mr. Craig, what's your full name again?

18 A David Craig.

19 Q And where are you employed?

20 A Greenville County Public Safety Forensics Division.

21 Q And where is your former employer?

22 A It was Laurens County Sheriff's Office. I was the
23 evidence custodian.

24 Q Were you evidence custodian --

25 THE COURT: Put that microphone just a little bit

1 closer to you, sir.

2 THE WITNESS: I'm sorry. Can you hear me now.

3 THE COURT: The jury's okay. I'm having difficulty
4 hearing you.

5 MR. TODD: Sorry about that.

6 Q You said evidence custodian in Laurens?

7 A Yes, sir.

8 Q So you were evidence custodian back in January 2015?

9 A That's correct.

10 Q And did you have an opportunity to be involved in the
11 Terrance Stewart evidence chain?

12 A Yes, I did.

13 Q Explain to the jury the evidence procedure and policy
14 that you followed?

15 A As evidence custodian what I would do is whenever
16 evidence was seized by the narcotics department, which it
17 was in this point by Steven Sweatt and Matt Veal, they would
18 do a -- seal it in an evidence bag. It would placed in a
19 BEST Kit, which is a kit that we submit to SLED forensics
20 division. And what I did was confirmed all the paperwork
21 was correct. Made sure that everything was done, secured
22 the evidence, and then I would transport it to SLED and SLED
23 would do the forensics investigation on it. After it was
24 completed I would go back to SLED and receive it back and
25 store it in the evidence department in the Laurens County

1 Sheriff's Office where it was secured until it was brought
2 before the Court.

3 Q And you touched on it a bit. BEST evidence kits are
4 packaging.

5 A Uh-huh.

6 Q Is that something you have in-house, or where do you
7 get those?

8 A Yeah. Those are actually provided by SLED. We keep
9 them in-house. Each one has a specific number on it. And
10 the evidence is placed in that bag by the narcotics officer.
11 He seals it and signs it. And you will find if you look at
12 the evidence that his signature is there. And then he
13 submits it to me, and then once I've received it I would
14 take it to Columbia.

15 Q I'm going to show you what's been marked as State's
16 Exhibit No. 27 for identification. Do you recognize that?

17 A Yes, I do.

18 Q What is it?

19 A It is -- it's showing as case number 1500-0202. It was
20 submitted by a Steven Sweatt. It was placed in BEST Kit
21 251474. The actual drugs in the kit I cannot tell you --

22 Q Sure.

23 A -- because I wasn't privy to that.

24 Q But you see there are five bags in that?

25 A That's correct. There are five bags in here and I can

1 see that one of the bags that they had sealed in here said
2 four small plastic bags containing off white in color
3 powdery substance approximately .05 grams something. And
4 that's what it says.

5 Q And that's how you would have received it inside that
6 bag? Where is the BEST --

7 A The BEST Kit, if you can see right here so I can
8 explain it to you, is this bag inside with this seal here.
9 And you will see a BEST Kit number here. This is how it is
10 tracked. Once we -- Laurens County bar codes it. So each
11 bag -- inside that bag has a bar code on it. That's how we
12 distinguish what it is. And then that is sealed in the BEST
13 Kit bag by Sergeant Veal or Sergeant Sweatt and they sign
14 off that it's sealed and then it's never opened again until
15 it gets to SLED. Once SLED gets it there they will open
16 this bag, receive the drugs, do their analysis and place
17 that bag and the drugs and everything that was there into
18 another bag and it's sealed. So once it's sealed, I never
19 touch these drugs. The only person that ever touches these
20 would be the investigator. Everything I did would be inside
21 the bag, and it would be opened at SLED and resealed at SLED
22 and then sent back to the Laurens County Sheriff's Office.
23 So as long as the integrity seal is good on the bag it's
24 never been -- it's not contaminated in any way, and it
25 appears to be fine.

1 Q I'm going to also get you to examine this. What's
2 marked as State's Exhibit 28 for identification. And can
3 you tell me what's inside that bag? Not necessarily the
4 substance but --

5 A I can see -- I can see a bag, as you can, with some
6 sort of a white powdery substance, piece of tinfoil and some
7 small round white pills. This was BEST Kit 251473, and it
8 was submitted to me by Sergeant Veal.

9 Q And same as the -- same as the former bag. You never
10 had the opportunity to touch them physically?

11 A Yeah. Those are sealed by the Sergeant and the only
12 person that opens those is SLED and then they reseal them
13 again when they're through there.

14 Q So it goes from the officer, to the evidence locker, to
15 you, to SLED, SLED back to you?

16 A Correct. And then it's stored at the Sheriff's Office
17 until the Court date.

18 Q And since then they've been back from SLED they've been
19 stored at the evidence locker?

20 A That's where they would have been, yes.

21 MR. TODD: Beg the Court's indulgence?

22 THE COURT: Yes, sir.

23 Q And just hitting back on it again. Before going to
24 SLED it was always maintained under your care and custody
25 and yours alone?

1 A That's correct.

2 MR. TODD: I believe that's about all I have. Please
3 answer any questions Mr. Wise has.

4 CROSS-EXAMINATION

5 BY MR. WISE:

6 Q When items are dropped off with you there's a chain of
7 custody form that's signed by everybody, isn't it?

8 A That's correct.

9 Q Have you got those with you?

10 A It would be on the bag itself.

11 Q You don't have a separate form?

12 A No.

13 Q Let me -- the reason I ask is, is this something
14 generated in your --

15 A This would be generated by Sergeant Veal or Sergeant
16 Sweatt. And what this is is where they log into the
17 computer under a Laurens County Sheriff's Office law track
18 computer and it assigns a bar code number, as you'll see on
19 the left for each item that they submit.

20 Q Right.

21 A And this is basically their statement that they
22 submitted it and turned it into evidence.

23 Q But these are not signed by anybody?

24 A No.

25 Q So there's no written documentation with signatures

1 that show when things are submitted?

2 A Only -- there is a -- what you see right there is how
3 it is submitted.

4 Q Right. But there's no signatures on that?

5 A No.

6 Q So what I'm saying is you don't have any written
7 documents with signatures saying -- signed by Mr. Veal or
8 anybody else saying, "I gave this to the evidence custodian
9 at Laurens County?"

10 A There would be an evidence log that would have where I
11 received it. I would have typed in that I received that
12 evidence from them --

13 Q But nothing -- nothing that's not --

14 A -- but not with a signature, no.

15 MR. WISE: All right. Thank you.

16 THE COURT: Nothing else, Mr. Todd?

17 MR. TODD: Your Honor, beg the Court's indulgence.

18 REDIRECT EXAMINATION

19 BY MR. TODD:

20 Q Mr. Craig, there is something on that bag. Not
21 necessarily a signature but where it says chain of custody
22 from, to and date; is that correct?

23 A Yes. It says the person sealing the bag and the
24 signature of the person sealing the bag, and -- I'm not able
25 to see it because it's covered with anything else, but there

1 is a place here where Sergeant Veal would have signed it
2 saying that he had sealed it.

3 Q Right. And that's there?

4 A And it is here. One is from Sergeant Sweatt and one is
5 from Sergeant Veal. And if I remember right it was because
6 one set of evidence was entered as a result of the search
7 warrant and one was as a result of the controlled buy.

8 MR. TODD: I think that's going to do it. Thank you.

9 MR. WISE: Nothing further.

10 THE COURT: Sir, thank you.

11 THE WITNESS: Yes, sir.

12 THE COURT: You can step down and you are free to go.
13 Thank you for coming in.

14 (Whereupon, the witness stepped down from the witness
15 stand.)

16 THE COURT: How many more witnesses does the State have
17 for the day?

18 MR. SCOTT: Two probably, Your Honor.

19 THE COURT: Do you have a --

20 MR. SCOTT: One is going to --

21 THE COURT: Right.

22 MR. SCOTT: They'll both take a little bit of time.

23 THE COURT: We're going to go ahead and take a break,
24 ladies in gentlemen, in hopes that we can knock out both
25 witnesses. So we'll be at ease for about 10 minutes. If

1 you need to step outside, feel free. Otherwise, don't talk
2 about the case. We'll take a break right now and hopefully
3 get the last two witnesses, from the State's perspective,
4 today. Thank you.

5 (Whereupon, the jury exited the courtroom at 3:01 p.m.)

6 (Whereupon, a recess was held from 3:01 p.m. to 3:17
7 p.m.)

8 THE COURT: Let's have the jury.

9 (Whereupon, the jury entered the courtroom at 3:17
10 p.m.)

11 THE BAILIFF: All present, Your Honor.

12 THE COURT: All right. The jury is back and seated.
13 At this point, Solicitor, if you'll call your next witness,
14 please.

15 MR. SCOTT: Your Honor, the State calls Tondalai
16 Coleman.

17 MR. WISE: Your Honor, can we approach for a minute?

18 THE COURT: Come on up.

19 (Whereupon, a sidebar was held.)

20 TONDALAI COLEMAN, having first been
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SCOTT:

24 Q I'm just saying Tondalai; is that right?

25 A Uh-huh.

- 1 Q Tondalai Coleman. And Tondalai, how old are you now?
- 2 A Twenty-seven.
- 3 Q Full-time employed. We were talking about that. It's
- 4 a subsidiary of Samsung, is that what you said?
- 5 A Yes, sir.
- 6 Q And what hours do you work?
- 7 A 9:00 to 5:30.
- 8 Q How long have you had that job?
- 9 A Two and a half years now.
- 10 Q I don't know where you live now, but where were you
- 11 living in January 22nd of 2015?
- 12 A At , Fountain Inn.
- 13 Q Fountain Inn?
- 14 THE COURT: Could you slide that just a little bit
- 15 closer to you, Ms. Coleman, please. The microphone, just a
- 16 little closer.
- 17 Q , Fountain Inn. Tondalai, who lived there
- 18 with you?
- 19 A Myself, my two children and Terrance.
- 20 Q Terrance, he was the father of your children?
- 21 A Yes.
- 22 Q How long have you guys been together at that point?
- 23 A That morning?
- 24 Q No. How long had you known him by that date?
- 25 A Quite some time. Ten plus years.

- 1 Q Did you ever known him to have any nicknames?
- 2 A Yeah.
- 3 Q Did he have more than one?
- 4 A No.
- 5 Q What was his nickname?
- 6 A Spoon.
- 7 Q Say what?
- 8 A Spoon.
- 9 Q Spoon?
- 10 A Uh-huh.
- 11 Q Did you ever hear anybody call him Cheddar?
- 12 A Call him what?
- 13 Q Cheddar?
- 14 A No.
- 15 Q You never heard that? What did Terrance Stewart do for
- 16 a living at that point?
- 17 A He worked for a car dealership. Well, more so of
- 18 maintenance. Not dealership, but cleaning cars, maintenance
- 19 for cars. Small stuff like oil changes. But most at car
- 20 washes and cleaning the interior. Also cut hair.
- 21 Q Where was that? Where did he -- where was the car
- 22 dealership?
- 23 A Bizzy J's. It's in Fountain Inn as well.
- 24 Q And where did he cut hair?
- 25 A Off and on like people houses, or at one point it was a

1 barber shop in Greenville. I'm not -- I don't know the
2 location.

3 Q January 22nd, around that date, was he working at that
4 time?

5 A Uh-huh.

6 THE COURT: You've got to say yes.

7 A Yes. I'm sorry.

8 Q Did you have your job at the time?

9 A Yes.

10 Q The 9:00 to 5:00 job?

11 A Yes.

12 Q Were you able to keep up with what he was doing during
13 the day while you were at work?

14 A No.

15 Q Well, cut to the chase. January 22nd, do you remember
16 that date?

17 A Yes.

18 Q Your probably not going to forget it anytime soon. How
19 would you describe that day, Tondalai?

20 A I guess difficult.

21 Q Well, I mean, police busted into your house, didn't
22 they?

23 A Yeah.

24 Q Did you come to find out why they were at your house?

25 A I heard -- be hearing everything that was being

1 discussed. What they were saying.

2 Q Did you know, or did you have any information that
3 Terrance was distributing drugs out of your house?

4 A No.

5 Q Because you were at work during the day, right?

6 A Yes.

7 Q Did you have any idea that large amounts of drugs were
8 being stored at your house?

9 A No.

10 Q That day when they came in you were in the kitchen
11 where a large quantity of heroin and oxycodone was found.
12 Do you remember that day?

13 A Yes.

14 Q Well, your testimony is that you didn't know that drugs
15 were being stored in your kitchen; is that right?

16 A Correct.

17 Q They charged you with the drugs, too, didn't they?

18 A They charged me with conspiracy.

19 Q To distribute?

20 A Yes.

21 Q Did you have anything to do with distributing drugs out
22 of that house?

23 A No.

24 Q After the arrest did you speak with Mr. Stewart while
25 he was incarcerated?

- 1 A Yes.
- 2 Q Multiple times?
- 3 A Yes.
- 4 Q And did he make statements to you about that day and
- 5 the dope?
- 6 A We had conversations about what happened and what could
- 7 possibly happen.
- 8 Q Is it safe to say you were concerned about your charge?
- 9 A Yes.
- 10 Q Did he make any statements to you about the drugs that
- 11 were found in the kitchen?
- 12 A Statements like --
- 13 Q About the drugs?
- 14 A I mean, yeah, we talked about what occurred that day
- 15 and what could possibly occur.
- 16 Q You remember -- I don't know if he's made any lately.
- 17 But when he would make calls to you from the jail, do you
- 18 remember the prerecorded voice that would always come on
- 19 right before the calls?
- 20 A Yes.
- 21 Q And what did it warn?
- 22 A All calls are monitored and recorded.
- 23 Q We listened just now -- during that break you were back
- 24 in my office, weren't you?
- 25 A Yes.

1 Q And I played a few calls for you?

2 A Yes.

3 Q This is State's No. 21. Did you recognize the voices
4 on that audio cassette I played for you?

5 A Yes.

6 Q Who are the calls between?

7 A Terrance and I.

8 Q Those are your voices? You don't dispute that?

9 A Yes.

10 Q You do dispute it or you don't dispute it?

11 A Don't.

12 MR. SCOTT: Your Honor, the State offers 21 for
13 admission into evidence.

14 MR. WISE: No objection.

15 THE COURT: Very good. That's State's 21.

16 (Whereupon, State's Exhibit No. 21 was admitted into
17 evidence.)

18 THE COURT: Solicitor, State's 21 is in evidence. You
19 may publish it.

20 (Whereupon, State's Exhibit No. 21 was published for
21 the jury.)

22 MR. SCOTT: Your Honor, what I could do is, with
23 permission from the Defense, we could fast forward probably
24 to the more relevant part.

25 THE COURT: Very good. Go ahead. And if there's

1 anything Mr. Wise wants played he'll make sure to let us
2 know.

3 MR. SCOTT: Yes, sir.

4 MR. WISE: I think we've decided we're going to excuse
5 the jury just a minute.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, I'm going to take up a brief issue with the attorneys.
8 I want to try to get this right. And don't discuss the
9 case. I'll have you back here in just a matter of moments.
10 Okay?

11 (Whereupon, the jury exited the courtroom at 3:30 p.m.)

12 THE COURT: All right. The jury is out, Mr. Wise.

13 MR. WISE: Right. I just had one precaution. Mr.
14 Bentley says he's edited out the part about Peoria, Illinois
15 and we're just going to play about three minutes of it. We
16 can play the relevant portion just to make sure.

17 THE COURT: Sure, go right ahead.

18 MR. WISE: It just seemed like the thing to do.

19 THE COURT: Not a bad idea. Go ahead.

20 (Whereupon, State's Exhibit No. 21 was played.)

21 MR. SCOTT: Probably, Judge, what I would advocate is
22 about 10 minutes in and then just letting it play out. So
23 that's about three and a half --

24 MR. WISE: That doesn't include any of the two areas of
25 concern that I have.

1 THE COURT: Just so the record is clear, Mr. Wise
2 approached earlier and had some concerns about other
3 portions of the recording which referenced out of state
4 charges in Illinois or Indiana something.

5 MR. WISE: Illinois.

6 THE COURT: Illinois.

7 MR. SCOTT: Now, while we're here, Judge, there's one
8 other clip. Let's just -- with Your Honor's permission --

9 THE COURT: Sure.

10 MR. SCOTT: -- We're going to get clear on that one,
11 too, and that's the only other one we're going to introduce.

12 (Whereupon, State's Exhibit No. 21 was played.)

13 MR. SCOTT: So on that one, that's the video -- we have
14 video 1, probably about the 420 mark to around the 525 mark.
15 Somewhere in there. Just that section we just listened to.

16 THE COURT: Very good. Those are both on State's 21,
17 correct?

18 MR. SCOTT: Yes, sir.

19 THE COURT: I'm just thinking forward. At some point
20 the jury may request to hear those again. Is it possible,
21 Mr. Bentley, for at some point in a break you'd actually
22 pull those -- instead of the entire recording. What I want
23 to be able to do is if they ask to hear it again be able to
24 send a CD ROM back to the jury room with a computer. Yeah.
25 And so, if you could actually just -- the portion that is

1 played, keep track of the times, and then that actual audio
2 portion, put that on another CD ROM. We'll make that one
3 21A. And if the jury requests that we can send that back so
4 that we don't have to bring them back out here and play -

5 MR. BENTLEY: We can do it this evening.

6 THE COURT: Yeah. Let's have the jury, please.

7 MR. SCOTT: Probably, Your Honor, sort of just a
8 Judge's instruction, maybe call Walter up there to -- it's
9 going to be kind of choppy if we do it that way. And I
10 fully endorse that. But I always feel like I need to
11 explain to a jury like --

12 THE COURT: I'll take care of that. I'll simply say
13 that there's extraneous information in there that's not
14 relevant to any issue in this case, and that's why it's only
15 -- the part you're hearing is the only portion that's
16 relevant to any issue in this case, or words to that effect.

17 (Whereupon, the jury entered the courtroom at 3:36
18 p.m.)

19 THE BAILIFF: All jurors present, Your Honor.

20 THE COURT: Ladies and gentlemen, the reason we took a
21 brief break, I was told a moment ago these are fairly long
22 phone calls, so we've got them reduced to the part that is
23 germane to the issues involved in this case. Okay? So
24 we've got it time stamped appropriately. Mr. Bentley, you
25 can proceed with the first call.

1 (Whereupon, State's Exhibit 21 was published for the
2 jury.)

3 Q Tondalai, that was a conversation that you had with
4 Terrance Stewart?

5 A Yes.

6 Q And fair to say you were concerned that you were being
7 charged with the dope, too?

8 A Yes.

9 Q And what did he say in response to that?

10 A We both discussed scenarios as far as what could happen
11 and what the allegations were.

12 Q But he was admitting that it wasn't your dope?

13 MR. WISE: Objection, Your Honor. He's leading the
14 witness.

15 A That it's not --

16 THE COURT: Sustained as to leading, but rephrase the
17 question.

18 Q Tondalai, what did he say to you in regards to whose
19 drugs were found in the house?

20 A If he has to say that they were his, then that's what
21 he would say.

22 Q Were they yours?

23 A No. The drugs were not mine.

24 Q You, Terrance, and your children lived in the home?

25 A Yes.

1 (Whereupon, State's Exhibit No. 21 was played.)

2 Q Tondalai, do you still talk with Mr. Stewart?

3 A Yes.

4 Q Fairly regularly?

5 A Yes.

6 Q But you don't deny that those are y'all's voices on the
7 jail call?

8 A Correct.

9 MR. SCOTT: Answer any questions Mr. Wise has for you.

10 CROSS-EXAMINATION

11 BY MR. WISE:

12 Q Ms. Coleman, you were arrested that day also?

13 A Yes.

14 Q And you have a lawyer representing you?

15 A Yes.

16 Q And when you -- let me ask you a couple questions,
17 first. You say you never saw any drugs in the house?

18 A Correct.

19 Q You never saw Terrance bring any drugs in the house?

20 A Correct.

21 Q You never saw him sell any drugs from the house?

22 A Correct.

23 Q You all did over time save some money?

24 A Correct.

25 Q And the money was in the house?

1 A Yes, sir.

2 Q And you were working now?

3 A Alorica. It's a third party company for Samsung.

4 Q Say it again?

5 A Alorica. It's a third party company for Samsung.

6 Q For Samsung?

7 A Uh-huh.

8 Q And both you all had income coming in?

9 A Yes, sir.

10 Q And both of you all were putting some cash aside?

11 A Yes, sir.

12 Q And Terrance would go to work every day?

13 A Yes, sir. To my knowledge.

14 Q And when you called him on those calls, the one we just

15 heard, you expressed to him early on in the conversation a

16 real concern about going to jail.

17 A Yes, sir.

18 Q Because you've got kids?

19 A Yes, sir.

20 Q And you don't want to go to jail?

21 A Correct.

22 Q And in the course of that conversation after you

23 expressed some concern about going to jail he basically told

24 you that theoretically he can claim the drugs and not go to

25 jail himself, didn't he?

1 A Yes, sir.

2 Q He said if they ain't got a basis for coming into our
3 home then I can say the drugs are mine and I don't even get
4 convicted either.

5 A Yes, sir.

6 Q And that would exonerate you, too?

7 A Yes, sir.

8 Q And that you'd go free?

9 A Yes, sir.

10 Q If he took that approach?

11 A Yes, sir.

12 Q And that was a theoretical approach that could be
13 taken?

14 A Yes, sir.

15 Q And that was the gist of the conversation you all were
16 having?

17 A Yes, sir.

18 Q Now, back in December of 2014 did he have some surgery?

19 A Yes, sir.

20 Q And did he get a prescription for that -- what kind of
21 surgery did he have?

22 A He had an abscess on his rear-end where when they did
23 surgery they actually cut him from like left to right across
24 his buttocks. And because of the type of surgery it was, it
25 was not a surgery that was sewn up or stapled. It had to

1 remain open and heal from the inside out. So in that event

2 I would have to pack it with gauze.

3 Q And they give him any pain medication?

4 A Yes, sir.

5 Q And what did they give him?

6 A The oxy.

7 Q Oxycontin?

8 A Yes, sir.

9 Q Or Oxycodone?

10 A Yes, sir.

11 MR. WISE: Give me just one moment.

12 Q And they came in at about 7:00 -- a little after 7:00

13 in the morning?

14 A It was before 7:00. My son's school bus hadn't came

15 yet. The school bus comes before 7:00, anywhere between

16 6:30 and 6:45 in the morning.

17 Q And I'm showing you State's Exhibit 22. Is that really

18 accurate as to the way that house is?

19 A Yes, sir.

20 Q Is the sofa that far away from the front door?

21 A No, sir.

22 Q Let me show you State's 17. That's the -- the door in

23 the right side, is that door opened or shut?

24 A It's open.

25 Q And it's bent. What caused that?

1 A They came through the front.

2 Q They didn't knock?

3 A No, sir.

4 Q And so, the door is on the -- the open door is on the
5 left side of -- or, excuse me, the right side of that
6 picture?

7 A Yes, sir.

8 Q And the sofa is kind of just about opposite the door,
9 just almost?

10 A Yes, sir.

11 Q And is that the front door or the back door?

12 A That's the front door.

13 Q Did they tell you why they were there?

14 A No, sir. Not right off.

15 Q Excuse me?

16 A Not right off.

17 Q Not right off. How long were they there before they
18 told you?

19 A It had been some time. I mean, opposed to, you know,
20 me asking what's going on. It was kind of like just
21 continuing on with their search.

22 Q And Terrance was asleep on the sofa when they came in?

23 A Yes, sir.

24 Q And you were up doing what?

25 A Getting ready to get my son up for school.

1 Q And you and Terrance been together how long?

2 A About eight, nine years.

3 Q Eight, nine years. And you all have been living in
4 this location how long?

5 A Maybe about two at the time.

6 Q Two?

7 A A little less than two, or just right at two at the
8 time.

9 Q Somewhere in the neighborhood of two years?

10 A Yes, sir.

11 MR. WISE: Give me one second.

12 THE COURT: Yes, sir.

13 Q Did they tell Terrance -- excuse me. Did they tell Mr.
14 Stewart that they had a warrant for his arrest?

15 A No, sir.

16 Q They just arrested him?

17 A Yes, sir.

18 Q Did they tell you -- did you hear them say what they
19 arrested him for?

20 A No, sir.

21 Q Found out later though?

22 A Yes, sir.

23 MR. WISE: Thank you.

24 REDIRECT EXAMINATION

25 BY MR. SCOTT:

1 Q They did separate you guys once they got there because
2 they let you -- you were in the kitchen, and then you had to
3 take care of the children, right?

4 A Not so much as take care. I was handcuffed as soon as
5 they came in and they sat me in a chair and he had already
6 been taken out back.

7 Q So you don't know if they told him his charges once he
8 was outside of your presence, do you?

9 A No.

10 Q Now, the Defense attorney, Mr. Wise, was asking about
11 some different theories that you all might have been
12 discussing on the phone calls, like different legal theories
13 and everything. And, you know, well, what if this, what if
14 that, and maybe we can get it kicked out. And you were
15 talking about some different that we can say, yeah, we saved
16 up the money. Are you saying that all that money was money
17 that you knew about that was saved?

18 A I can't say that, because I'm not aware of the amount.
19 But I can confirm that we both was employed. Money was
20 being put up.

21 Q Did you know at least \$100 was found in those stacks of
22 money that was documented government funds? Did you know
23 that?

24 A No, sir.

25 Q You didn't know what he was doing all day long, did

1 you?

2 A No, sir.

3 Q While you were working, gainfully employed?

4 A No, sir.

5 Q The prescription, that was -- you've never told me
6 that. I've never heard of that, that he had a prescription
7 for oxycodone. When the officers were in your home that day
8 did you give them the prescription?

9 A It was available to them, even when they asked.
10 Because his -- when you go and pick up the prescription the
11 -- what is written and filled out from the pharmacy as they
12 put on the bag was on the counter. And when they advised
13 that they had pills I said, well, he just had surgery. He
14 has a prescription for pills.

15 Q Can you get that for us today?

16 A What?

17 Q Because we can dismiss that charge today.

18 A It's at home. I mean, if I would have known prior to
19 then of course I would have brought it with me.

20 Q Well, do you know he's on -- you knew he was on trial
21 today, right?

22 A Yes, sir.

23 Q Wouldn't that have been something to bring to Court?

24 A That's not -- that's his case. That's not my case. I
25 was -- you advised that I was here today to confirm that the

1 drugs were not mine. You didn't inform me that I needed to
2 bring anything with me.

3 Q Can you get those for us? That would be helpful. This
4 is the first I've heard about that.

5 A Yes, sir.

6 Q Any reason they weren't in a pill bottle? Any reason
7 they were in a ball of tinfoil on top of the refrigerator
8 with a large quantity of heroin?

9 A I was unaware that they were not in the bottle.

10 Q Do you have any explanation for that?

11 A No.

12 Q What about the digital scale that was in the kitchen
13 with the residue on it? Did you know about a digital scale
14 in there?

15 A No, sir.

16 Q Your testimony, you've never seen him deal out of the
17 back of your house?

18 A No, sir.

19 Q And it's your testimony you didn't know about the
20 heroin or the pills?

21 A Correct.

22 Q That is his voice saying that the dope was his in the
23 jail calls, correct?

24 A That's his voice giving the scenario saying that they
25 was his. Yes, sir.

1 Q What is the talk about the scenario? Because I haven't
2 heard that either. What are these scenarios you're
3 describing?

4 A The phone conversations. "What if" this and "what if"
5 that. That was a conversation that we had. I can't say
6 that the openly said, hey, yes, those are mine, because
7 that's not what the conversation consisted of. The
8 conversation consisted of, well, what if they say this?
9 Well, they're saying this. What's going to happen if this
10 goes this way or if this goes that way. So I can't say that
11 he -- I can't do anything but be truthful, so I can't say he
12 told me out of his mouth that those were his when the
13 conversations that we had, the multiple arguments that we
14 had were scenarios. Well, what if. Well, this is what
15 they're saying and this is what it's looking like. What if
16 this happens, what if that happens.

17 Q Tell me your truth. What were you concerned about on
18 those jail calls?

19 A My concern was how am I charged with conspiracy and I
20 don't know what's going on. I'm still trying to piece
21 together what is going on.

22 Q We can listen to it again, but let me see if I can
23 paraphrase the way I understood it. Tell me if I'm wrong.
24 You're concerned with why am I being charged with this when
25 I didn't know anything about it, right?

1 A Yes, sir.

2 Q And you're saying two people live here and I'm saying
3 it's not mine, then whose is it?

4 A Yes, sir.

5 Q And what is his response?

6 A That's when he gave the scenario about if two people
7 are riding in a car and they find a gun, that's when he gave
8 his scenario as far as what could or could not be said.

9 Q I don't think we just listened to that part. But tell
10 me what was his explanation to you what he was going to say
11 if he came to Court?

12 A What you mean what he was going to say?

13 MR. SCOTT: Let's play it again. Play it again.

14 Q You don't want to see him get in trouble, right?

15 A That's not -- my concern is me and my children. I
16 can't sit -- I'm not going to sit up here and not be
17 truthful.

18 Q I'm asking you very simple questions. All right?
19 You're concerned about somehow being a snitch against him;
20 is that correct?

21 A No, sir. That's incorrect.

22 Q You haven't said that to me?

23 A Never, not one time. And I'll attest it with my hand
24 on the Bible.

25 Q I'm asking you a very simple question. What is he

1 saying about the dope in the audio tape? The conversation
2 you guys had?

3 A And I've advised you.

4 Q What have you advised me? I still don't understand.

5 A That we had arguments with scenarios as far as what
6 could happen if things went this way. If, okay, they're
7 saying both of us ours. Well, if they're not ours, whose
8 are they. These are the scenarios that we were arguing
9 about. This is the conversation that we had again. Like
10 you said, we can play the call again.

11 Q If it's not yours and it's not the kids', who's is it?
12 Do you have any explanation how that heroin and --

13 A No. I can only attest that it's not mine. I can't say
14 that it's his, and I haven't seen him with it. How can I
15 say that. How can I -- if I'm not aware, which I am not,
16 how can I advise who it belongs to.

17 Q Because he told you.

18 A That's -- he didn't tell me. If that's what you got
19 out of that phone call then I feel like this is more so a
20 matter of an opinion. That was your opinion when you listed
21 to the call that that's what he was telling me. But me
22 being on the other end of that conversation and knowing from
23 start to finish that call and what the argument was,
24 multiple arguments were, then I can only give my truth.
25 That's all I can do.

1 Q I think that's all I'm going to get out of you. The
2 jury will have those phone calls, so they can interpret them
3 however they want to.

4 A Absolutely.

5 Q But your interpretation is that these are just theories
6 you guys are floating back and forth? Well, what if they
7 ask you this, then we can say that? Is that what you're
8 saying?

9 A Absolutely.

10 Q And you're trying to come up with some explanation for
11 how the dope got in there?

12 A Yes, sir.

13 MR. SCOTT: All right. Thank you, Ms. Coleman.

14 THE COURT: Anything, Mr. Wise?

15 MR. WISE: Nothing further.

16 THE COURT: Ma'am, you can step down, thank you.

17 THE WITNESS: Thank you.

18 (Whereupon, the witness stepped down from the witness
19 stand.)

20 THE COURT: Your next witness is -- do you need a
21 break?

22 MR. SCOTT: I do have a quick one, Your Honor. It will
23 take two minutes probably.

24 THE COURT: Bring him on in.

25 MR. SCOTT: I'm going to recall Steven Sweatt just

1 really quick.

2 THE COURT: Sir, if you'll come up. You're still under
3 oath.

4 STEVEN SWEATT, having been
5 previously sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SCOTT:

8 Q Steve, I should have covered this earlier. You
9 understand chain of custody and drugs, don't you?

10 A Yes, sir.

11 Q And that's -- the State needs to basically account for
12 drugs from when they're discovered all the way until when
13 they get to SLED and we need to know who touched the drugs
14 in between.

15 A Yes, sir.

16 Q Your testimony earlier was about the distribution. Did
17 I show this to you? This is State's No. 27.

18 A Yes, sir. You did.

19 Q And that's -- what is that again?

20 A Those are the five baggies containing heroin that we
21 got on the buy.

22 Q And this is from the buy. And I recall, now, you
23 talked about going and dropping them off at the evidence
24 drop box.

25 A Yes, sir.

1 Q Now, after you testified we started talking about the
2 search warrant at the house the next day and you were
3 involved with that, too, right?

4 A Yes, sir.

5 Q The reason you didn't get into it earlier is because we
6 had a couple other people after you that testified. But
7 your role was helping do the search of the house. Is that
8 fair to say?

9 A Yes, sir. Secondary role.

10 Q Do you remember the refrigerator in the kitchen?

11 A Yes, sir.

12 Q Do you remember what was found on the refrigerator?

13 A There was a basket sitting on top. It was kind of like
14 a plastic basket, yea big. In it there were some other
15 items, but importantly there was a baggy containing a
16 similar substance to which that first exhibit you showed me,
17 you know, white powder. It weighed 25 or so grams. Around
18 there. We did field test it there. It did indicate
19 positive for the presence of heroin in it. Also found some
20 tinfoil that was in there. It was kind of scrunched up
21 around a bunch of pills in the same basket on top of the
22 refrigerator.

23 Q This is State's 14. Do you recognize that?

24 A That would be the baggy I was talking about.

25 Q State's 13. Do you recognize that?

1 A Those would be the pills found in the aluminum I was
2 talking about.

3 Q Let me show you State's 11.

4 A And that would be the basket on top of the frig I was
5 talking about.

6 Q State's No. 28. Do you recognize what that is?

7 A That is the evidence bag containing everything here.

8 Q Did you have a hand in collecting that drug evidence?

9 A Yes, sir. I did. Give me a second. I need to look at
10 the chain of custody on here. Just it's how we document it.
11 Yes, sir.

12 Q And where did you -- what did you do with the drugs
13 after you collected it?

14 A I gave it to Sergeant Veal.

15 Q It didn't pass -- after you collected it from the
16 refrigerator did it pass to anybody else's hands before it
17 went to Veal?

18 A No, sir.

19 MR. SCOTT: Thank you. Answer any questions Mr. Wise
20 has for you.

21 CROSS-EXAMINATION

22 BY MR. WISE:

23 Q You've testified at one of the pretrial hearings in
24 this matter, right?

25 A Yes, sir.

1 Q Didn't you testify at that hearing that -- and a
2 question from Mr. Scott that you said let me -- you really
3 were involved with the whole execution of the search
4 warrant, and you answered no, sir. I was on the scene but I
5 was out of view.

6 A When we initially got there. Yes, sir.

7 Q But initially --

8 A Once Mr. Stewart was secured in the car then I decided
9 to go ahead and come on in and assist. The reason for that
10 being, I was riding with a confidential informant the day
11 before. I felt that Mr. Stewart got a real good look at me
12 and I didn't want anything to connect the dots between the
13 CI and him and his safety. So, you know, I stood back when
14 we first got there.

15 Q Now, when you do a search you do an inventory, right?

16 A Yes, sir.

17 Q I hand you a return. Do you recognize that as a return
18 to the search warrant inventory?

19 A Yes, sir. It lists each item that was found and
20 collected from the location. And it also lists who first
21 saw the item.

22 Q Who does it list as having seen the item on top of the
23 refrigerator?

24 A Let's see. The pills were first seen by Captain
25 Richardson --

1 Q Right.

2 A -- and right now it's also first seen by Captain
3 Richardson.

4 Q Captain Richardson. And your name doesn't appear on
5 that?

6 A Because I'm not the one who seen the drugs.

7 Q All right. Now, when you searched the house you also
8 -- you did help participate in the search of the house?

9 A Yes, sir.

10 Q And when you were searching the house you were looking
11 --

12 MR. WISE: One of the little bags. You got it? There
13 you go. The real little one. Here we go. Yeah, I got it.

14 Q And when you were searching the house you were looking
15 for some little bags like that?

16 A Any and all bags. But, I mean -- yes, sir.

17 Q But particularly little bags like that, because that
18 would link what Mr. Cheatham said to Mr. Stewart, wouldn't
19 it?

20 A Well, any kind of packaging material is relevant. We
21 found plastic sandwich bags right there in the same basket
22 or area on top of the refrigerator with all that.

23 Q Well --

24 A Just not those particular type.

25 Q You didn't find any little bags like that in that

1 house?

2 A No, sir.

3 Q Even though you were looking for them?

4 A I was looking for any packaging materials. Not
5 specifically those. No, sir.

6 MR. WISE: Thank you.

7 THE COURT: Thank you, sir. You can step down. Mr.
8 Scott, Mr. Wise, you all approach.

9 (Whereupon, a sidebar was held.)

10 THE COURT: We have one more witness, ladies and
11 gentlemen, so that we don't have to take an additional
12 break. I'm sorry. I need a break. I don't care if you all
13 do or not, but I'm going to take a break. So we're going to
14 take about five or 10 minutes and then we're going to finish
15 with the final witness for the day. Just step to the back
16 but don't talk about the case. Thank you.

17 (Whereupon, the jury exited the courtroom at 4:14 p.m.)

18 THE COURT: We'll be at ease for a few moments.

19 (Whereupon, a recess was held from 4:14 p.m. to 4:21
20 p.m.)

21 (Whereupon, the jury entered the courtroom at 4:21
22 p.m.)

23 THE BAILIFF: All jurors are present, Your Honor.

24 THE COURT: The jury is back and seated. Mr. Todd,
25 call your next witness, please.

1 MR. TODD: The State calls Shana Sorrells.

2 SHANA SORRELLS, having been first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. TODD:

6 Q Ms. Sorrells, what is your occupation?

7 A I am currently a forensic drug analyst at the South
8 Carolina Law Enforcement Division more commonly known as
9 SLED.

10 Q And how long have you been there?

11 A I have been at SLED now for 10 years, eight months.
12 The first eight years that I was at SLED I was a forensic
13 toxicologist and then three years ago I moved over to the
14 drug analyst side.

15 Q So you've done work in both fields over the last 10
16 years?

17 A Yes, I have.

18 Q And what type of training do you have to have to be
19 both of those, the toxicologist and the drug analysis?

20 A Well, I have a Bachelor's degree in chemistry from the
21 University of South Carolina. I have my Master's degree in
22 analytical chemistry also from the University of South
23 Carolina. Once I started at SLED I was given an extensive
24 in-house training under a senior toxicologist. I was sent
25 to the -- it's well known among the toxicology world, the

1 Borkenstein School of Alcohol and the Borkenstein School of
2 Drugs to learn how alcohol and drugs affects the body and
3 how it reacts on the body. I have attended multiple
4 conferences about toxicology. Three years ago I moved over
5 to the drug analysis lab where I again worked under a senior
6 drug chemist, had extensive training there, and I have
7 attended the seminar at the DEA for drugs and lab.

8 Q And, I guess, just working now back. What were your
9 duties as a drug analysis and what were your duties as a
10 forensic toxicologist?

11 A As a drug analyst we test any -- I'm going to say any
12 substance because you get a multiple variety of them.
13 Anything that is submitted to us that is believed to have
14 some type of controlled substance in it. That includes your
15 powders, tablets, liquid samples. All of that that could
16 contain some type of illegal substance. In toxicology we
17 are still looking for those drugs, we're still looking for
18 pharmaceuticals, but we're looking for it in the blood and
19 the urine, and other bodily forms such as your brain, your
20 liver, in overdose patients. So it was my job to quantitate
21 and look for drugs in all bodily -- bodily fluids, I guess
22 I'll say, in the tox lab.

23 Q So your testimony is that you take drugs or substances
24 and chemically test them and find out whether or not they
25 are, indeed, narcotic based or they have narcotics in them?

1 A We try to identify what the substance that has been
2 submitted to us is, yes.

3 Q And how many times would you do this in a given month
4 currently?

5 A Currently somewhere between -- we work somewhere
6 between 80 and 100 cases a month. If we get a good month,
7 over a 100 cases a month. Those cases come in multiple
8 items, multiple samples. So it's -- it varies on how many
9 cases we work, but it's between -- usually between 80 and
10 100 a month.

11 Q So, in other words, your duties include just analysis
12 pretty much?

13 A Constant, yes.

14 Q Have you ever had the opportunity to qualify as an
15 expert in General Sessions court?

16 A Yes, I have.

17 Q Do you know off the top of your head what the forensic
18 toxicology and the drug analysis, how many each time?

19 A I have been qualified as a forensic toxicologist in not
20 just General Sessions courts but municipal courts also 26
21 times, and I have been qualified as a drug analyst three
22 times in court.

23 MR. TODD: Your Honor, at this point we'd like -- the
24 State would offer Ms. Sorrells as an expert in forensic
25 toxicology and drug analysis.

1 MR. WISE: No objection.

2 THE COURT: Ladies and gentlemen, normally when a
3 witness testifies they have to testify about something that
4 they've observed with one of their five senses, something
5 they saw, heard, et cetera, and those witnesses are not
6 allowed to give opinion testimony or conclusions. And
7 exception to the rule exists for expert witnesses in
8 situations where a person is qualified as an expert. In
9 this case the parties agree that this witness is an expert
10 in the field of forensic drug analysis and toxicology.
11 Those expert witnesses can give opinion testimony and also,
12 of course, the reasons for their opinion. That's evidence
13 for you to use as you deem appropriate. Okay?

14 Solicitor, you may proceed.

15 Q Ms. Sorrells, on or about in February of 2015 did you
16 have an opportunity to work in or come into contact with
17 some substances relating to Terrance Stewart from the
18 Laurens Sheriff's Department?

19 A When I received them it was in March. But yes, I did.

20 Q March, okay. I'm going to hand you what's been
21 identified as State's Exhibit 27. Why don't you take a look
22 at that and identify it.

23 A This is what we call the K-Pack bag. When we get a
24 case in it becomes in a BEST Kit, which is this right here.
25 We place it in the K-Pack bag with all the evidence, and

1 then we seal it when we are finished with it with our
2 initials and the date.

3 Q And when you received that what -- what's the process
4 once you receive a substance like that?

5 A Well, the first thing we do, the very first thing, is
6 you always put the lab number on it. You look to see if
7 that seal has been tampered with on this bag. This heat
8 sealed bag here that we get in, this is sealed. This is
9 also heat sealed. And we make sure that that has not been
10 tampered with in any way. That somebody hasn't added things
11 there or taken things out. Once that is done we write seal
12 intact, our initials and the date. Then I take the evidence
13 that's on the inside, make sure that it matches the
14 description that I have. Every single piece of evidence
15 that you will probably see has my initials and my date -- or
16 the date that it was done. And in this case -- well, the
17 evidence will have the lab number, the item number that I
18 assign it and my initials. My initials will be on
19 everything. It appears that I have -- I was submitted five
20 individual small baggies. At that point I take those
21 baggies and do a chemical test on it, a simple spot test,
22 that if it is a certain chemical it will -- with a different
23 chemical that we use, if it is a certain drug it will change
24 colors if you add it to that chemical. It's called a spot
25 test. And that doesn't tell us what it is, but that gives

1 us an idea of which way to go. So these were spotted. And
2 after that spot test was done and I have an idea of which
3 direction to go in, a very small amount is taken and placed
4 on our gas chromatography, mass spectrometer, and that will
5 identify exactly what is in it.

6 Q And did you have an opportunity to do that with those
7 five samples?

8 A I did, yes.

9 Q And the results? That would be 27.

10 A Okay. I've got two reports up here. Yes. They were
11 submitted in two separate evidence bags, which these are the
12 evidence bags that they were submitted in. The first one
13 was an evidence bag containing four small Ziploc bags
14 containing a powdered substance. In those -- in that
15 powdered substance was heroin and fentanyl. And in the
16 second evidence bag it contained a single Ziploc bag also
17 containing a powdered substance, and that was also found to
18 be a mixture of heroin and fentanyl.

19 Q When you were talking about the second bag are you
20 talking about the larger --

21 A No. There are actually -- there are two separate
22 evidence bags in here..

23 Q That's my fault. Well, while we're at it. What's been
24 marked as State's Exhibit No. 28. Why don't you take a look
25 at that.

1 A Yes. This is the other case and the other BEST Kit
2 that was submitted to me under Terrance Stewart's name.

3 Q And same protocol with the initialing and the bag and
4 the packaging?

5 A Yeah. You can see it better here. You see the case
6 number that is assigned to it once it comes into SLED, the
7 item number that I assign to it, and then my initials.

8 Q And the same integrity of maintaining control with
9 initials on the packet?

10 A Yes.

11 Q Did you have an opportunity to test those substances
12 when they arrived?

13 A I did. And let me see how they -- they also -- it's
14 hard to tell. There are two separate evidence bags in here
15 also. The first one -- I have it upside down. The first
16 one contained the plastic -- contained a plastic sandwich
17 bag. It's in here somewhere. Containing -- a plastic
18 sandwich bag containing a powdered substance. This is not
19 what the evidence came in. You can tell that it's not what
20 the evidence came in, because the little Ziploc bag that it
21 is in now I added. And if I added a Ziploc bag to it, it
22 will say bag added on the bottom. So these came in two
23 separate plastic sandwich bags. It's in there somewhere.
24 And this I discovered to be also a mixture of heroin and
25 fentanyl. And this came in a bag wrapped in the foil and it

1 contained 56 white tablets found to be oxycodone.

2 Q You said two substances. Powder substances containing
3 heroin and fentanyl. This is going to sound elementary, but
4 can you explain somewhat what heroin is?

5 A Heroin is a semi-synthetic opioid. It's made from --
6 the chemical name for heroin is diacetylmorphine. Heroin is
7 a very strong narcotic analgesic, which means it is used for
8 pain, it is used for euphoria. It binds to the opioid
9 receptors in your brain that control pain and emotion.
10 Heroin breaks down to morphine, but it is 30 times more
11 powerful than morphine. Sorry. Thirty times more powerful
12 than morphine upon it's initial binding in the brain.

13 Q And you mentioned fentanyl was found in both samples,
14 the five baggies and in the larger amount. What is
15 fentanyl?

16 A Fentanyl is also a narcotic analgesic. It is also a
17 synthetic opioid. It acts very similar to the way heroin
18 does. It binds to the same receptors as heroin, but it is
19 30 times more powerful than heroin is. You can overdose on
20 fentanyl in very, very small doses, which is why when it is
21 prescribed to you it is prescribed under a doctor's care and
22 under strict instructions on how to take it. It is -- it's
23 easier to overdose on fentanyl. It's about three times more
24 easier to overdose on fentanyl than it is on heroin because
25 of how strongly it reacts in the brain. It controls -- it

1 acts on the part of the brain that controls your breathing.
2 So now you have something in your brain that is suppressing
3 your breathing, and a lot of times people just stop
4 breathing upon taking fentanyl.

5 Q When you say stop do you mean pass out?

6 A No. It results in death, because your respiratory is
7 so depressed it results in just you stop breathing.

8 Q What's the significance of fentanyl in heroin or cut
9 with heroin?

10 A It makes it much more potent when you see heroin cut
11 with fentanyl. A lot of people that take heroin have --
12 have claimed that they have -- they become tolerant to it
13 over a long period of time. By cutting it with fentanyl you
14 now have a 30 time increase in how heroin acts, and you get
15 such a much more euphoria as when you first take heroin.
16 You get that euphoria again, and it lasts a lot longer in
17 your system, because fentanyl has a longer half life than
18 heroin does. Heroin breaks down very quickly, whereas
19 fentanyl can stay for several hours in the body.

20 Q In your experience testing heroin when you get those
21 substances that confirm, I mean, is it common to find
22 fentanyl in those tests with heroin?

23 A It's become more common in the past two years. It's
24 showing up a lot more. But it is what we consider a recent
25 thing, but we are seeing it much more in the lab.

1 Q Getting back onto the actual heroin that you tested.

2 Do you test for weights of substances?

3 A Yes, we do. Before we analyze any sample the first
4 thing we do is weigh it outside of the original packaging
5 that it was given, then we run all our chemical tests on it.

6 Q And did you do that with the five baggies?

7 A I did. Let me see. Only four of the baggies gave us a
8 significant weight, and the total of the four baggies that
9 we weighed was 0.379 grams. The fifth baggie was less than
10 .1 grams.

11 Q And then for the second substance you tested, what you
12 said turned out to be heroin, the larger bag, State's No.
13 28, did you get a weight on that?

14 A Yes. That also was a mixture of heroin and fentanyl,
15 and the weight on it was 23.83 grams.

16 Q 23.83, okay.

17 MR. TODD: Judge, at this time, I'd like to offer in
18 State's No. 27 and 28 into evidence.

19 THE COURT: Subject to earlier --

20 MR. WISE: Subject to my previous position.

21 THE COURT: Right. Subject to the Defense's previous
22 position and, of course, prior ruling, those are in
23 evidence.

24 (Whereupon, State's Exhibit Nos. 27 and 28 were
25 admitted into evidence.)

1 MR. TODD: Beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 Q Going back to the oxycodone that you tested. Those
4 were, in fact, what they say they were?

5 A Yes, they were. They were marked as oxycodone and they
6 did register as oxycodone, yes.

7 Q And how many were there?

8 A Fifty-six.

9 MR. TODD: Answer any questions Mr. Wise has.

10 THE COURT: Mr. Wise.

11 CROSS-EXAMINATION

12 BY MR. WISE:

13 Q Ms. Sorrells, you said there were five bags that one of
14 which was significantly less than the others?

15 A It was -- it did not give a significant weight to have
16 an exact weight, so we just said it was less than 0.10
17 grams.

18 Q And four of the bags was how much?

19 A The four bags total weighed 0.379 grams. The only
20 reason that fifth bag was not added in was because it was --
21 it was separated out into a separate evidence bag when it
22 was submitted. It was separated from the other four.

23 Q So the average weight of four of the bags was about how
24 much?

25 A I would not be able to do that right now. I'm sorry.

- 1 Q What did the four bags total?
- 2 A The four bags total weight is 0.379 grams.
- 3 Q 0.3 --
- 4 A 79.
- 5 Q -- 79 grams.
- 6 A Right.
- 7 Q So it's about -- it's about .09 grams --
- 8 A Yes.
- 9 Q -- per bag?
- 10 A Yes, about 0.096. Yes.
- 11 Q Except for one that just had a trace amount?
- 12 A It wasn't -- it wasn't a trace amount. But because it
- 13 was separate I didn't put it on our smaller scale. I
- 14 considered it as a completely separate item. And on the
- 15 scale that I weighed it on it only accurately goes down --
- 16 well, it accurately goes down much lower, but we do not
- 17 record any weight less than 0.10 grams. In this case it was
- 18 0 -- it was less than 0.10 grams.
- 19 Q So it was roughly a tenth of -- weigh-wise of the other
- 20 four?
- 21 A No, because -- well, if you average the other four, the
- 22 other four average 0.096 --
- 23 Q Right.
- 24 A -- which is also less than 0.10. But I didn't worry
- 25 about getting a specific weight on that second item because

1 it is -- it would not change the charge between possession
2 and --

3 Q Let me ask you this question. Was one bag visibly had
4 less than the other four?

5 A No.

6 Q So you just weighed four. Was there a reason for
7 weighing one separate from the others?

8 A It was submitted as a separate item in a separate
9 evidence bag. All five were not -- they were all submitted
10 in the same case.

11 Q I got you.

12 A Yes.

13 Q So what you're saying is somebody took one of those
14 bags and submitted it completely independent of the other
15 four?

16 A They submitted it in the same case, but there were --
17 if you look in the case you'll see an inner smaller bag, and
18 there should be two of them. Four of them were in one of
19 them, and one of them was in the second one. So there
20 should be two smaller evidence bags in there. They're
21 probably stacked. We try to fit them in there --

22 Q I understand.

23 A -- as good as we can.

24 Q So one is labeled four small evidence bags. Correct me
25 if I'm wrong. I'm looking at -- what's the numbers?

1 State's 27.

2 A Yes.

3 Q And then one of them was listed separately?

4 A Yes.

5 Q In another bag?

6 A Yes, that's correct.

7 Q Now, if someone handles heroin with bare hands can it
8 get into their system?

9 A No, it cannot. You have to have an open sore of some
10 type. It is not readily absorbed through the skin.

11 Q But it would be through an open sore?

12 A It would be through an open sore, yes.

13 Q You can get it if you sniff it?

14 A That is true, yes.

15 MR. WISE: Thank you.

16 THE COURT: Any redirect?

17 MR. TODD: Yes, briefly.

18 REDIRECT EXAMINATION

19 BY MR. TODD:

20 Q Ms. Sorrells, discussing the -- you mentioned it
21 briefly with the writing on the bags. But can you kind of
22 describe the process of how you got those bags? In other
23 words, the chain of custody when, you know, they were
24 delivered to SLED?

25 A They were brought in by -- I don't know he is an

1 officer. They were brought in by somebody from Laurens
2 County Sheriff's Office to our evidence log-in department.
3 In which case they take the outer bag that they submit, that
4 Laurens County Sheriff's Office submitted. They enter in
5 all the information that is given to them about the case.
6 They assign the case a specific lab number. And then they
7 place that case into a locked store area, which is what we
8 call our drug evidence intake storage area. When I finally
9 get to that case, after a certain amount of time, when that
10 case comes up I will go down and pick it up myself from that
11 intake storage area and bring it upstairs and either work it
12 immediately or place it into our drug vault which can only
13 be accessed by drug analysts in our lab and our Captain and
14 Major.

15 Q And going back to the heroin and the actual oxycodone.
16 They are schedules -- different schedules of drugs; is that
17 correct?

18 A There are. There are five different schedules of drugs
19 set by the FDA.

20 Q And what is oxycodone?

21 A Oxycodone is a schedule two.

22 Q And what's that mean?

23 A That means that it has -- it has some medical use. It
24 has -- well, the two main components are it has some medical
25 use, but it can be addictive.

1 Q And what about heroin? What schedule is that?

2 A Heroin is a schedule one.

3 Q And what does schedule one mean?

4 A Which means that -- schedule one means that it does
5 have -- it has no medical use. It is highly addictive, and
6 there are no safety information about it, or no -- there is
7 actually no safety information when taking heroin.

8 Q And we mentioned fentanyl. Is that even a scheduled
9 drug?

10 A It is. Fentanyl is a schedule two because it does have
11 some medical uses. It is a pain medication. It is given
12 for people with severe pain. But it is a schedule two
13 because it can become addictive, and it has to be taken
14 under a doctor's care.

15 Q Do you know anything about field testing substances?

16 A Not much, no.

17 Q Based on your -- that's a bad question. One more time
18 about the chain of custody. Do you mind telling me actual
19 names of whose hands it passed through to get to you?

20 A Oh, yes. I'm sorry. Yes. It was submitted to us by a
21 David C. Craig from the Laurens County Sheriff's Office who
22 brought it to our forensic technician in our log-in
23 department, Doris Yarborough, and she placed it in our drug
24 evidence intake storage, and I received it -- well, I
25 received it from Jackie Davis who got it out of the storage

1 and placed it in my custody.

2 Q And then it makes it's way back down the chain and gets
3 back to David Craig somehow?

4 A It does. Once I'm finished with the case and it's
5 reviewed by one of my other drug analysts and the report is
6 signed I take it back downstairs to have it returned to the
7 AMC. In this case I took it back down to Doris Yarborough
8 and she placed it on -- back into the -- our evidence room
9 with the drugs for return and she -- well, after a certain
10 time Jennifer Aycock got it out of that locked area and
11 returned it back to David Craig.

12 Q So you mentioned a few names there. Those are clearly
13 just internal people whose main job is just to pass it to
14 you, correct?

15 A That's correct.

16 Q There's no manipulation. It's just kind of point A to
17 point B?

18 A That's correct. And when it gets to me it is still
19 sealed.

20 MR. TODD: I think that's going to do it. Thank you.

21 THE COURT: Any recross?

22 MR. WISE: Nothing further.

23 THE COURT: Ma'am, thank you very much for coming.

24 THE WITNESS: Thank you.

25 THE COURT: You are free to go.

1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 THE COURT: All right. Ladies and gentlemen, we've
4 reached a good breaking point for the evening. Just a
5 reminder. I'll need you back tomorrow afternoon around 2:00
6 and we'll proceed with the trial at that particular point in
7 time. Okay? So do be back in the jury room tomorrow
8 afternoon at 2:00. Again, this evening when you go home
9 please don't discuss the case with anyone. Don't talk about
10 it with your husband, wife, significant other, whoever it is
11 you share a roof with. Don't discuss it with them. Okay?
12 Perfectly fine -- I'm sure they already realize that you've
13 been picked on a jury since that happened yesterday. But
14 you'll have plenty of time later on to discuss the case with
15 them once you've rendered your verdict. So perfectly fine
16 to discuss it after the verdict has been rendered. Just not
17 tonight. Okay? Additionally, should anyone attempt to
18 contact you this evening you know what to do. Get any kind
19 of information you can from whoever is calling. Immediately
20 call 911. They'll send a deputy out, they'll take a report,
21 and I will address that issue tomorrow if need be. But with
22 that I trust you all have a lovely evening. Try and stay
23 dry, try and stay warm, and I'll see you back here at 2:00
24 tomorrow. I'll be here working in the morning. If you want
25 to come early, that's fine. But I really don't need you

1 back until 2:00. Okay? I'll see you then. Take care.

2 Thank you.

3 (Whereupon, the jury exited the courtroom at 4:50 p.m.)

4 THE COURT: The jury is out. Before we go off the
5 record on this case. I realize the State has not formally
6 rested yet, but I assume that is where you anticipate that
7 last witness being your final?

8 MR. SCOTT: For all intents and purposes. Yes, sir.

9 THE COURT: Just out of curiosity, Mr. Wise. Has the
10 Defense decided whether y'all are going to present a case at
11 this point or are you still thinking about that?

12 MR. WISE: We're still thinking about that. We would
13 ask to have the night.

14 THE COURT: Good enough. We can address that tomorrow
15 afternoon at 2:00. I'm going to ask my law clerk, he has
16 been working on the jury instructions. I'm not quite sure
17 how far along he is.

18 LAW CLERK: 95 percent.

19 THE COURT: 95 percent. He's going to go ahead and
20 send y'all what we have worked up, and it's not a final
21 product. I can look at it tonight when I get home. If you
22 feel the need to take a look at it yourselves.

23 That's it. Everyone have a good night. I'll see you
24 tomorrow morning at 2:00.

25

1 TRIAL DAY 3-12/14/16

2 THE COURT: Mr. Stewart is present with counsel. At
3 this point in time does the State intend to offer any
4 additional evidence?

5 MR. SCOTT: No, Your Honor.

6 THE COURT: All right. So the State rests; is that
7 correct?

8 MR. SCOTT: Yes, sir.

9 THE COURT: Mr. Wise, of course, you renew all previous
10 motions, especially the ones that were heard about a year
11 ago concerning the search, and I assume you move for a
12 directed verdict; is that correct?

13 MR. WISE: What's that last part?

14 THE COURT: You move for a directed verdict as well?

15 MR. WISE: I do, Your Honor. And, of course, under the
16 *State v Brown* case I'm moving that the State be required to
17 elect the case that I handed up to the Court earlier.

18 THE COURT: I understand your position concerning
19 *Brown*. Do y'all want to speak to that?

20 MR. SCOTT: Which case was that?

21 THE COURT: *State v Brown*, requiring you -

22 MR. SCOTT: What was the proposition?

23 THE COURT: Mr. Wise.

24 MR. WISE: It's the one involving whether or not the
25 distribution emerges with possession with intent, where --

1 factually it's a little different in that case. In the
2 *Brown* case the undercover informant was requesting to be
3 able to buy four ounces of drugs. The guy showed up with
4 four. He bought two. And when the guy went back to his
5 house they got a search warrant to search the house, found
6 two ounces of drugs, and they charged him with possession
7 with intent and distribution, and the Court says no, they
8 merge into one.

9 MR. SCOTT: Judge, I'm happy to address that, if you
10 want. But I find those facts to be totally distinguishable
11 from our case. We've got a very clear distribution. And
12 then the PWID at the house arises from oxycontin and the
13 trafficking amounts of heroin there. So I would distinguish
14 our case that way, Your Honor.

15 MR. WISE: And I would just point out that I agree that
16 oxycontin is a totally different issue. There's no question
17 about that. But the heroin in the house, while it's a
18 trafficking amount, by statute possession with intent is a
19 lesser included of trafficking.

20 THE COURT: I do understand your position. I think
21 that case is distinguishable, and I'll deny your motion and
22 your motion for a directed verdict.

23 Do you anticipate offering a defense, Mr. Wise?

24 MR. WISE: We do not, Your Honor.

25 MR. SCOTT: Judge, just for housekeeping matters. We

1 have those jail calls we had. What we've done is we edited
2 the -- what we've entered into evidence, but we -- I have an
3 edited copy that contains the portions that were published
4 in Court, and it looks like Tara has marked it State's 30.
5 And so, we will -- that will be sent back for the jury.

6 THE COURT: My court reporter informs me that she has
7 changed State's 21 for -- just to identification purposes
8 and State's 30 is what will be submitted to the jury in the
9 event they want to listen to it back there.

10 Mr. Wise, have you had a chance to listen to State's
11 30?

12 MR. WISE: State's what?

13 THE COURT: The revised tape that --

14 MR. WISE: No, I haven't had a chance to listen to it.

15 THE COURT: Maybe what we can do is we'll -- because
16 it's probably only about five or six minutes.

17 MR. SCOTT: At the most.

18 MR. WISE: At the most.

19 THE COURT: Yeah. When we send it back to the jury
20 I'll let you listen real quick to it and confirm that it's
21 everything that you're good with.

22 MR. WISE: Right. I'd be shocked if it isn't.

23 THE COURT: I'm sure it is. I've already shared with
24 everyone the proposed jury instructions. I received an
25 email from Mr. Scott earlier saying that he was okay with

1 them. Mr. Wise, I know that you've had a very busy day. Do
2 you need a moment?

3 MR. WISE: I have not had a chance to review them. I
4 know most of them are pretty boilerplate. I'm going to do
5 those now.

6 THE COURT: Let me do this so that you're not rushed.
7 Why don't we take a few moments and you can look at those,
8 and if you want to you can go ahead and listen to the tape
9 if you want. If not, that's fine.

10 MR. WISE: It won't take -- it won't take long to get
11 through the jury instructions.

12 THE COURT: Good enough. Just take a look at those.
13 We'll be at ease for a few moments and make sure you're
14 comfortable with everything. And you need to make -- I
15 assume, Mr. Wise, you'll be making a request to the Court
16 that you be allowed to -- the State be required to open
17 fully and then you respond?

18 MR. WISE: No, we won't. We won't.

19 THE COURT: You will not, okay.

20 MR. WISE: We will not put up any evidence, so we get
21 to go last.

22 THE COURT: Valid point.

23 MR. SCOTT: You anticipated the Rauch Wise argument.

24 MR. WISE: It may be. It may be the last case in the
25 state of South Carolina that we're able to do this.

1 THE COURT: I watched the argument, Mr. Wise, and I
2 think you -- I think a very compelling argument was made by
3 all concerned. You and Mr. Grose about a month ago. We're
4 at ease.

5 (Whereupon, a recess was held from 2:18 p.m. to 2:35
6 p.m.)

7 THE COURT: We'll go back on the record. I'm told that
8 the CD has been reviewed by you, Mr. Wise --

9 MR. WISE: That's correct.

10 THE COURT: -- and that you're comfortable with it.
11 Any concerns or suggestions regarding the instructions?

12 MR. WISE: One, and just kind of a general thing first.
13 Trafficking is also a possession crime, but you describe
14 possession in the context of oxycontin and not trafficking,
15 if you follow what I mean. Because you're talking about
16 possession of oxycontin with intent to distribute and then
17 you go into all that. Aside from that general, specifically
18 on page 13. "Finding drugs on --", excuse me. "The right to
19 exercise dominion and control over property where the drugs
20 were found", I don't think is a proper definition of
21 constructive possession. Constructive possession basically
22 is a means of proving prior actual possession. Otherwise,
23 if my secretary is sitting in my office back in Greenwood
24 with an illegal drug, arguably I would be in possession of
25 that drug because I have dominion and control over that

1 office, and I don't think that's what constructive
2 possession means.

3 Secondly, a couple lines down, I object to the
4 reference to inference. I would point out to the Court that
5 when you charge an inference you are taking one fact, in
6 this case the fact that Mr. Stewart has dominion and control
7 over the property and the elevating that above other facts
8 and basically giving the jury a charge on the facts because
9 of it. So you're in essence telling the jury in that case
10 that they can take a fact and elevate it above other facts.
11 They can elevate it now above the fact that another person
12 was in my house. They can elevate it above the fact that
13 the government never proved any DNA on any of the drugs.
14 And therefore you're telling the jury to give that more
15 importance. There are two old cases in South Carolina and
16 they're old railroad cases that one of which said -- and I
17 can get that for you in a second. One of which said the
18 defendant -- or the plaintiff, excuse me, had requested a
19 charge that if a package is left on a loading dock for a
20 reasonable period of time, the jury can infer that the
21 railroad has accepted it. And that's, to me, a pretty
22 logical inference. The Court -- our Supreme Court said that
23 that's a charge on the facts and therefore that particular
24 request was not proper. Now, granted, that was a civil case
25 and this is a criminal, but I don't see how it really makes

1 much difference. If you give me about two minutes I can
2 find you those two cases. As soon as I can open up my Word
3 Perfect. But going back also to the charge that
4 constructive possession means dominion and control over the
5 property where the drugs are found. That doesn't even get
6 to knowledge. It doesn't address the knowledge issue that's
7 required for drugs on that. And one of the cases I'm
8 referring to is *Finch v Atlantic and Carolina Airline*
9 *Railway* which is 669 S.E. 208. A 1907 case. And the other
10 case is *Yarborough v Southern Railroad* which is 58 S.E. 936.
11 Those are the two that deal with the civil side of the use
12 of the word inference.

13 THE COURT: May I suggest this. On the top of page 13,
14 if I were to just create a second heading, because your
15 point about the possession instruction is a good point.
16 That the possession of the heroin and the oxycontin, I need
17 to define possession for both of those. So what I've sort
18 of done is just create a heading at the very top of page 13.
19 a new heading saying possession defined. Then like on the
20 fourth line down, power and the intent to control
21 disposition or use of. I scratched out the oxycodone and
22 just wrote drugs involved. I did the same thing in the next
23 sentence, so that throughout it just references drugs which
24 can be collectively explained as either the oxy or the
25 heroin, which I think solves that problem.

1 Solicitor, did you want to -- and then what I'll do is
2 the -- on page 14 I scratched through "two or more persons
3 may have joint possession of a drug", because I don't think
4 that's really in play here. And then I'm going to move the
5 balance of page 14 and the two lines on the top of page 15
6 underneath the discussion of the oxycodone.

7 MR. SCOTT: Judge, I would ask that the two or more
8 persons may have joint custody to be in effect because
9 that's going to be one of their defenses that it's
10 Tondalai's drugs. That's been the implication during the
11 whole trial through cross-examination.

12 THE COURT: All right. I'll leave it in.

13 MR. SCOTT: Otherwise I have no problem with the other
14 amendments.

15 THE COURT: The request -- the knowing sort of request
16 on behalf of Mr. Wise, do you all want to speak to that?
17 The actual knowledge kind of a element.

18 MR. SCOTT: I don't think that it's a requirement in
19 this case. I'll consent to that being added because that's
20 our theory of the case. That was his stash up there. He,
21 of course, knew it to be there and that's where he kept it
22 and dealt from. So I have no problem with that.

23 THE COURT: On the top of page 13, that's where it is
24 right now. What if I simply changed it to prove possession
25 -- I'll change it to this. To prove possession the State

1 must prove beyond a reasonable doubt that the Defendant had
2 knowledge of, comma, power over, comma, and the intent to
3 control the disposition or use of the drugs involved. That
4 would seem to address y'all's concerns, if I'm not mistaken.

5 MR. WISE: I think that would be a correct statement of
6 the law.

7 THE COURT: I think that is correct.

8 MR. WISE: And then we get down to inference.

9 THE COURT: Right, which -- sorry. Noted. Thank you.

10 MR. WISE: I don't think it got through. Lesser
11 includeds.

12 THE COURT: Sure. Let me hear you on that.

13 MR. WISE: By the statute possession with intent is
14 lesser included of trafficking.

15 THE COURT: I'm sorry. Say it again, please.

16 MR. WISE: By statute, lesser included is a different
17 -- is lesser included of trafficking. And then the
18 possession of oxycontin would be a lesser included of
19 possession with intent. Particularly in this case where
20 there's absolutely no evidence of any real sale of
21 oxycontin.

22 THE COURT: Can you cite me to the specific statute
23 that says --

24 MR. WISE: It's --

25 THE COURT: -- PWID is the lesser included of

1 trafficking?

2 MR. WISE: It's under the trafficking statute. I'll
3 have to get it up.

4 THE COURT: I know that that's the case with the new
5 assault statute.

6 MR. SCOTT: Judge, do you care to hear from me?

7 MR. WISE: Yeah, I dealt with the assault statute last
8 week and it is not pleasant.

9 THE COURT: What's the State's position on that one?

10 MR. SCOTT: That, of course, it's the lesser included.
11 But trafficking is a statute that specifically has to do
12 with threshold weights. So that's why the legislature
13 created it, to deal with large scale drug distribution and
14 possession. So threshold weight is everything. If there
15 was some question as to what the weight of the drugs were,
16 which there have not been, then the State would fully agree
17 that possession with intent to distribute would possibly be
18 -- or even possession would be a lesser included. However,
19 the sole testimony, the sole evidence was that he possessed
20 23.83 grams of heroin. That's second tier trafficking.
21 First tier would be, I think, four grams up to 14. That's
22 first tier. And then we surpassed that into the second
23 tier. So while I would agree in some circumstances that
24 PWID would be a lesser, certainly not in this case under any
25 standard. I would agree, however, Your Honor -- I'm going

1 to concede some of it. The oxycontin he would be entitled
2 to a lesser included on possession on that one.

3 THE COURT: I would agree with you on the oxy.

4 MR. WISE: Let me get into Westlaw.

5 THE COURT: Go ahead.

6 MR. WISE: I should be there in a second.

7 MR. SCOTT: Let me know, too, that the penalties are
8 higher for PWID third than they are for trafficking. So
9 it's almost be careful what you ask for.

10 MR. WISE: I agree. But, you know, that's one of those
11 strange things about the law. Where's the code section on
12 it? Do you got that real quick?

13 MR. SCOTT: 24-53-37.

14 MR. WISE: 370? All right. Code section -- at the end
15 of the trafficking statute, a section of it, it says, "The
16 offense of possession with intent to distribute described in
17 section 44-53-370(a) is a lesser included offense of
18 offenses of trafficking based upon -- based upon possession
19 described in this subsection." And it's toward the end of
20 that 370. If you're doing a word search, I found a quick
21 review in the word "lesser".

22 THE COURT: That's contained where?

23 MR. WISE: It's in -- I'm trying to run -- the statute
24 is real long and it's hard for me to pick up the exact code
25 section. But it's the very end of all the trafficking

1 stuff. After we go through all the trafficking of meth
2 trafficking and everything else, at the very end it says
3 that. As I say, if you bring up 44-53-370 and do a word
4 search for the word "lesser", that was the quickest way I
5 found it. It may be limited -- excuse me. It may be
6 limited to -- I may have read it wrong.

7 THE COURT: That's why I'm trying to look in the actual
8 book law, so to speak.

9 MR. WISE: I think it applies to the whole thing the
10 way it's worded. Yeah, it's -- if you find the heroin
11 statute, that's paragraph three dealing with heroin.
12 Subparagraph three. And then you go down to five, six --
13 yeah, and then before -- go down pass five and six. .
14 Subparagraph five and six and you'll get to that provision.

15 THE COURT: You're looking in 370?

16 MR. WISE: I'm looking at -- hold on. I'm looking in
17 44-53-370.

18 (Off the Record)

19 THE COURT: Mr. Wise has pointed the Court to the
20 provision that you had found. It's in the 2016 supplement
21 Title 44. It's on page 338 and it states quote, "The
22 offense of possession with intent to distribute described in
23 section 44-53-370(a) is a lesser included offense to the
24 offenses of trafficking based upon possession described in
25 this subsection," period, end quote. Now, that exact same

1 provision is also on page 600 of the bound volume of Title
2 44. I'm showing a 2002 copyright for the bound volume. Now
3 the State has cited two cases, Matthews and Brandy reported
4 at 300 S.C. 238 and 306 S.C. 224 for the proposition that
5 the Court should only charge on the question of trafficking.
6 Those two cases, however, correct me if I'm wrong,
7 Solicitor, but you said those were cases from 1990 and 1991?

8 MR. SCOTT: That's what my research has shown. I'm
9 trying to Shepardize from the courtroom here.

10 Judge, let me just say this, though. If we take a step
11 back and we look at this logically, why have weight and
12 thresholds if every time you're going to say, well, you get
13 to pick between trafficking and PWID. I don't understand
14 how a jury is going to make that choice if it's based on
15 weight thresholds. So why in the world would they enact
16 weight thresholds. And very clearly, the language of those
17 two cases -- give me some more time, I'm sure there's more
18 recent ones. It came to my head so quick because I've dealt
19 with this same issue before and, you know, it occurs to me
20 simply assault and battery is a lesser included of attempted
21 murder, but it's not always an appropriate charge. Just as
22 in this case there's no dispute as to what the weight of
23 this drug is. It's very clearly over the threshold.
24 Therefore, that lesser included is wholly inappropriate in
25 this case.

1 MR. WISE: Your Honor, I can find -- my preliminary
2 research indicates that this became part of the code under
3 Act 355 Senate Bill 916 in 2000. That's the first time I
4 can find reference to that provision that you mentioned
5 going to the history at the very end and clicking on those.

6 THE COURT: And that's what I was trying to satisfy
7 myself with as well.

8 MR. WISE: But I can't imagine putting it in the Senate
9 Bill in 2000 if it had been there before then.

10 MR. SCOTT: Judge, I'm starting to find some newer
11 cases with the same proposition.

12 THE COURT: Anything post 2000?

13 MR. SCOTT: Yes, sir. I've got 2005. A January 2005
14 case. Supreme Court case, *Sellers v State*, 362 S.C. 182,
15 January 4th, 2015. They cite *Grandy* in it. "A defendant is
16 not entitled to a lesser included charge of possession with
17 intent to distribute when there is evidence that the amount
18 involved exceeded minimum for trafficking," and that's down
19 under section two of that opinion under jury charge as the
20 subtitle. I've got another one, 2014 case. It's called
21 *Gore*.

22 THE COURT: Was there another case you were going to
23 cite?

24 MR. SCOTT: Yes, I'm sorry. That is *State v Gore*. I'm
25 going to give you the S.E.2nd cite. 758 S.E.2nd 717. That

1 is a April 2nd, 2014 case, and it cites *Grandy* in it.

2 MR. WISE: *State v Gore*. The quick distinction I make
3 with *Gore* is that we're talking about simple possession,
4 which by statute is not included.

5 THE COURT: Mr. Wise, here's, of course, the ruling on
6 this particular issue, sir. The Court can envision factual
7 circumstances. For example -- let's say for example the
8 total gross weight of all the heroin involved in this case
9 was -- let's just say 15 grams to keep matters simple. But
10 the total 15 grams was divided into three separate baggies
11 located at three separate areas of the house. Factually I
12 think that maybe a PWID charge would be more appropriate
13 under those circumstances because you have the drugs
14 scattered throughout as opposed to all in one container.

15 More to the point, when I was in your position, Mr.
16 Wise, and I'm sitting in the shadow of Judge Johnson, but I
17 tried exactly the same case and requested -- made the exact
18 same request and Judge Johnson was of the opinion that only
19 when there's some evidence that would cast doubt on the
20 accuracy of the weight involved, or by virtue of the example
21 I just gave you. Only under those circumstances would it
22 knock it down from trafficking to some other PWID
23 potentially. And only then would a lesser charge be
24 warranted. I appreciate you bringing that section to the
25 Court's attention, Mr. Wise. I have a difficult time

1 reconciling that section against some of the other more
2 recent case law the Solicitor cites. Perhaps counsel simply
3 didn't make those trial courts aware of that provision of
4 the law. But in this case there's been no evidence that the
5 total of 23 grams was divided into different containers,
6 different baggies. There's been no evidence that casts any
7 doubt on the weight of the drugs found above the
8 refrigerator. And for those reasons the Court's inclined
9 just to go up or down on trafficking and not give you a
10 lesser. But your objection is noted.

11 MR. WISE: Right. And I think it was not raised in
12 those other questions. And again --

13 THE COURT: That may very well be the issue.

14 MR. WISE: And to again quote our former Chief Justice
15 of the South Carolina Court of Appeals, Justice Alex Sanders
16 wrote an opinion one time that appellate courts are like
17 obedient children. They only speak when spoken to. So if
18 they weren't spoken to on that issue they wouldn't address
19 it.

20 MR. SCOTT: Well, you know, trafficking you can sell,
21 manufacture, cultivate, deliver. There's all kinds of way
22 to traffic. And PWID is not a lesser of any of those, only
23 the possession. And it just logically doesn't make sense.
24 You can rectify that with the case law. PWID can be a
25 lesser if trafficking is based on possession. It can be if

1 weight's in question. It can never be a lesser if he's
2 distributing trafficking amounts, delivering, cultivating
3 trafficking amounts. So it does make sense if you look at
4 it that way.

5 THE COURT: By that line of thinking, the State's
6 entire theory is that he's in possession of 23 grams of
7 heroin. Therefore, because he obviously is not cultivating
8 heroin or delivering heroin it's simply above this bridge.
9 If that's the correct thinking, then perhaps the Court
10 should charge -

11 MR. SCOTT: My interpretation is there's different
12 flavors of trafficking, right? PWID, how could it ever be a
13 lesser if the trafficking is based on distributing? So what
14 they've done is -- it's never a lesser of those. But if
15 it's based on possession in certain circumstances it can be
16 a lesser. And that's only if weight's in question. They
17 would have never had a threshold weight if they had intended
18 for it to always be a lesser.

19 THE COURT: I understand what you're arguing. Perhaps
20 it's an open question. Just give me one moment, please.

21 All right. I think we know where we stand.

22 MR. WISE: Can we take about a two minute break?

23 THE COURT: By all means.

24 (Whereupon, a brief recess was held.)

25 THE COURT: Let's go back on the record, please. I

1 apologize for having done this. On break something did
2 occur to me and my concern is, after looking at Sellers my
3 concerns were confirmed. Sellers arose in the context of a
4 post conviction relief action. The State's correct that it
5 is a 2005 case. However, in looking at Sellers apparently
6 -- and this is the only temporal reference that I could find
7 that relates to when that crime was tried, it references a
8 direct appeal in Sellers that was affirmed in 1999 in an
9 unpublished decision. Therefore, Sellers had to have been
10 tried. The substantive law at the time Sellers was tried
11 would have predated the 2000 change contained in Act 355.
12 It would have predated Act 355 passed in the year 2000.
13 That's when that section concerning PWID being the lesser
14 included was put into Title 44. Having looked at Gore, that
15 is a 2014 decision. In that case the Defense was requesting
16 a lesser included of simple possession due to the fact that
17 the drugs -- there were some other drugs found under a
18 mattress and the argument was that the jury could reasonably
19 conclude that the drugs under the mattress belonged to the
20 defendant, with that being simple possession weight, whereas
21 the other drugs did not belong to the defendant. The
22 provision that Mr. Wise points out to the Court -- pointed
23 out to the Court simply was not contained or not argued
24 apparently in the Gore decision from 2014. So based upon
25 that, I think the Court has to conclude that the substantive

1 law that existed at the time Sellers was tried had to have
2 been the pre 44-53-370 version of the code. And candidly,
3 Mr. Wise, Mr. Scott, this issue has never been argued to the
4 Court. I'm looking at just the plain language of the code,
5 and it plainly states that -- and I understand your
6 position, Solicitor, and it makes no logical sense to me
7 whatsoever, not one bit, that you would have these inference
8 levels. But according to the black letter law in the book,
9 it says PWID's a lesser included of trafficking.

10 MR. SCOTT: Judge.

11 THE COURT: Yes, sir.

12 MR. SCOTT: I would -- if you're going to rule this way
13 without any other argument I'd ask for time to research this
14 because it makes no sense. They're going to go back there
15 with a PWID as a threshold. I'm going to say the law says
16 that if it's over this threshold you must find trafficking,
17 and they're going to say, well, how in the world can I
18 consider PWID. And you're going to read the law and it's
19 going to conflict each other. Let me explain, if I may. My
20 interpretation of that, and I don't have any problem here,
21 but what it says is the trafficking statute, Judge, what I
22 was trying to explain earlier -- let's see. If you
23 knowingly sell trafficking amounts of the drug, that could
24 be trafficking. If you manufacture trafficking amounts,
25 that could be trafficking. If you deliver -- if I buy

1 trafficking amounts of marijuana, I could be charged with
2 trafficking marijuana. These aren't possessory offenses.
3 The crime alleged is not based on an individual possessing
4 that amount. By the look on your face you're not following
5 me.

6 THE COURT: I'm not following you.

7 MR. SCOTT: All right. It specifically says based on
8 possession being the theory of trafficking, does it not? I
9 don't have -- I don't have that provision in front of me.
10 Why wouldn't it allude to the entire trafficking statute in
11 saying PWID is always a lesser of the trafficking offense.

12 THE COURT: I understand. I understand your position,
13 but let's take that to the next logical step. What is it
14 that under the specific facts of this case the State has
15 alleged other than actual possession of the heroin found
16 above the refrigerator?

17 MR. SCOTT: It's the trigger weight. That's the
18 elements of the case. He possessed amounts that trigger
19 threshold weight. That's what trafficking is. That's the
20 sole thing that separates it from the possession of lesser
21 includeds below it. I can cite Tucker. I can say if
22 there's no evidence that would support a lesser then the
23 trial court is not supposed to give them the lesser
24 included. There's been no evidence that it's below the
25 trigger weight.

1 THE COURT: The operative word that I'm focusing on
2 here -- and I understand you 100 percent. I'm looking at
3 the section again cited by Mr. Wise. The offense of
4 possession with intent to distribute described in subsection
5 blah, blah, is a lesser included offense to the offenses of
6 trafficking based upon possession --

7 MR. SCOTT: Right.

8 THE COURT: -- emphasize possession --

9 MR. SCOTT: Yes, sir.

10 THE COURT: -- described in the subsection. In this
11 case what other than possession are you alleging against the
12 Defendant? He didn't cultivate it. He didn't manufacturer
13 it. He possessed it.

14 MR. SCOTT: That's all I am saying. That's what I am
15 saying. And that statute, it cannot possibly say you always
16 give the lesser. I mean, there's case law that says a
17 lesser should only be given if there's some evidence that
18 tends to show.

19 THE COURT: I would tend to agree. If this were a
20 marijuana case and he was growing a field of marijuana ,
21 plants out there he's not in possession. He's
22 manufacturing. It's the manufacturing of the marijuana that
23 would not entitle the Defendant to a lesser included, a
24 PWID, under those facts. But in this case you haven't
25 alleged that he's manufactured the heroin. You're not

1 alleging that he did any of the other things. The trigger
2 offense, what he did wrong, was to be in possession of
3 heroin and that's it.

4 MR. SCOTT: So he is entitled to that lesser if -- if
5 there's some evidence that shows he should be entitled to
6 it. In other words, if a weight triggering mechanism is
7 questioned. It's never been questioned. You see what I'm
8 saying? That provision is in there, because PWID can never
9 be a lesser of the other flavors of trafficking. That's why
10 it specifically says possession. If there's some evidence
11 that tends to show that, you know, the weight's in question,
12 then he would be entitled to PWID. That's why they --
13 what's why they carve out possession from the other flavors.

14 MR. WISE: The quick answer to that, Your Honor, is
15 that you then need an act of the legislature to get a lesser
16 included under those facts. The legislature would have a
17 way to put that in there.

18 MR. SCOTT: I can only just try to appeal to logic and
19 common sense and that's what I've tried to do. But, you
20 know, if we get to a jury, how are they going to distinguish
21 between the two when I'm saying the law says trigger
22 weights, and you're going to tell them the law says trigger
23 weights, but you can just go ahead and, you know, consider
24 this other charge that -- I think all those cases are good
25 law that I cited, Your Honor. I would have to do some

1 research as to when that provision was enacted. But, you
2 know, I think that it would at least be some kind of
3 negative treatment of those cases if that provision, or
4 those positions weren't still valid, Your Honor.

5 THE COURT: I agree with you 100 percent, Mr. Scott.
6 It is illogical. It is irrational. There is no reason in
7 the world for that provision to make any sense in the
8 context of the trafficking statute. And the only thing I
9 can say -- I don't know who first said it, but the law is
10 not based upon logic. It's based upon human experience.
11 And for whatever reason the General Assembly of South
12 Carolina has decided to spell out the lesser included
13 offense as of the year 2000 to these trafficking offenses
14 when it is based upon possession. I don't know what to say.
15 I mean, there's no other way to read the law, even though in
16 my mind it makes no sense and I agree with you on that.

17 MR. SCOTT: Judge, with this ruling, what you're saying
18 now is every time there's a trafficking offense based on
19 possession they are always cart blanche entitled to the
20 lesser PWID instruction. That's what that ruling would say.
21 Every time, no matter what the evidence is. It could be
22 1,000 grams and then, you know, blowing the threshold
23 weights out of the water which makes them completely
24 obsolete, then they always get the PWID.

25 THE COURT: What's the purpose of that subsection being

1 in the law then?

2 MR. SCOTT: Because --

3 THE COURT: Because if the weight is in question, Mr.
4 Wise is correct. If we're dealing with the argument, hey,
5 are you sure the scale was calibrated correctly and it's
6 10.02 grams of crack is -- you know, if that's the argument,
7 then under the law he would be entitled to a lesser included
8 of PWID, if the inference was the only thing that the State
9 had and that the State was going on, the inference from the
10 weight of the crack. Your understanding of the law is what
11 I've always understood it to be. Okay? Help me --

12 MR. SCOTT: I'm trying to. If you look back at the
13 legislative intent of the trafficking statute, it was to
14 deal with large scale drug distributors. And they carved
15 out this drug provision specifically based on weights. It's
16 still around. I mean, and you're going to -- there's a
17 whole statute, there's a whole offense, whole penalty
18 levels, structured around the trafficking crime. And
19 there's one blurb in this voluminous drug code that mentions
20 that it is lesser included. It doesn't say it's always to
21 be charged. I can't think of one crime where there is a
22 lesser that is always charged, no matter what the evidence
23 is.

24 THE COURT: You look at the new murder statute,
25 attempted murder, they say, okay, well, AB -- not ABWIK, but

1 assault and battery high and aggravated is a lesser included
2 of attempted murder. A lesser included of ABHAN is a
3 assault and battery first degree. A lesser included of
4 assault and battery first degree. And it goes down this
5 obscene cascading lesser included offenses. And I know that
6 there are some judges who, when faced with an attempted
7 murder charge, charge everything all the way down to simple
8 assault and battery based upon the way that statute is
9 drafted.

10 MR. SCOTT: But that we all agree. I think in our
11 little neck of the world that's poorly written law. And
12 there's such vague differentials between those that it's
13 always kind of a grey area. There's no grey area here.
14 We're in the second tier of weights. And I hate to --

15 THE COURT: All right. Well, here's -- you realize you
16 will be giving Mr. Wise, under the Court's opinion, a fairly
17 strong appellate issue if the Court were to decline to give
18 him what he wants.

19 MR. SCOTT: You understand -- and I know Your Honor
20 understands this. He's been in our jail now indefinitely
21 for the last two years, and I -- I've been trying to move it
22 for some time. And if he goes back there to the jail he's
23 got a federal sentence that he's not getting any credit for
24 it.

25 THE COURT: I understand.

1 MR. SCOTT: I needed to move this. But my concern here
2 is this. We're setting a precedent here.

3 THE COURT: Here's -- Solicitor, you've convinced me.
4 The Court wants guidance from the Supreme Court. This is
5 the first issue -- the first time that this issue has been
6 presented to me. The Court will give the State what the
7 State has requested over the objection of Mr. Wise. We will
8 not instruct on what I would otherwise instruct on and that
9 is the lesser included offense of PWID and we'll let it go
10 on up if he is convicted, in fact, of that offense.

11 MR. SCOTT: Thank you, Your Honor.

12 THE COURT: Your objection to my failure to charge
13 possession with intent to distribute is however noted, Mr.
14 Wise.

15 MR. WISE: And you didn't change the language on
16 inference either?

17 THE COURT: I am not changing that either.

18 MR. WISE: Well, I sent -- I sent both of you a copy of
19 a brief I wrote on that charge, too, so you can -- I sent it
20 to everybody just so it would not be an ex parte
21 communication.

22 THE COURT: Let us have the jury. When they come out,
23 Solicitor, if you will rest, and then Mr. Wise, you can
24 rest. The State will go first. Mr. Wise gets final
25 argument and I'll tell them what we've been doing for an

1 hour and 45 minutes.

2 (Whereupon, the jury entered the courtroom at 3:45
3 p.m.)

4 THE BAILIFF: All jurors present, Your Honor.

5 THE COURT: Ladies and gentlemen of the jury, thank you
6 for being back here on time. Thank you for your patience.
7 We are, of course, still engaged in the trial. At this
8 point in time, Solicitor?

9 MR. SCOTT: The State rests, Your Honor.

10 THE COURT: All motions renewed, same rulings as
11 before, Mr. Wise?

12 MR. WISE: The Defense rests, Your Honor.

13 THE COURT: All right. Ladies and gentlemen, we've
14 reached that portion of the trial where we have received all
15 the evidence that you're going to have in order to judge
16 this case. Okay. And now it's time for the attorneys to
17 give you their closing argument or their closing summation.
18 I will let you know that one of the reasons that I kept you
19 waiting back there so long, ladies and gentlemen, and I'm
20 just trying to be forthright with you, but the reason I had
21 to keep you waiting is that by law -- the law requires me to
22 have a discussion with the attorneys on the record about
23 what I'm going to instruct you in terms of the law. That
24 discussion took about an hour and 30 minutes longer than I
25 was expecting that it would. Okay? I apologize for that.

1 But that's the reason I had to keep you waiting, because my
2 law I have to discuss it with them, and it wasn't until I
3 got in here today that I realized we were pretty much done
4 with the case. So at least until they got in here this
5 afternoon that I realized that we were done with all the
6 evidence in the case.

7 Now, the order that we'll follow for closing arguments
8 is the State will go first to be followed by Mr. Wise. And,
9 of course, ladies and gentlemen, the argument is not
10 evidence. The attorney's argument is not argument in the
11 case. It's merely their contention to what has been proven
12 or has not been proven. Okay? If they refer to facts during
13 the course of their closing arguments and what they say
14 about the facts differs from your recollection of the facts,
15 you should, of course, go with your recollection as opposed
16 to what they say those facts are. All right.

17 With that, Solicitor, you are recognized for your
18 closing.

19 MR. SCOTT: Thank you, Your Honor. If it please the
20 Court.

21 THE COURT: Yes, sir.

22 CLOSING ARGUMENT

23 BY MR. SCOTT: The central issue in this case, based on
24 its face, seems to be drugs. The crimes charged, the crimes
25 alleged are distribution of heroin, possession with intent

1 to distribute oxycodone, and trafficking in heroin. But
2 this case is about so much more than that. This case is
3 about an epidemic and the just extreme increase in heroin.
4 And it is an epidemic. And we've seen so many more cases
5 recently with this insidious drug and the resurgence and the
6 spreading of the misery it produces all over this state and
7 all over this county.

8 You know, a parasite is a living organism that lives
9 and feeds off other living things and provides nothing in
10 return. Like a tapeworm, a flea, a leech. And during this
11 trial have we not come to see what Mr. Terrance Stewart is?
12 Have we not come to see how he feeds off the weak and the
13 sick of this society and offers nothing in return? Have we
14 not seen that during this two, three days of testimony. He
15 is the taker, and the taker is exploits, and the taker uses
16 up, and the taker gives nothing in return. The taker is a
17 drain where things disappear and nothing is ever given back.
18 Terrance Stewart is a taker. And we hear about early 2015,
19 officers with Fountain Inn find Lawrence Cheatham. Y'all
20 saw the man. Sick, passed out, dead to the world. Had to
21 go to the hospital. Had to be revived. He said he had to
22 be brought back to life. He had hit rock bottom. OD'd in
23 the parking lot of a gas station on a cocktail of heroin and
24 fentanyl. You recall he explains to law enforcement how he
25 came to be in that state. Where he got that poison that he

1 injected into his veins. January 21, 2015 is the date that
2 law enforcement takes action. They meet with Cheatham.
3 They search him. He said two, three times. They wire him
4 with video cameras. Little tiny video cameras that you
5 could fit in a button hole. I think he said his was on a
6 key fob or a phone or something. They tell him what they
7 need him to do and they give him \$100 worth of buy money.
8 Five \$20 bills with the serial numbers recorded. And then
9 they drive him out to And the reason they
10 search him beforehand, I know it probably was explained a
11 lot, but to make sure that he comes into that deal
12 completely empty handed. Completely clean. He has nothing
13 on him except those five \$20 bills they documented. They
14 drive him out there, , and Deputy Sweatt sits in the
15 car and watches as Terrance Stewart, the taker, comes to
16 take a little bit more from Mr. Cheatham. And he says, I'm
17 giving him this heroin, but he's taking so much more.
18 Sweatt sees him. The deputy watches as he passes by that
19 sedan with that blue shirt. Only briefly loses track of the
20 CI, Lawrence Cheatham and Mr. Stewart as they do the hand to
21 hand which takes all of about a minute. He testified
22 Lawrence Cheatham gets back in the car. Those five \$20
23 bills are placed with five small packets of poison. And
24 it's listed on the report as heroin mixed with fentanyl.
25 But let's call it what it is. It's poison. You all

1 remember the SLED agent? Heroin. A schedule one drug. It
2 has no medical -- no medically viable uses. Thirty times
3 more powerful than morphine. You're all familiar with
4 morphine as a pain killer. Thirty times more powerful.
5 When you put fentanyl in it that's 30 times more powerful
6 than heroin. Three times more likely to produce an
7 overdose, just like Mr. Cheatham had that day law
8 enforcement found him down there in the gutter. Needle in
9 his arm. Taking what the taker gave him. Three times more
10 likely to OD on it. You know why? Because it suppresses
11 breathing. Did you all hear that? It suppresses breathing.
12 And sometimes when you pass out after you put that poison in
13 you, you stop breathing. And sometimes you don't wake up.
14 So let's call it what it is. It's poison. All right? And
15 that's what the taker is putting out in the community.
16 That's what he's selling at \$20 at a time. So he buys it,
17 comes back, immediately turns over the five packages of
18 heroin to Deputy Sweatt. Guess what? He doesn't have the
19 money any more. We know where the money is. It's in the
20 takers pocket. That's your distribution of heroin case.
21 Okay? That's part one. Proving to you beyond a reasonable
22 doubt. We got the video footage of it. Now the sheriff's
23 office can go to a judge to get a search warrant. And they
24 want to know what else Mr. Stewart has in his house. What
25 else might be there. And they got a pretty good idea but

1 they got to go to a judge and tell them about the
2 distribution and tell them, hey, we think he might have some
3 more of that stuff in his house. Can we have a search
4 warrant to go check. They get a search warrant and they do
5 just that. The next morning after the judge issues the
6 search warrant they go to [REDACTED]. That's January
7 22nd. Also including Sergeant Veal here. They go to the
8 home and they find Mr. Stewart on the couch and he's not
9 wearing his pants because he's sleeping. It's early in the
10 morning. And they say you're under arrest, and he says,
11 well, please let me get dressed and they say by all means.
12 And he points to his pants and he says can I have my pants.
13 They give him his pants. But first, you know, they're going
14 to check his pants to make sure there's no contraband in it.
15 They find \$1,123 in his pants pocket. \$100 of which is that
16 documented funds. And this is the money that was in
17 Lawrence Cheatham's hands 13, 14 hours before that he put in
18 the taker's hand in exchange for the heroin. And there it
19 is in Stewart's pants pocket. What else did they find?
20 Over the washing machine they find a pistol. Back in the
21 bedroom on a shelf -- or, excuse me, the bathroom they find
22 \$2,700 in a roll of money. Over the refrigerator they find
23 56 pills of oxycodone wrapped up in tinfoil over the
24 refrigerator in that bucket they were talking about. Looked
25 to me kind of like the ice tray on an automatic -- you know,

1 a refrigerator that makes ice. Looks like a tray. Anyway,
2 that's on top of the refrigerator and it's got all those
3 oxycodone pills. That's a synthetic opiate. I remember
4 that's what the SLED agent called it, and she says it's a
5 pain pill. And it's wrapped in tinfoil and it's sitting
6 right next to this heroin here. And if you do that math,
7 that heroin, that same chemist, she said that was 23.83
8 grams of heroin. Sixty-three times the amount of what he
9 sold Lawrence Cheatham. You do the math. A hundred bucks
10 for that times 63. That seems to be \$6,300 worth of heroin
11 on top of his refrigerator. Ready to flood the community
12 with that. Ready to give to people like Lawrence Cheatham
13 so they can put it in their veins, and then they can go out
14 and steal from this guy and that guy and commit petty
15 larcenies and receiving stolen goods and all the other
16 crimes Mr. Cheatham says he does to feed his addiction.
17 That addiction to people like Terrance Stewart promulgate.
18 Now, trafficking of heroin. That was the heroin that was
19 found on top of the refrigerator. Possession with intent to
20 distribute the oxycodone. Of course, that's the wrapped up
21 tinfoil oxycodone. I know Tondalai, as you'll see, she's
22 sitting over there behind the Defendant, she mentioned oh,
23 well yeah, he had a prescription for that. That's simply
24 not true. That's not true. Law enforcement has never found
25 any prescription because it doesn't exist. You would have

1 that before you today if there was a prescription. He'd
2 never been charged with it had he had a prescription. It's
3 in a balled up tinfoil right beside 63 times -- \$6,300 worth
4 of heroin on top of the refrigerator. And the State would
5 allege that was up there because he deals in opiates. He
6 deals in heroin, which is an opiate. He deals in oxycodone
7 which is an opiate. It's a pain killer.

8 Distribution, I'm going to go over the law just
9 quickly. And I know it's a little bit later in the day and
10 I thought we were going to get started, but I'm going to try
11 to hurry through this. But I want you all to be clear on
12 the law. The Judge is going to describe it. But
13 distribution of heroin is just what it sounds like. That's
14 the portion that's on the videotape. That's the portion
15 with Lawrence Cheatham when he buys the heroin. It goes
16 without saying, common sense. You can't deal drugs. We all
17 know that. But that's what the case is about. He's a drug
18 dealer. He dealt heroin to Mr. Lawrence Cheatham. That's
19 the crime. It's illegal to distribute any controlled
20 substance classified as a schedule one narcotic drug. We
21 heard that heroin is a schedule one drug, has no medically
22 viable purposes.

23 Possession with intent to distribute oxycodone. It's
24 illegal to possess oxycodone with the intent to distribute
25 the drug. And that's the State's allegation here. You

1 don't have loose pills, loose opiates like oxycodone balled
2 up in tinfoil ball right beside a package of heroin. The
3 inference from the State, based on how it's packaged, based
4 on the scales in his kitchen, and all the other illegal
5 drugs was he intended to distribute the pills as well. He's
6 an opiate dealer. That's what oxycodone is. It's an
7 opiate. Trafficking in heroin. It's illegal to traffic in
8 heroin or any mixture containing heroin. Trafficking is a
9 drug concerned with threshold weights. Okay? He's not
10 guilty of trafficking on the distribution because it's a
11 very small amount. That's a small amount because it doesn't
12 take a lot of heroin to get somebody really, really high,
13 especially when you mix with fentanyl. Threshold weights
14 becomes once you start getting into heavier and heavier
15 weights, larger and larger quantities. It's a separate
16 crime. Possession between 14 grams and 28 grams of heroin
17 is considered trafficking. That's why he's been charged
18 with that. Stewart had 23.83 grams. Okay? So that puts
19 it, you know, right at the upper threshold of the
20 trafficking statute. And it's uncontested, there has been
21 no testimony whatsoever that puts that weight in question.
22 You heard the SLED agent. She talked about all her
23 credentials and talked about being in the toxicology
24 department and drug analysis department. All the training
25 she has to go through. But she weighed those drugs and

1 unquestionably it came out to be 23.83 grams of heroin. The
2 heroin had fentanyl in it, which makes it even more potent.
3 That's the trafficking heroin statute, and that's the crime
4 he's been accused of and that's what the State is alleging.

5 Reasonable doubt. By the way, this is the last time
6 you all get to hear from me, and I am trying to make it
7 quick. But this will be the last time you hear from me.
8 The Defense attorney, he's going to get up here next and
9 he's going -- everything I say, he's going to say the
10 opposite of. I don't know what he's going to say how that
11 heroin got there. I don't know what he's going to say about
12 the distribution. But he's going to say Mr. Stewart's not
13 guilty, and I'm going to sit over there and I'm going to
14 wish I could stand up and say, whoa, whoa. Wait, wait. Let
15 me counter that argument he's making. Let me talk to the
16 jury one more time. I can't do that. So what I'm trying to
17 do is tell you as much as I possibly can now and just really
18 hope I'm not missing something and hope there's not some
19 question that I'm leaving unanswered in your head. I've
20 given you all the evidence. I've given you all the
21 testimony I can. But my burden, and the burden I carry in
22 every case and the burden of every prosecutor from here to
23 California carries is beyond a reasonable doubt. I've got
24 to prove any crime beyond a reasonable doubt. I welcome
25 that. That's part of what makes this the greatest system.

1 The greatest judicial system that the world knows. All the
2 benefits go to the Defendant. And that's fine. We can't
3 just go and arrest somebody and throw them in jail without
4 evidence. We've got to have evidence that's -- that's up
5 here. I mean, I'm not going to lie to you. It's a high
6 standard. But a case like this, in a case like this, it's
7 beyond reasonable doubt. It's far beyond any possible
8 counter-argument. So I accept it in cases like this. I
9 don't want to put somebody, you know, with a conviction
10 that, you know, there's questionable evidence. That's why
11 we have such strong burdens. It's called beyond a
12 reasonable doubt. What is it? The Judge is going to
13 explain it to you. It doesn't mean you can't hold some
14 doubt after hearing all the evidence. It doesn't mean you
15 -- there might be something you have a little bit of a
16 question about. You know, you're not 100 percent sure of
17 it, because the Judge is going to tell you there's almost
18 nothing in this world -- at least there are very few things
19 that you know to be true with absolute certainty. The law
20 doesn't require that. I've never tried a case, I don't know
21 of any case that's been proven with 100 percent certainty.
22 I can only think of a handful of things I know with 100
23 percent certainty. I like to think when I wake up in the
24 morning the sun's going to come up. But, you know, beyond
25 that there's very few things that you know without a doubt.

1 And that's just not what my standard is. It's beyond a
2 reasonable doubt. What is a reasonable doubt that you could
3 possibly have in this case? Do you reasonably doubt that
4 Terrance Stewart put this dope in the hands of Lawrence
5 Cheatham? Do you reasonably doubt this money was found in
6 his pocket from that transaction. Do you reasonably doubt
7 that. Do you reasonably doubt that? Do you doubt your own
8 eyes? It's on video. Do you doubt that he had this heroin
9 on top of his refrigerator? Do you doubt that he had those
10 pills up there? Give me a reasonable explanation. There is
11 no reasonable counter explanation that is his. Or was it
12 Tondalai Coleman's? Is that what he's insinuating? I
13 called her as my witness. I mean, she has no happy feelings
14 towards me. You see her sitting over there. This is her
15 boyfriend. And she sat up there and she tried -- she tried
16 with great effort to try to explain those jail calls and try
17 to explain that, you know, she didn't know that stuff was up
18 there, that he was dealing. I don't know. I do know we've
19 got Terrance Stewart on video dealing drugs. I do know we
20 have those tested jail calls where he says the drugs are
21 his. But she tried her best, and I don't blame her. I
22 expected that when I called her to the stand. But I also
23 knew if you guys heard that there was another person in the
24 house and I didn't call her as a witness then you all would
25 wonder, I would have liked to have heard from the other girl

1 who was there, because maybe or maybe not she could shed
2 some light on the situation. I never want a jury to hold it
3 against me if I don't call a witness. So I knew she'd get
4 up there and kind of spin her wheels a little bit, and she
5 did. Even though she said it wasn't hers. I do know she
6 took that stand and said it wasn't hers. And again, I do
7 know who's on that video. It seems crystal clear to me when
8 I look at the video that it's Terrance Stewart that's doing
9 that hand to hand. And I do know the heroin he sold that
10 day had heroin mixed with fentanyl. And I do know the
11 heroin found on top of the refrigerator was heroin mixed
12 with fentanyl. I know those things. So what reasonable
13 doubt do you have that those drugs were not Terrance
14 Stewart's?

15 You've got to be firmly convinced. This Judge may get
16 tired of hearing me say this, because that's the best that I
17 know -- in every one of his trials I describe reasonable
18 doubt as this. If you're firmly convinced of his guilt, you
19 must find him guilty. If you're firmly convinced. He's
20 going to tell you. He's going to say it twice when he gives
21 you the instructions. Firmly convinced. Just keep that in
22 mind. That's the easiest way for me to describe it. But
23 I'm going to say this on the flip side. If you have a
24 reasonable doubt and all 12 of you agree that it's
25 reasonable that maybe somebody snuck in the house and put

1 that dope up there, then find him not guilty. Okay? I've
2 done my job. I'll sleep very well tonight. I put up the
3 evidence. And now all I can do is rely on your common sense
4 and your logic and your rational thinking and just hope that
5 you've obeyed the oath that the Judge has given you which is
6 to try this case and base your verdict on a reasonable
7 interpretation of the evidence. What reasonable doubt can
8 you have? I know of none. I'm going to leave you with a
9 few thoughts, or rather a few comments that the Defendant
10 made himself.

11 (Whereupon, jail phone conversations were played.)

12 He's speaking to you. The taker is speaking to you.
13 He's daring you. It's mine. It's mine. We know it's not
14 yours, Tondalai. It's mine. He's daring you. It came from
15 his mouth. Don't let the taker take away your common sense
16 and rational thinking. Don't let him do it. Go back there
17 and speak amongst yourselves. Deliberate thoughtfully.
18 Respect each other's opinions. Respect each other's
19 viewpoints, but come to the only natural conclusion.
20 Terrance Stewart is guilty of distribution of heroin.
21 Possession with intent to distribute oxycodone and
22 trafficking in heroin. Thank you, ladies and gentlemen.
23 THE COURT: Thank you, Mr. Scott. Mr. Wise, you're
24 recognized for your closing, sir.

25 CLOSING ARGUMENT

1 BY MR. WISE: Mr. Foreman, ladies and gentlemen of the
2 jury. First of all I want to say this. I am not defending
3 the sale of heroin. Not even close. If -- we all agree the
4 sale of heroin is bad. It shouldn't be done. It causes
5 problems. The Solicitor pointed out, appealing to your
6 emotion when he talks about the horrors of it. But
7 appealing to your emotions is not what this case is about.
8 I represent that Terrance Stewart who just happens to be
9 accused of selling heroin. That's who I represent. And
10 when you go into your jury room and say to yourself, among
11 yourselves, you know, I listened to all that evidence and
12 Terrance is probably guilty. He probably sold that heroin.
13 He probably possessed it. What should your verdict be?
14 Your verdict should be not guilty, because we're not talking
15 about what probably happened, but might have happened, what
16 could have happened or what possibly happened on January
17 21st and 22nd of 2015. When we talk about proof beyond a
18 reasonable doubt it is the highest standard known to man
19 short of an absolute certainty. If you were to go into
20 court in civil court and you were to come back with a money
21 verdict against a defendant, the burden of proof would be
22 preponderance of the evidence and the Judge would explain to
23 you the tip of the scale is however slight. If you want to
24 go into court and take someone's child away in a civil case,
25 in order before the State can take someone's child away they

1 must prove it by clear and convincing evidence. It's got to
2 be clear and convincing before you can take a child away.
3 Proof beyond a reasonable doubt is higher than that when we
4 talk about it. It's the thing we brag most about in our
5 judicial system when we talk about it to other people in
6 other countries. And that is a standard by which you have
7 to abide by in this case.

8 Now, what I want to emphasis to you is this. There are
9 two indictments in this case. The State wants to have you
10 look at them as interconnected. You are violating your oath
11 if you do. The Judge told you these are two separate
12 charges. If because he is charged with distribution of
13 heroin you tend to say, well, therefore he possessed it,
14 then what you are saying is the mere accusation of proof of
15 one. The mere accusation is proof. The charged you at the
16 beginning the indictment is not proof. It's the mere piece
17 of paper by which we got into this courtroom. So you have
18 to look at these cases as totally two separate and
19 independent cases. And if you let your mind at all
20 interlink them then you're doing what the State wants you to
21 do. Link them together and don't treat them as two separate
22 cases. Make the mere fact that we're bringing two charges
23 proof of the other one. That is not what we do. That is
24 not what we do and that is not a proper way of reviewing it.
25 So please look at them as two separate cases.

1 Now, I also want to talk about -- I'll get to that in a
2 moment. Let's look at what we have here. The first case.
3 The alleged distribution of heroin case. I have told some
4 people that -- and this time of the year is one way of
5 looking at reasonable doubt. Think of it as an instant
6 replaying of a football game. You've watched the football
7 game and they will do an instant replay and the question
8 becomes is there irrefutable evidence that the call on the
9 field is wrong. And you'll look at the replay and you'll
10 sit there and say his foot might have been out of bounds,
11 and somebody in the room with you say yeah, but it's just
12 not that clear. Not irrefutable. And you say, well, it
13 probably was out of bounds. Then we say no, but that's not
14 the standard. The standard is that irrefutable evidence
15 that the call on the field is wrong. Well in this courtroom
16 on the first charge the call on the field is not guilty.
17 The call on the field on the first charge is that no sale
18 was made. That's the call on the field. And you can go
19 back and you can relook at that video and relook at that
20 video and relook at that video and ask yourselves is there
21 irrefutable evidence that the call on the field is wrong,
22 because there was no sale. Is there irrefutable evidence
23 that there was, in fact, a sale, and there isn't, and here
24 are the problems with it. First of all I'm going to tell
25 you something I agree with the Solicitor on. He's a user.

1 He's a taker. He's a leech. He went out and committed
2 forgery to get money. Forged a document to get money. He
3 broke into somebody's house to get money. He went out and
4 received stolen goods to get money. He sold drugs to get
5 money but somehow had those dismissed. And that is not
6 Terrance Stewart. That is Lawrence Cheatham. That's who is
7 the user. Used them. That is who is the taker. Took them
8 for a ride. And that's who is the leech off of everybody he
9 probably knows. So when you say to yourself is he credible,
10 one definition of beyond a reasonable doubt is this. It is
11 the doubt you would give a close friend or relative. So the
12 relative came into you and said I've been accused of
13 whatever. Really? Who accused you of that. A guy named
14 Lawrence Cheatham. Well, tell me about him. Would you give
15 that friend or close relative the doubt? Of course you
16 would. So the only thing you have in here is basically
17 Lawrence Cheatham's testimony, and it's been all over the
18 place if you really look at it. First of all, let me ask
19 you this. They know not to trust him. That's why they
20 search him. They know not to trust him. But ask one little
21 question in this case. One little question. Who searched
22 Lawrence Cheatham. Give me the name of the person that
23 searched Lawrence Cheatham and somebody saying somebody is
24 not a good answer, because whoever searched Lawrence
25 Cheatham would need to testify I searched him and this is

1 what I did. I didn't just put my hands in his pockets. I
2 just didn't gently pat him down. Here's what I did. I went
3 into great details. Maybe even strip searched him. I don't
4 know. And you know what, you don't know, because that
5 person never testified. Matt Veal said, oh, my recollection
6 is that Mr. Sweatt searched Lawrence Cheatham. I asked Mr.
7 Sweatt, did you search Lawrence Cheatham, no, I didn't.

8 MR. SCOTT: Objection, Your Honor. That's a
9 misstatement of the testimony.

10 THE COURT: Ladies and gentlemen of the jury, as I
11 explained earlier, if your recollection of the testimony or
12 the facts differs from what the attorneys say, go with your
13 recollection. Otherwise the objection is noted but
14 overruled. Please continue, Mr. Wise. I apologize for the
15 interruption.

16 MR. WISE: No problem. Go back and listen to the
17 testimony. Who searched him and what did they do to search
18 him. Did anybody ever testify -- one, they never testified
19 that they put any -- nobody ever testified they put his
20 hands in his pockets and searched him. They didn't testify
21 they patted them down. They didn't testify they did a strip
22 search. We don't know. And when you don't know, that's a
23 problem. Second, who searched the girlfriend? She was in
24 the car. Mr. Sweatt was driving the car. He wasn't paying
25 attention to Lawrence Cheatham the whole time, I hope. If

1 he's driving the car I hope he was keeping his eye on the
2 road making sure he was going where he was supposed to go.
3 Who searched the girlfriend? What did the girlfriend have
4 on her. Do we know? You know, this is a young man who is
5 trying to work out favors with the government. So who
6 searched her. There's not a scintilla of testimony of
7 anybody searching her in this case. Not a scintilla. Let's
8 continue with these strange things that are happening in
9 this case. There are some talk about getting some scratch
10 off tickets. I think Mr. Cheatham said I was supposed to go
11 get him some scratch off tickets and give them to him. I
12 had promised them to him the day before. Okay. That's
13 fine. If Mr. Cheatham was carrying scratch off tickets to
14 Mr. Stewart and Mr. Stewart was paying Mr. Cheatham money
15 for the scratch off tickets, where's the money. Where's the
16 money? That's what Mr. Cheatham said. I was getting
17 scratch off tickets for Mr. Stewart. I was supposed to get
18 them for him. Where's the money? They said he had no money
19 on him when he got back. One of those things we don't know
20 the answer to. Oh, but we found documented money. Great.
21 How was it documented? It was written down. Great. Did
22 you think about taking a picture of it with the date and
23 time. No. Did you think about taking a picture of the same
24 money you found that you said was documented when you found
25 it at Mr. Cheatham's house in Mr. Cheatham's pocket? No.

1 We just took pictures of some general money. So how well is
2 it documented? How well is it? We don't know. We don't
3 know. Then you get to the actual video. Is there any
4 conversation about a drug deal. Listen to it. Where is any
5 conversation about a drug deal. I think there's a thank
6 you, something like that. That's it. And based upon all
7 that, and that video that you can replay, can you rationally
8 say the call on the field is wrong. Is the call on the
9 field wrong. That is your question. Is there irrefutable
10 evidence that a sale occurred when the call on the field is
11 no sale occurred and the answer is no. And that's their
12 first case.

13 Second case. I noted with a great deal of interest
14 something that Mr. Scott said talking about Ms. Coleman
15 implying he didn't know whether she told the truth or not
16 when she got up there and said I don't where the drugs are.
17 I didn't know the drugs were there. If she doesn't know,
18 how do you? How do you know that she told the truth? Two
19 people in that house. The drugs belong to either him, her,
20 both of them or a third person. And in only two of those
21 scenarios is there a basis to convict Mr. Stewart. Two out
22 of four is simply not beyond a reasonable doubt. If you
23 look at, I believe, Exhibit 17 for the government. That's
24 the place where they say the drugs were found. And on that
25 tray is a bottle of fingernail polish. Now, I think it's a

1 fair logical bet that the fingernail polish didn't belong to
2 Terrance Stewart. So fingernail polish is up there with the
3 drugs and she said I never knew they were there. Is that an
4 honest statement? And if it's not an honest statement what
5 proof is there that they belong to Mr. Stewart. The Judge
6 will tell you, you can decide this case on the evidence or
7 lack of evidence. When you've got two people in the house
8 and you want to prove one of them is the possessor of the
9 drugs, it's probably a good idea to at least try to get DNA
10 off of that. At least try. They didn't. So you're left to
11 guess who's DNA is on that bag. And when you have to guess,
12 that's not proof beyond a reasonable doubt.

13 Also when we talk about this, you recall they say this
14 is the little bags that Mr. Cheatham turned in. Right?
15 They didn't find the first little bag in that house. Not
16 the first. And they looked, because that's what they are
17 looking for, because they knew if they found those little
18 bags it would make their case for the sale. But they found
19 nothing. Didn't find the first one. Also, who first saw
20 the drugs. He didn't testify, by the way, which is
21 interesting. Mr. Richardson. He first saw the drugs.
22 Where did he see them? Don't assume. Don't assume. You
23 can't assume in this court. Where did he see them? We
24 don't know because he didn't testify. Did he see them on
25 that tray? We don't know. Were they covered up? You don't

1 know. Were they in something else? You don't know.
2 Another thing about this case that makes some, what I call
3 inherent illogical about it that tells you something is
4 awry. Ms. Coleman says I never saw the drugs in there,
5 never saw Mr. Stewart putting them in there. If Terrance
6 Stewart is hiding his drug dealing from Ms. Coleman, he's
7 going to just come in and lay it down on top of the
8 refrigerator in plan view? No. Does that mean Ms.
9 Coleman's testimony is not accurate? Well, we don't know.
10 But the State called her. The State called her as a
11 witness. And they called her primarily to talk about the
12 telephone conversations. And here's what the State did for
13 you. They took about four minutes of hours of calls and
14 they asked Ms. Coleman about them, and what did she say.
15 She said basically you're taking it out of context. We were
16 talking about hypotheticals. What if this, what if that.
17 Terrance would say, okay, I contend the drugs were mine, and
18 the search was illegal, we got problems -- they got
19 problems. You know, everybody -- nobody goes to jail. They
20 were talking about how to -- the conversation started,
21 according to her when she testified, when she expressed
22 concern about her going to jail.

23 MR. SCOTT: Your Honor, I would object to -- that was
24 -- the editing was an agreement between the -- it was a
25 Defense's motion that the tape would be edited down.

1 MR. WISE: That was her testimony.

2 THE COURT: Overruled. Again, the jury will recall
3 testimony. They'll have the tape back there to listen to it
4 again.

5 MR. WISE: Her testimony was that she expressed worry
6 about going to jail. And Terrance said don't worry about
7 it. You know, because here's scenarios that we can both.
8 And that's what she said it was. And that was their witness
9 and that was who they brought in here to talk about it. And
10 heaven knows she knows the context of that telephone call
11 over the many hours of phone calls better than the State or
12 anybody else. And that's basically what the State's got.
13 They have to convince you beyond any and all reasonable
14 doubt that the drugs belonged to Terrance Stewart. Not Ms.
15 Coleman, not some third party. And they've got to -- they
16 told you in opening. The burden on the -- the function of
17 the jury is to determine whether or not the State has proven
18 it's case. Not that they have proven something. Not that
19 they've proven it might be. And as I said in my opening,
20 not if they've proven it probably is. That's not the burden
21 they have. It's higher than that. Higher than clear and
22 convincing. And certainly, certainly, if you watch Mr.
23 Cheatham testify, as you did, to convict anybody of
24 anything, if the standard is only clear and convincing,
25 based upon Mr. Cheatham's testimony, would fall woefully

1 short. It probably would fall shorter in preponderance of
2 the evidence. And it certainly falls way short of beyond a
3 reasonable doubt. Yeah, he's got problems. He is, in many
4 respects, a pathetic person. What motivates him and keeps
5 him going, we'll never know. All we know is he admitted to
6 a serious life of crime stealing from people and all this.
7 And we know that he was trying to help himself out. But
8 what he did to help himself out the State hasn't prove it
9 beyond a reasonable doubt.

10 Those are the facts of the case. Those are the issues
11 you have to decide. And you can't even decide -- name the
12 person that searched Mr. Cheatham, nor say how they searched
13 him. And you haven't got -- even tried to get any
14 fingerprints or DNA off the evidence they said belonged to
15 Mr. Stewart, and the State simply -- and there are two
16 people in the house. The State simply hasn't proven it.

17 Now, one thing I want to say, too. It is improper, I
18 think -- you may not think so, but I do, to simply assume
19 because he is the male he is involved in drugs. That's not
20 how we decide cases. We don't decide it because of the sex
21 of the defendant. You know, there are woman who use drugs,
22 unfortunately. Men, too, unfortunately. But to sit there
23 and even consider that, oh, because he's the male therefore
24 he's responsible is not based upon any facts that appeared
25 in this courtroom from that witness stand -- from this

1 witness stand, and that's what you're to decide by. The
2 State hasn't proven it then the proper verdict should not be
3 not guilty. Thank you.

4 THE COURT: Mr. Wise, thank you very much, sir. Now,
5 ladies and gentlemen, now it becomes to my responsibility to
6 instruct you on the law that applies in this particular
7 case. And I'll tell you the way that this has traditionally
8 been done, or at least 23 years ago, 24 years ago when I
9 first started practicing law, the way judges would do this
10 is they would sit here and they would basically read to you
11 18 pages of law taken from various law books and the jury is
12 supposed to sit there and hear it all and get it right on
13 the first hearing. And I always found that a little bit
14 unreasonable, because like most lawyers it took me three
15 years to get through law school to learn everything that's
16 in those books. So long story short, ladies and gentlemen,
17 I'm going to give you a copy of these instructions that you
18 can refer to if you need to in your deliberations in the
19 jury room. If you need extra copies, let me know. I'll
20 provide additional copies to you. Please, of course, pay
21 attention to the instructions as a whole and not simply pay
22 attention to parts to the detriment of other portions. And
23 when you are done, return these to me when you're done with
24 your deliberations.

25 Now, ladies and gentlemen, I instruct you that the

1 indictments in this case charge the Defendant with the
2 offenses of trafficking in heroin, distribution of heroin
3 and possession with intent to distribute oxycodone. I
4 remind you that the fact that Mr. Stewart was arrested,
5 charged and indicted is not evidence in this case, nor could
6 it be considered by you as evidence of guilt. These
7 indictments do not create any presumption or inference of
8 guilt. They're simply the formal written documents that
9 contain the charges made against Mr. Stewart. They're the
10 formal documents by which these cases are brought into
11 court. Each indictment, ladies and gentlemen, charges a
12 separate and distinct offense. You must decide each
13 indictment separately on the evidence in the law applicable
14 to it uninfluenced by your decision as to any other
15 indictment. Mr. Stewart may be convicted or acquitted on
16 any or all of the offenses charged and you'll be asked to
17 write a separate verdict of guilty or not guilty for each of
18 the offenses as stated.

19 Now, ladies and gentlemen, the Defendant in this case,
20 Mr. Stewart, has pled not guilty to these indictments and
21 that plea puts the burden on the State to prove him guilty.
22 I instruct you that a person charged with committing a
23 criminal offense in South Carolina is never required to
24 prove himself innocent. It's an important rule of law that
25 the defendant in a criminal trial, no matter what the

1 seriousness of the charge may be, will always be presumed to
2 be innocent of the crime for which the indictments were
3 issued unless guilt has been proven by evidence satisfying
4 you of his guilt beyond a reasonable doubt. Ladies and
5 gentlemen, this presumption of innocence does not end when
6 you begin your deliberations, but it accompanies the
7 Defendant throughout the trial until you reach a verdict of
8 guilt based on evidence satisfying you of his guilt beyond a
9 reasonable doubt. The presumption of innocence is like a
10 robe of righteousness placed about the shoulders of the
11 Defendant. It remains with him unless it has been stripped
12 from him by evidence satisfying you of his guilt beyond a
13 reasonable doubt. Ladies and gentlemen, the presumption of
14 innocence is not merely a legal theory. It's just not --
15 it's not just a legal phrase. It's a substantial right to
16 which every defendant is entitled unless you are satisfied
17 from the evidence of his guilt beyond a reasonable doubt.
18 Well, what is a reasonable doubt in the law? A reasonable
19 doubt is the kind of doubt that would cause a reasonable
20 person to hesitate to act. The State has the burden of
21 proving the Defendant guilty beyond a reasonable doubt. And
22 some of you may have served as jurors in civil cases where
23 you were told that it was only necessary to prove that a
24 fact is more likely true than not true, such as by the
25 greater weight or the preponderance of the evidence. In

1 criminal cases the State's proof must be more powerful than
2 that. It must be proof beyond a reasonable doubt. Proof
3 beyond a reasonable doubt is proof that leaves you firmly
4 convinced of the Defendant's guilt. Now, there are very few
5 things that we know in this world with absolutely certainty
6 and in criminal cases the law does not require proof that
7 overcomes every possible doubt. If, based on your
8 consideration of the evidence you're firmly convinced that
9 the Defendant is guilty of the crimes charged, you should
10 find him guilty. If, on the other hand, you think there's a
11 real possibility that the Defendant is not guilty, you
12 should give him the benefit of the doubt and find him not
13 guilty.

14 Now again, I'll remind you that during this trial you
15 and I have certain duties to perform, and as the trial judge
16 it's my responsibility to preside over the trial. I also
17 have the duty to rule on the admissibility of evidence
18 offered. You're to consider only the competent evidence
19 before you. So if there was any evidence or testimony
20 stricken from the record you have to disregard that
21 testimony because you're to consider only the testimony
22 which has been presented from the witness stand, as well as
23 any of the exhibits which have been made a part of the
24 record in this case. I have the additional duty to charge
25 the law, and as the trial judge I'm the sole judge of the

1 law. It's your duty to accept and apply the law as I stated
2 to you. So if you already have any idea as to what the law
3 is or what it should be and it does not agree with what I
4 tell you the law is, you must abandon this idea because
5 you're sworn to accept and apply the law as I state it to
6 you now. Again, you are the sole and exclusive judges of
7 the facts in this case. A trial judge cannot intimate,
8 state, comment on, or make any statement to a jury about the
9 facts. Since you, the jury, are the sole judges of the
10 facts, you're not to infer from what I said during the
11 progress of this trial in ruling upon the admissibility of
12 evidence or otherwise or anything that I say to you now
13 during the course of these instructions that I have any
14 opinion about the facts in this case. Ladies and gentlemen,
15 the law does not permit me to have any opinion about the
16 facts. This is a matter solely for you to determine. As
17 jurors it's your duty to determine the effect, value, weight
18 and truth of the evidence presented during trial.

19 Now, ladies and gentlemen, typically there are two
20 types of evidence presented during a trial. Direct evidence
21 and circumstantial evidence. Direct evidence directly
22 proves the existence of a fact and does not require
23 deduction, such as testimony by an eyewitness.
24 Circumstantial evidence is proof of a chain of facts and
25 circumstances indicating the existence of a fact. I

1 instruct you that crimes may be proven by circumstantial
2 evidence and the law makes no distinction between the weight
3 or value to be given to either direct or circumstantial
4 evidence. However, to the extent the State relies on
5 circumstantial evidence, all the circumstances must be
6 consistent with each other and when taken together point
7 conclusively to the guilt of the accused beyond a reasonable
8 doubt. If these circumstances merely portray the
9 Defendant's behavior as suspicious, then the prove has
10 failed. The State has the burden of proving the Defendant's
11 guilt beyond a reasonable doubt and this burden rests with
12 the State regardless of whether the State relies upon direct
13 evidence, circumstantial evidence or some combination of the
14 two.

15 Now, ladies and gentlemen, necessarily you have to
16 determine the credibility of witnesses who have testified in
17 this case and credibility simply means believability. It
18 becomes your duty as jurors to analyze and to evaluate the
19 evidence the evidence and determine which evidence convinces
20 you of its truth. Again, determining the believability of
21 witnesses who have testified in this case you may believe
22 one witness over several witnesses or several witnesses over
23 one witness. You may believe a part of the testimony of a
24 witness and reject the remaining part of the testimony of
25 that same witness. You may believe the testimony of a

1 witness in its entirety or reject the testimony of a witness
2 in its entirety. You may consider whether any witnesses
3 exhibited to you any interest, bias, prejudice or other
4 motive in this case, and you can also consider the
5 appearance and manner of a witness while on the witness
6 stand.

7 Now, ladies and gentlemen, I instruct you that a person
8 who has a past criminal record is competent to testify
9 during a trial. A past record does not affect the ability
10 of that witness to testify. The past record may only be
11 considered by you, if at all, in determining the witness'
12 believability. Remember, you're the sole judges of the
13 facts in this case and of the believability of any and all
14 of the witnesses who have testified.

15 Now, as I explained to you briefly yesterday, ladies
16 and gentlemen, normally the rules of evidence don't permit
17 someone to testify as to opinions or conclusions, but an
18 exception exists for this rule for expert witnesses. A
19 witness who by education and experience has become an expert
20 in some art, science, profession or calling may state an
21 opinion as to relevant and material matters in which the
22 witness claims to be an expert and they may also give the
23 reasons for their opinion. You should consider any expert
24 opinion received in evidence in this case, and like any
25 other evidence give it the weight you think it deserves. If

1 you decide the opinion of an expert is not based on
2 sufficient education and experience, or if you conclude that
3 the reasons given in support of the opinion are not sound,
4 or that the opinion is outweighed by other evidence, you may
5 disregard the opinion entirely. An expert witness'
6 testimony is to be given no greater weight than that of any
7 other witness simply because the witness is an expert.
8 Further, you're not required to accept an expert's opinion
9 even though it's not contradicted.

10 Ladies and gentlemen, I instruct you and emphasize that
11 the fact the Defendant did not testify is not a factor to be
12 considered by you in any way in your deliberation and in
13 your consideration on the question of the guilt or the
14 innocence of the Defendant. It must not be considered by
15 you in any manner whatsoever. A Defendant has the
16 constitutional right to remain silent, and the assertion of
17 this right must not be considered by you during your
18 deliberations. I repeat, under your oath, you're to draw no
19 conclusions whatsoever from the fact that the Defendant in
20 this case did not testify. The fact he did not testify
21 should not even be discussed in the jury room. As I've
22 stated to you, the burden of proof is on the State. The
23 Defendant is not required to prove his innocence and the
24 burden of proof remains on the State to prove guilt beyond a
25 reasonable doubt.

1 Now again, ladies and gentlemen, the Defendant in this
2 case is charged with trafficking in heroin. The State must
3 prove beyond a reasonable doubt that the Defendant knowingly
4 sold, manufactured, cultivated, delivered, purchased,
5 brought into the state or by the financial assistance or
6 otherwise aided, abetted, attempted or conspired to sell,
7 manufacture, cultivate, deliver, purchase or bring into the
8 state, or was knowingly and actual or constructive
9 possession or knowingly attempted to become in actual
10 constructive possession of heroin. The State must also
11 prove beyond a reasonable doubt that the amount of the
12 heroin was 14 grams or more, but less than 28 grams in
13 weight. The Defendant is also charged with distribution of
14 heroin. The State must prove beyond a reasonable doubt the
15 Defendant distributed heroin. Distribute means, again, to
16 deliver or to actually -- or constructively or attempt to
17 transfer a drug either by administering or dispensing.
18 Deliver means to actually constructively or attempt to
19 transfer a drug. A transfer can involve an exchange for
20 money, a barter or a gift. There does not have to be
21 anything given in exchange for the drugs for a transfer to
22 constitute distribution.

23 Now, ladies and gentlemen, the Defendant is also
24 charged with possession with intent to distribute oxycodone.
25 The State must prove beyond a reasonable doubt that the

1 Defendant possessed oxycodone with the intent to distribute
2 it. The State must also prove beyond a reasonable doubt
3 that the Defendant intended to distribute the oxycodone.
4 Distribute means to deliver either by administering or
5 dispensing a drug. Intent may be shown by acts and conduct
6 of the Defendant and other circumstances from which you may
7 naturally and reasonably infer intent. In determining
8 whether the Defendant had the intent to distribute the
9 oxycodone you may consider the circumstances surrounding the
10 Defendant's alleged possession. You may consider the amount
11 of the substance alleged to have been possessed, the manner
12 in which it was allegedly possessed, the place where it was
13 allegedly possessed, and other factors which you consider to
14 be important. You must find that the Defendant did not
15 intend to have the oxycodone solely for his use in order to
16 convict him for the offense of possession with intent to
17 distribute oxycodone.

18 Now, ladies and gentlemen, if you find that the State
19 has failed to prove beyond a reasonable doubt that the
20 Defendant is guilty of possession with intent to distribute
21 oxycodone you may consider whether the State has proven
22 beyond a reasonable doubt that the Defendant is guilty of
23 simple possession of oxycodone. Simple possession does not
24 require an intent to distribute the drug. Again, including
25 within the -- included within the offense of possession with

1 intent to distribute is this lesser included offense of
2 simple possession. Simple possession, again, doesn't
3 require an intention to distribute the oxycodone.

4 Now, the Defendant again -- if you find that the State
5 has failed to prove beyond a reasonable doubt the intent to
6 distribute aspect, in order to find the Defendant guilty of
7 simple possession of the oxycodone you must find that the
8 State has proven beyond a reasonable doubt that the
9 Defendant knowingly or intentionally possessed the
10 oxycodone. Knowingly means with knowledge consciously and
11 not accidentally. Intentionally means wilfully intending the
12 result which actually occurs, not accidentally or
13 involuntarily. Intent may be shown by acts and conduct of
14 the Defendant and other circumstances from which you may
15 naturally and reasonable infer intent.

16 Now, ladies and gentlemen, in terms of the possession
17 -- or, sorry. In terms of the trafficking heroin charge and
18 the possession with intent to distribute oxycodone and the
19 possession of oxycodone charges, I'm going to define with
20 you how the law defines possession. To prove possession,
21 ladies and gentlemen, the State must prove beyond a
22 reasonable doubt the Defendant had knowledge of, power over
23 and the intent to control the disposition or use of the
24 drugs involved. Possession may be either actual or
25 constructive. Actual possession means that the drugs

1 involved were in the actual physical custody of the
2 Defendant. Constructive possession means that the Defendant
3 had dominion and control or the right to exercise dominion
4 and control over either the drugs itself or the property
5 upon which the drugs were found. Mere presence I instruct
6 you -- I instruct you that mere presence at the scene where
7 the drugs were found is not enough to prove possession. The
8 Defendant's knowledge and possession may be inferred when a
9 substance is found on the property under the Defendant's
10 control. However, this inference is simply an evidentiary
11 fact to be taken into consideration by you along with the
12 other evidence and to be given the weight you think it
13 deserves. I instruct you, ladies and gentlemen, that two or
14 more persons may have joint possession of a drug.
15 Additionally, mere presence at the scene where the drugs
16 were found is not enough to prove possession. The
17 Defendant's knowledge and possession again may be inferred
18 when the substance is found on the property under the
19 Defendant's control. Again, this is merely an evidentiary
20 fact to be taken into consideration by you with the other
21 evidence and give it the weight you think it should deserve.

22 Now, ladies and gentlemen, there are six possible
23 verdicts in this case and I have prepared a verdict form
24 that kind of helps guide your deliberations. All right?
25 Madam Forelady this is -- Madam Forelady. Mr. Foreman, this

1 is pretty self-explanatory. All right? But I'm going to go
2 over it with you briefly. Basically the first statement
3 that I have here is, "We the jury in the above-captioned
4 case on the charge of trafficking in heroin unanimously find
5 Terrance Edward Stewart," and then there are two options,
6 either not guilty or guilty. The same is said for the
7 distribution of heroin charge. With regard to the
8 possession with intent to distribute oxycodone charge, the
9 same two options are given. However, if you find that the
10 State has failed to meet it's burden of proving the
11 Defendant's guilt beyond a reasonable doubt of that charge
12 you can consider the offense of possession of oxycodone.
13 Simple possession of oxycodone. That's kind of listed as
14 the next one there. Okay? So if you answer not guilty on
15 the third statement, you would then go down and consider the
16 fourth statement whether the State has met its burden of
17 proving guilt beyond a reasonable doubt on that particular
18 charge.

19 Now, ladies and gentlemen, again, your verdict has to
20 be unanimous. That means all 12 of you agree. In South
21 Carolina we do not have majority verdicts. I hope we don't
22 have majority verdicts ever. Other states do have majority
23 verdicts. Other states are doing it wrong. All right? So
24 all 12 of you must agree on the ultimate verdict in this
25 case. When you have agreed on the verdict, Mr. Foreman,

1 simply sign the verdict form, initial as appropriately, and
2 knock on the door and let the bailiff know. I'll get
3 everyone back in here. Okay?

4 Just a few other housekeeping matters, ladies and
5 gentlemen. First of all, please understand at this point in
6 time it's not possible to reopen the record and have
7 additional evidence come into -- come into the record for
8 your consideration. So if you have a factual question
9 you're probably going to have to rely upon what your
10 recollection of the facts are. You're going to have rely on
11 the testimony of the evidence presented thus far. However,
12 if you have any question about the law that applies, simply
13 write a note, give it to the bailiff, send it out, and if
14 you're having a question about the law I can probably help
15 you with that, better define something if you're struggling
16 with that. Okay? I can't help you, however, with factual
17 questions.

18 Additionally, the CD ROM will be sent back with you.
19 The CD ROM of those portions of the telephone calls that you
20 heard yesterday. You will have that available. I think
21 it's Exhibit No. 30. If you need to play that, or you want
22 to play that again, simply let the bailiff know. I'll send
23 a laptop into the jury room. It will probably be my clerk's
24 or maybe an investigator's or somebodies laptop and you can
25 play that. I'm sure that one of you all can figure out how

1 to pop it in and play it. I have to get my law clerk to do
2 that sometimes for me, but I'm sure one of you all know how
3 to do that. Obviously when a laptop goes back there just
4 use it to play the recording. Don't go Google or looking at
5 other stuff on that laptop. All right?

6 I'm sometimes asked by a jury how long you're required
7 to deliberate. I know it's about 10 minutes of 5:00 at this
8 point in time. Under the law, ladies and gentlemen, there
9 is no minimum or maximum about of time that you have to
10 deliberate. If you deliberate five minutes, 15 minutes,
11 five hours, five days, five weeks, I hope it's not that
12 long, that's entirely up to you. Okay? Additionally, once
13 the case is submitted to you we are now officially on your
14 time. So if you decide that you want to take a break for
15 the evening, maybe some of you all have something you have
16 to get to tonight and you want to take a break, that's
17 perfectly fine. We'll come back tomorrow morning whenever
18 you want us to come back. All right? So if you decide
19 because you have some obligation or something you got to do
20 that you got to take a break, we are 100 percent on your
21 timeframe tonight. All right?

22 Now, ladies and gentlemen, I'll remind you -- oh, one
23 other quick housekeeping matter. If you do communicate with
24 the Court about any issue never give me any numerical
25 division between the jurors. Okay? I don't want to know if

1 you're seven/five, six/six, 11 to one. I don't want to
2 receive that information at any point in time. So make sure
3 that that kind of information is not conveyed to me.

4 I do remind you that you have been chosen as fair and
5 impartial individuals who have no interest in the outcome of
6 this case. In other words, ladies and gentlemen, you've got
7 no friends to reward, you have no enemies to punish. All
8 right? Your verdict is to render -- your job is to render
9 a verdict based solely on the evidence in the law as
10 presented.

11 Now, I'm going to ask that you return to the jury room
12 for just a moment. Your cue to begin your deliberations
13 will be receipt of the verdict form, these instructions, and
14 the other exhibits which have been introduced into the
15 record in this particular case. We will be sending the
16 actual narcotics back there, ladies and gentlemen, but
17 please do leave it in the bag. Okay? Don't open the bag
18 up. All right? I shouldn't have to say that. I now say
19 that because of a case I tried about three years ago. All
20 right? Don't open the drugs up, please. All right?

21 You know what your cue is to begin your deliberations.
22 Alternates, I'm going to ask that you all go back with them
23 one more time. We're going to make sure all the evidence is
24 put together, that I've covered all the instructions for
25 you. You know what your cue is to begin your deliberations.

1 Adjourn to the back but don't start talking yet. We'll have
2 this to you in a few moments. Thank you.

3 (Whereupon, the jury exited the courtroom to begin
4 deliberations at 5:00 p.m.)

5 THE COURT: Additions from the State?

6 MR. SCOTT: No, Your Honor.

7 THE COURT: Except for the things that you already put
8 on the record, Mr. Wise?

9 MR. WISE: Well, I thought we were going to do a little
10 different on dominion and control can be shown by -- excuse
11 me. That possession can be shown by dominion and control
12 over property where drugs are found. I didn't hear the
13 intent charge, in that aspect of it. But when it was
14 earlier. It just seemed to have gotten lost by the time you
15 got to that. And let me, of course, object to the infer
16 possession from drugs found on the property under the
17 Defendant's control, and then, of course, not charging
18 possession with intent to distribute which we said earlier.

19 THE COURT: I think I accurately defined -- I'm looking
20 back over my instruction. I think I touched on that first
21 point adequately. Unless the State wants to --

22 MR. SCOTT: No, Your Honor. I'm just -- I've been
23 sitting a while.

24 MR. WISE: Let me suggest one thing. I always like to
25 have 12 copies of the jury instructions went back -- go

1 back. But why don't we just compromise and send three more
2 copies now.

3 THE COURT: Because I basically told them if they
4 wanted additional copies to let me know and I trust that
5 they will do so.

6 MR. WISE: All right.

7 THE COURT: Very good. I need to modify these for one
8 little typo and my clerk's going to do that. You all get
9 good on the evidence and we will submit those for the jury.

10 (Whereupon, a recess was held for deliberations from
11 5:00 p.m. to 5:31 p.m.)

12 THE COURT: We'll go back on the record. The record
13 should reflect the Defendant is present. I'm told that the
14 jury has reached a verdict. Anything before the jury is
15 received back into the courtroom from the State?

16 MR. SCOTT: No, Your Honor.

17 THE COURT: From the Defense? Nothing from the Defense
18 --

19 MR. WISE: Nothing further.

20 THE COURT: -- before bringing them back? Let's have
21 them, please.

22 (Whereupon, the jury entered the courtroom at 5:31
23 p.m.)

24 THE COURT: The record will reflect that the jury is
25 back and seated. Mr. Foreman, I'm told the jury has reached

1 a verdict; is that correct?

2 MR. FOREMAN: Yes, it is, Your Honor.

3 THE COURT: All 12 of you agree as to the verdict?

4 MR. FOREMAN: Yes.

5 THE COURT: If you would, hand the verdict to the
6 bailiff. Madam Clerk, if you'll publish, please.

7 MADAM CLERK: Your Honor, in the case of the State of
8 State of South Carolina vs. Terrance Edward Stewart, case
9 number 2015-GS-30-957, 958 and 959, we the jury in the
10 above-captioned case on the charge of trafficking in heroin
11 unanimously find Terrance Edward Stewart guilty. We further
12 find that on the charge of distribution of heroin
13 unanimously find Terrance Edward Stewart guilty. We further
14 find that on the charges of possession with intent to
15 distribute oxycodone not guilty. Though we do not find the
16 Defendant guilty beyond a reasonable doubt of possession
17 with intent to distribute oxycodone, we unanimously find the
18 Defendant guilty beyond a reasonable doubt of simple
19 possession of a controlled substance, oxycodone and say
20 yes." Signed by the Foreperson, Robert Ferguson, December
21 14th, 2016, Laurens, South Carolina.

22 Ladies and gentlemen, if that be your verdict please
23 indicate by raising your right hands.

24 (Whereupon, the jury raised their hands.)

25 MADAM CLERK: Thank you.

1 THE COURT: The record will reflect all 12 jurors did
2 raise their right hand. Anything prior to discharge of the
3 jury from the State?

4 MR. SCOTT: No, Your Honor.

5 THE COURT: From the Defense?

6 MR. WISE: Nothing from the Defense.

7 THE COURT: Ladies and gentlemen of the jury, I want to
8 thank you for your jury service here this week and your
9 attention to this particular case. I again apologize for
10 the inconvenience that has been caused to you. You will
11 receive some measure of remuneration for your jury service.
12 It's \$20 a day, so a check for \$60 will be mailed to you
13 sometime tomorrow. Okay? Please, as I kind of explained
14 the other day, don't take this as payment for your service.
15 Just accept it as maybe a tax refund for your property taxes
16 here in Laurens County, because obviously you do this -- or
17 you have to serve as a juror because it's a public
18 obligation. It's something that you have a duty to do as a
19 citizen, like voting or paying taxes. So accept the money
20 not as payment, because it's not enough to pay you for what
21 you've been through the last couple of days. Accept it as
22 more of a gift.

23 You'll also receive a letter from me thanking you again
24 for your jury service. If there's anything you liked about
25 jury service, feel free to let me know. If there's anything

1 you do not like about jury service definitely let me know.
2 Okay? Because I've actually change the way the Court
3 operates based on feedback from people who have served as
4 jurors in my Court. All right? You are now free to discuss
5 this case with anyone that you choose to. Friends, family
6 members, the attorneys. Just as a general rule, what takes
7 place in the jury room, what's discussed in the jury room,
8 like Vegas, stays in the jury room. Okay? That's just a
9 general rule. But if people want feedback on how their
10 presentation went, how you felt they did as an attorney or
11 what have you, that's perfectly fair game. All right?

12 With that the only thing that remains to be done this
13 evening is a few pretrial motions and sentencing. If you
14 want to stick around for sentencing that's perfectly fine.
15 I'll need to ask that you -- just for security purposes,
16 that you kind of go out and come back in and sit on that
17 back row there. Okay? Over on this side. If you don't
18 want to stay for jury service, that's perfectly fine.
19 You're free to leave. So whether you choose to leave or
20 choose to stay is your decision to make.

21 With that, I will release you for the rest of the week,
22 again, with the Court's thanks and appreciation. You are
23 all free to go with the exception of the Foreman. I need
24 you to stay and actually sign your verdict on the
25 indictments. Okay? So the rest of you are free to go.

1 Sir, I need you to stick around for two seconds. All right.

2 (Whereupon, the jury was released at 5:40 p.m.)

3 THE COURT: We'll give it about five minutes if you
4 want to work up some sentencing sheets, and we'll see if any
5 of the other jurors want to join us. Okay? We're at ease
6 for five minutes.

7 (Whereupon, a recess was held from 5:40 p.m. to 5:47
8 p.m.)

9 THE COURT: If we may, we'll go back on the record in
10 the State vs. Mr. Stewart. Mr. Wise, of course you renew
11 all pretrial motions and motions made during the course of
12 trial, and you do move for a new trial, correct?

13 MR. WISE: That's correct. And I guess you need to
14 specifically rule on the pretrial motion about the failure
15 to give a search warrant to the person searching the house
16 and the failure -- and the fact that you don't go by what
17 the judge -- you go by what the judge heard and not what the
18 officer said to the judge in issuing the magistrate's
19 warrant. And I'm thinking in the meantime you've had an
20 opportunity to review the record also.

21 THE COURT: I did, and I believe my clerk handed that
22 back to you, Mr. Wise. The prior rulings of Judge Hocker at
23 the suppression hearing which took place roughly a year ago,
24 the Court will not change those. This Court will not change
25 his rulings. They stand. Additionally, with regard to the

1 search warrant issue, I've researched that and you are
2 correct in what the law states as far as a copy being given
3 to the owner of the home or the occupant of the home, but I
4 can find no law that says that the failure to do so is fatal
5 to a prosecution. So that appears to be a novel issues, at
6 least under South Carolina law. I'll deny your motion for
7 dismissal based on failure to give that search warrant or a
8 copy of that search warrant to them. And for the reasons
9 stated earlier yesterday when we addressed the question of
10 the magistrate and what was issued, or what was said to the
11 magistrate by the people who testified in front of Judge
12 Hocker, I also find that it's -- there was enough evidence
13 presented at that pretrial suppression hearing and that it
14 was not necessary that the magistrate retain an independent
15 recollection of what was related to the magistrate.

16 Anything further from the Defense?

17 MR. WISE: I think that covers it all.

18 THE COURT: Very good. Solicitor, at this point can
19 you inform the Court of Mr. Stewart's prior criminal
20 history, and I'm happy to hear anything else that you may
21 want to present to the Court.

22 MR. SCOTT: I want to direct my voice so the jury can
23 hear. They're here and I think it's -- I appreciate their
24 service. But an extensive drug record, Your Honor. He's
25 got back in 2013 the least of his troubles were two simple

1 possession marijuana. He's from Detroit, so he's got some
2 out of state record, too. In Michigan in 2005 he pled
3 guilty to a weapons charge. He's got a possession. It
4 shows up as either heroin or cocaine in Michigan, found
5 guilty by a judge. And the year of that -- these things are
6 hard to read. 1996. He also has a weapons charge from
7 Michigan that same year. He's got a controlled substance
8 charge again, either cocaine or heroin, and that's out of
9 Michigan, and it looks like 1998 he got that. Bear with me,
10 Your Honor.

11 THE COURT: Yes, sir.

12 MR. SCOTT: These are other states. The -- what state
13 is this. Illinois he's got a possession controlled
14 substance, and the year is '08. It's out of Illinois. I
15 think that's the extent. Noteworthy -- the most noteworthy,
16 when he committed this crime he had pled in Federal Court to
17 a drug offense. He was out on house arrest. In Federal
18 Court you plea and then you await sentencing at a later
19 date. While he's on house arrest awaiting sentencing,
20 that's when he gets caught with the heroin charge here in
21 Laurens County. So despite facing a bunch of federal time,
22 he's still doing the same thing in Laurens County. And that
23 -- I've got a certified copy of that conviction here, Your
24 Honor. It is a drug offense, and he was sentenced to 144
25 months on that. It's a heroin offense. The actual indicted

1 charge escapes me. But I'll pass that up to Your Honor. He
2 has a Greenville possession with intent to distribute
3 methamphetamine out of Greenville County, and date of
4 offense is 2013. It looks like he pled to this one July
5 28th, 2015. So again, all these are third and higher
6 offenses.

7 Your Honor, I've got sentencing sheets that have the
8 trafficking, and that sort of -- it doesn't matter on that
9 particular weight what offense it is, but I do have the
10 distribution listed as a third offense and I have the
11 possession of a schedule two controlled substance listed as
12 the third offense, Your Honor.

13 THE COURT: In that case the distribution of heroin
14 third would be between 10 years and 30 years, am I correct?

15 MR. SCOTT: It is, Your Honor. And I've listed the
16 penalty ranges on the sentencing sheets.

17 THE COURT: The possession of the oxy would be up to
18 five years then, correct -

19 MR. SCOTT: Yes.

20 THE COURT: -- and the other one was 25?

21 MR. SCOTT: Yes, sir.

22 THE COURT: And a fine, I believe, of \$100,000. Mr.
23 Wise, is he on probation out of Greenville still? Is that
24 something -- we don't have a probation agent here, but
25 obviously -- he is on probation? We may simply have to

1 address that at a later point then.

2 MR. WISE: Right.

3 THE COURT: Because I don't have an agent here. I
4 apologize. Mr. Wise, I'm happy to certainly entertain
5 anything that you or your client or any member of his family
6 may want to say.

7 MR. WISE: Well, I understand that under the law your
8 hands are pretty much tied really what you can do in this
9 case. I just want to tell the Court this. I got a call, I
10 think, from Terrance's mother who is sitting here with his
11 brother in the front row, been here for the whole trial,
12 about coming over and seeing Terrance. I didn't know
13 anything about the case. Never have met him before. But I
14 go over to Laurens Detention Center and sit down and start
15 talking to him and I'm really sitting there wondering do I
16 really want to represent this guy, until I got to know him.
17 I wish I had more clients who were as detailed about looking
18 at the evidence and going over the evidence with the lawyers
19 as Terrance Stewart is. I mean, he goes over it with a fine
20 tooth comb to say the least. He -- frankly he could have
21 had a career in some other things. He is certainly a very
22 intelligent man. No question about it. He has two
23 children, and frankly I've learned he cares deeply about
24 them. Unfortunately, you know, you make judgments that
25 interfere with that. While he was -- as the Solicitor said,

1 while awaiting sentencing on Federal Court he caught up with
2 these charges. He went from about, I think, 72 months to 90
3 months range on the federal charge to ending up getting 12
4 years. And that's -- of course, the Court's aware that's
5 one of the issues we have in this case is when that can be
6 -- what impact that has on the State charges. So he got
7 punished pretty significantly in the Federal Court, too. I
8 would suggest to the court that, you know, simply run the
9 mandatory minimum, which is 25 years, concurrent with the
10 federal sentence. If we win some issues on appeal, fine.
11 If we don't, then obviously he's got a long, long time to
12 serve, and that's not an insignificant sentence. He will --
13 if all of it sticks he, of course, will never see his
14 children grow up outside of their coming to visit him
15 occasionally. He, you know -- I wish he had made some other
16 choices in life. Unfortunately he didn't. But like I say,
17 I've got to really know him probably better than a lot of
18 clients I know. And he is a gentle man. He is not -- I
19 mean, he is not a -- you know, he's a big man, but he
20 certainly is -- he's got a good heart and he's a very gentle
21 man. I just wish he had made some other choices frankly,
22 you know. He was and has been and will be very helpful in
23 working on his case. That's one thing that surprised me
24 about him. The detail with which he got involved.

25 THE COURT: Thank you, sir. Mr. Stewart, is there

1 anything you want to say, sir?

2 THE DEFENDANT: I just -- I apologize for the
3 situation, but I just feel like police officers get to do
4 whatever they want whenever they want. It doesn't even
5 matter. I shouldn't have went to trial. I should have just
6 took what was offered to me.

7 THE COURT: I understand.

8 THE DEFENDANT: I'm sorry I put my mother through this
9 and having her see me go through this again. I should have
10 just took what they offered.

11 THE COURT: I understand, sir. He has been
12 continuously in jail since January 22, 2015, no?

13 MR. WISE: That is correct. And I may add, that time
14 he's been in jail here does not count toward the federal.

15 THE COURT: Correct. You are correct. Anything
16 further from anyone, involved in this before sentence is
17 pronounced?

18 MR. SCOTT: Nothing from the State, Your Honor.

19 SENTENCING

20 THE COURT: Mr. Stewart, I certainly regret having to
21 make your acquaintance under these circumstances, and Mr.
22 Wise is not one to offer idle praise and I have no doubt
23 that you have many good and positive and fine qualities
24 about you. And certainly your love of your kids I'm sure is
25 one of those things, Mr. Stewart.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And under federal law it looks like you're
3 doing 12 years non-parole. Mr. Wise is correct that my
4 hands are pretty much tied here. Understand, Mr. Stewart,
5 one of the reasons though that the law is so severe for
6 repeat drug dealers is that it's a problem out there. All
7 right? It's a problem out there. And I know that you were
8 here when we did some pretrial motions. There was allusion
9 to the possibility that some of the stuff that you sold made
10 a lot of people sick up in Grey Court and that's how you --
11 that's how they came to look at you, or start looking your
12 way while you were out on house arrest on these federal
13 charges. The reason the penalty is so harsh, Mr. Stewart,
14 is because you've been involved with drugs for a long, long,
15 long time. Sooner or later the General Assembly -- the
16 General Assembly has decided that sooner or later you've
17 just got to go to prison for an incredibly long period of
18 time. And that's what the Court has to do. The Court's
19 hands are tied. And in the for whatever it's worth
20 category, I don't necessarily take issue with what the
21 General Assembly has passed down in the way of penalty in
22 this case because, Mr. Stewart, you've had plenty of chances
23 to straighten yourself out. I wish you had done it much
24 sooner and I wish I had never met you under these
25 circumstances, sir. I truly mean that.

1 On the trafficking in heroin charge, the sentence of
2 the Court is that you be committed to the Department of
3 Corrections for 25 years and ordered to pay a fine of
4 \$100,000. You'll get credit for time in jail since January
5 the 22nd of 2015. On the distribution of heroin charge
6 sentence is 10 years. On the possession of a -- the
7 possession of schedule 1B LSD or schedule two offense third,
8 or subsequent sentence is five years. All these sentences
9 will run concurrently with each other. And I'm giving you
10 credit for the time that you served on each and every
11 indictment.

12 Mr. Stewart, you have 10 days to file notice of intent
13 to appeal and Mr. Wise will do that on your behalf. Okay?
14 I'm sure he'll automatically do that.

15 Anything else, Mr. Wise?

16 MR. WISE: Just one question. First of all, we
17 understand that the feds may now pick him up in three or
18 four days and I was wondering if he could be ordered held
19 here instead of going down to SCDC for three or four days
20 while they pick him up. Or at least wait a week to see if
21 they're going to do it. I'll get in touch with them.

22 THE COURT: I really try to avoid getting involved with
23 the internal protocols of who gets moved where and when. If
24 they're inclined to do it, I mean, that's certainly at the
25 discretion of the jailer. But at the same time, if -- and

1 there's no harm in asking, sir. The worse they can say is
2 no, Mr. Wise. Anything further?

3 MR. WISE: Well, he wants me to clarify one thing. I
4 think I'm correct on this. The state charge will be
5 concurrent with the federal charge?

6 THE COURT: I don't even know if I can do that.

7 MR. WISE: You actually can. And I think by not making
8 it consecutive it would be concurrent, as a matter of law.

9 THE COURT: The intention of the Court is that this
10 sentence run concurrent with everything. I mean, he's doing
11 25 years under 85 percent. He may never see the light of
12 day anyway. This may very well be -- for a man of his age,
13 this may very well be a life sentence. I think that by
14 saying it's concurrent anyway with these other crimes it's
15 --

16 MR. WISE: I think what -- as I understand the rule,
17 the feds will not run it concurrent with a state sentence.

18 THE COURT: Well, 25 years under 85 percent and, you
19 know, he would -- he will be 60 plus when he gets out on
20 this charge. So I've noted concurrent. The record is
21 closed. Good luck.

22 MR. WISE: Thank you.

23 THE DEFENDANT: Thank you, Your Honor.

24 - - - END OF TRANSCRIPT OF RECORD - - -

25

Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete partial transcript of the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 13th and 14th day of December, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR

Circuit Court Reporter

April 13, 2017

STATE OF SOUTH CAROLINA

County/Municipality of LAURENS

SEARCH WARRANT

Date 01/21/2014

Officer SGT STEVEN ROWE SWEAT

000000000604

Date Printed: 01/21/2015 07:15:42 PM

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF LAURENS

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A RESIDENCE DESCRIBED AS A SINGLE WIDE MOBILE HOME OFF WHITE IN COLOR WITH DARK RED SHUTTERS AND WHITE UNDER PINNING WITH SMALL OUTBUILDING LOCATED AT THE BACK OF RESIDENCE. RESIDENCE IS DESIGNATED AS #35 RUE CIRCLE WHICH IS OFF SULLIVAN ROAD FOUNTAIN INN, S.C. IN THE COUNTY OF LAURENS. THE SEARCH IS TO INCLUDE THE RESIDENCE, ANY AND ALL PERSONS, OUTBUILDINGS, AND VEHICLES LOCATED UPON THE PREMISES.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

HEROIN, MORPHINE, METHAMPHETAMINE AND ANY OTHER CONTROLLED SUBSTANCES INCLUDING ANY AND ALL ITEMS USED IN THE DISTRIBUTION, SALE, OR DISPENSE OF CONTROLLED SUBSTANCES INCLUDING BUT NOT LIMITED TO PLASTIC BAGS, GRINDERS, SCALES, TRACE EVIDENCE, SEROLOGICAL EVIDENCE, MONEY, DOCUMENTS, CELL PHONES, ECT.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

ANY LAURENS COUNTY MAGISTRATE

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Gray Court, S.C.

January 21, 2015

Stephen L. Tucker (I.S.)
Signature of Judge

SCAA/513
(1-78)

Date Printed: 01/21/2015 07:15:42 PM

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

AFFIDAVIT

Personally appeared before me, one DEPUTY S R SWEAT
who, being duly sworn, says that there is probably cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

HEROIN, MORPHINE, METHAMPHETAMINE AND ANY OTHER CONTROLLED SUBSTANCES INCLUDING ANY AND ALL ITEMS USED IN THE
DISTRIBUTION, SALE, OR DISPENSE OF CONTROLLED SUBSTANCES INCLUDING BUT NOT LIMITED TO PLASTIC BAGS, GRINDERS,
SCALES, TRACE EVIDENCE, SEROLOGICAL EVIDENCE, MONEY, DOCUMENTS, CELL PHONES, ECT.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A RESIDENCE DESCRIBED AS A SINGLE WIDE MOBILE HOME OFF WHITE IN COLOR WITH DARK RED SHUTTERS AND WHITE UNDER PINNING
WITH SMALL OUTBUILDING LOCATED AT THE BACK OF RESIDENCE. RESIDENCE IS DESIGNATED AS #35 HUE CIRCLE WHICH IS OFF
SULLIVAN ROAD FOUNTAIN INN, S.C. IN THE COUNTY OF LAURENS. THE SEARCH IS TO INCLUDE THE RESIDENCE, ANY AND ALL
PERSONS, OUTBUILDINGS, AND VEHICLES LOCATED UPON THE PREMISES.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

A CONFIDENTIAL INFORMANT WORKING WITH THE LAURENS COUNTY SHERIFF'S OFFICE IN AN UNDERCOVER CAPACITY HAS GIVEN
INFORMATION TO LAW ENFORCEMENT PERTAINING TO THE ILLEGAL SALE AND STORAGE OF ILLEGAL NARCOTICS AT THE ABOVE
DESCRIBED PREMISES. OFFICERS HAVE CORROBORATED THIS INFORMATION DURING RECENT NARCOTICS OPERATIONS AND OTHER
SEARCH WARRANTS AT THIS LOCATION IN THE PAST. THIS INFORMATION OBTAINED WITHIN THE LAST 72 HOURS OF THE ISSUANCE OF
THIS WARRANT.

Sworn to and Subscribed before me

this 21st day of January, 2015.

Stephen L. Tucker
Signature of Judge

(L.S.)

[Signature]
Affiant

Address 216 W MAIN STREET

LAURENS SC 29360

Phone 864-984-4967

Date Printed: 01/21/2015 07:15:42 PM

RETURN

I received the attached Search Warrant _____, and have executed it as follows:

On 1-22-2015 at 7:20 o'clock Am, I searched

(the person) described in the warrant and (the premises)

I left a copy of the warrant with Terrance Silenup

Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1- plastic bag w/ off white powder substance (Richardson/Fridge)
1- Sig Sauer mini SP2740 with SP 10035725, 357 smg w/ 10 rds (J. P. Eden/Hallway)
1- digital scales (microphone Richardson)
7- cell phones
55- pills marked K-18 (Richardson/Fridge)
green leafy substance (garage)
2- Rev 357 mg bullets (kitchen shelves)
1 crown royal bag w/ marijuana residue
1 black in color Sony camera (bedroom)
Assorted PVC pipes used to store marijuana (garage)
metal pipes used to store marijuana (garage)
bandolier w/ assorted Stetson shells
1 box 357 bullets (garage)
magnifying glass w/ 45 w/ bullet (garage)
\$7928 in cash

1987 Corvete vin # 1G4Y2266V5103637

2011 Suzuki vin # JS1GN7FAYB2102864

2006 Ducati vin # 220M1XRGV89B089659

This inventory was made in the presence of Sgt. M. Veal, Sgt. S. Sweet
AND others

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 202

day of January 2015
Lawrence A. Gade (L.S.)
Signature of Judge

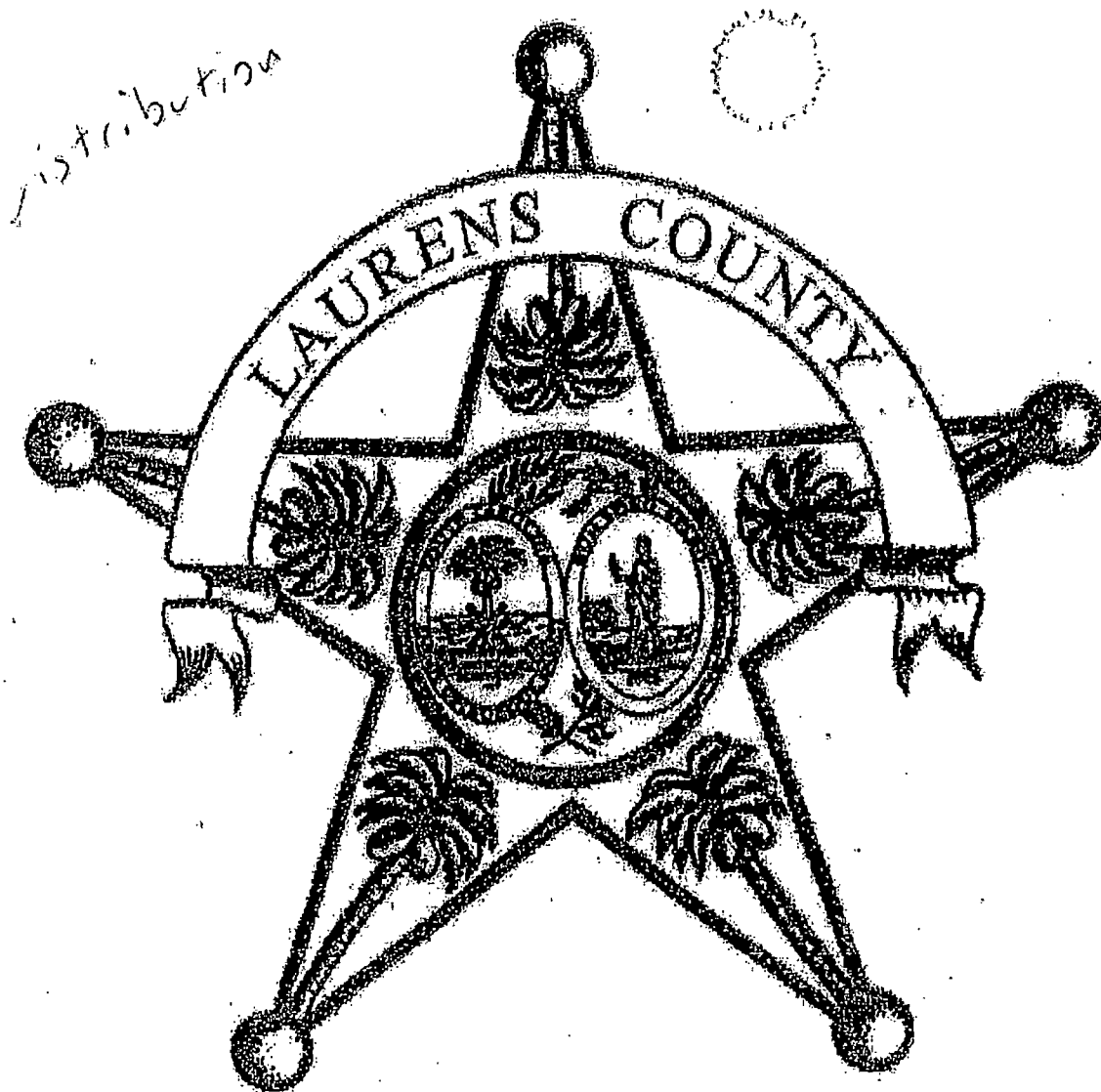
1:37 pm

Brian E. Briefs
(Signature of Officer Executing Warrant)

Date Printed: 01/21/2015 07:15:42 PM

TERRANCE EDWARD STEWART

OFFICE OF THE SHERIFF LAURENS COUNTY, SOUTH CAROLINA



INVESTIGATING OFFICER: SGT. S. SWEAT/SGT. M. VEAL

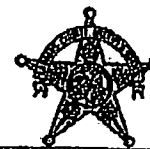
CASE NUMBER: 15000202

LCSO INV FORM 001
REVISED 11/2005



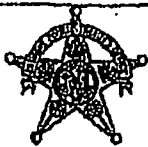
LAURENS COUNTY SHERIFF'S OFFICE

TABLE OF CONTENTS



INCIDENT NUMBER: 15000202

X	CASE SUMMARY REPORT
X	INCIDENT REPORT
X	SUPPLEMENTAL INCIDENT REPORT
N/A	VICTIM RIGHTS / NOTIFICATION FORM
N/A	STATEMENT (VICTIM)
N/A	STATEMENT (DEFENDANT)
N/A	STATEMENT (WITNESS)
N/A	COPY OF SEARCH WARRANT
N/A	COPY OF TELEPHONE RECORDS
N/A	COPY OF POWER BILL
N/A	COPY OF MEDICAL RECORDS
X	COPY OF LAB REPORTS
N/A	COPY OF DATAMASTER REPORT
N/A	COPY OF AUTOPSY REPORT
X	COPY OF PHOTOGRAPHS
X	COPY OF ARREST WARRANT
X	BOOKING INFORMATION
N/A	COPY OF DRIVER'S RECORD
X	COPY OF CRIMINAL HISTORY
X	MISC. PAPER WORK

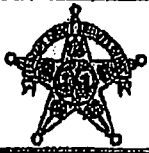


LAURENS COUNTY SHERIFF'S OFFICE

SUMMARY REPORT

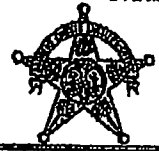


CASE INFORMATION	CASE NUMBER:	15000202	INCIDENT DATE:	January 21, 2015
	COMPLAINANT:	SGT. SWEAT	COMPLAINANT PHONE:	864-984-4967
COMPLAINANT INFORMATION	ADDRESS:	216 W MAIN STREET LAURENS, SC 29360		
	VICTIM # 1:	SOCIETY	VICTIM # 1 PHONE #:	864-984-4967
VICTIM INFORMATION	ADDRESS:	216 W MAIN STREET LAURENS, SC 29360		
	VICTIM # 2:	N/A	VICTIM # 2 PHONE #:	
	ADDRESS:			
DEFENDANT INFORMATION	SUBJECT:	TERRANCE EDWARD STEWART	SUBJECT PHONE #:	
	ADDRESS:			
CRIMINAL CHARGES	CHARGE # 1:	DISTRIBUTION OF HEROIN		
	CHARGE # 2:			
	CHARGE # 3:			
	CHARGE # 4:			
CO-DEFENDANT INFORMATION	SUBJECT # 2:			
	SUBJECT # 3:			
	SUBJECT # 4:			
EVIDENCE INFORMATION LISTED	SEE EVIDENCE SHEET LISTED AT BACK OF PACKET			
	PHOTOGRAPHS			
WITNESS INFORMATION	WITNESS # 1:	SGT. VEAL	WITNESS # 1 PHONE #:	864-984-4967
	ADDRESS:	216 W MAIN STREET LAURENS, SC 29360		
	WITNESS # 2:		WITNESS # 2 PHONE #:	
	ADDRESS:			
	WITNESS # 3:		WITNESS # 3 PHONE #:	
	ADDRESS:			
	WITNESS # 4:		WITNESS # 4 PHONE #:	
	ADDRESS:			



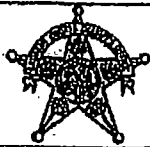
LAURENS COUNTY SHERIFF'S OFFICE

SYNOPSIS



INCIDENT NUMBER: 15000202

ON JANUARY 21ST, 2015 IN THE COUNTY OF LAURENS ONE TERRNACE EDWARD STEWART DID DISTRIBUTE A QUANTITY OF HEROIN TO A CONFIDENTIAL INFORMANT OF THE LAURENS COUNTY SHERIFF'S OFFICE.



LAURENS COUNTY SHERIFF'S OFFICE

Deputy Input In Criminal Case



INCIDENT NUMBER: 15000202

DEPUTY: SGT. S. SWEAT/SGT. M. VEAL
DEFENDANT: TERRANCE EDWARD STEWART
CHARGE # 1: DISTRIBUTION OF HEROIN
CHARGE # 2:
CHARGE # 3:
CHARGE # 4:
WARRANT/TICKET #: 2015A3010100132

THE SOLICITOR HAS THE RESPONSIBILITY FOR THE PROPER DISPOSITION OF EACH AND EVERY CASE. YOUR INPUT IS VERY IMPORTANT TO THE SOLICITOR, AND HIS STAFF, IN CARRYING OUT THIS RESPONSIBILITY AND MAKING THE FINAL DECISION ABOUT THE DISPOSITION. PLEASE COMPLETE THIS FORM AND PLACE IT IN THE CASE FILE. PLEASE FEEL FREE TO CALL SOLICITOR JERRY PEACE AT (864) 984-2202, IF YOU HAVE ANY QUESTIONS.

SOLICITOR JERRY PEACE

- ☒ I WISHED TO BE NOTIFIED FOR ANY PLEA.
MY TELEPHONE NUMBERS ARE: _____ (HOME)
_____ (WORK)
_____ (MOBILE)
- ☐ I RECOMMEND THAT YOU USE YOUR DISCRETION IN THE DISPOSITION OF THESE CHARGES.
- ☐ I RECOMMEND OR HAVE NO OPPOSITION TO THE FOLLOWING:
- DISMISSAL: ☐
PTI: ☐
PROBATION: ☐
- ☒ I RECOMMEND INCARCERATION BECAUSE:

SEE CRIMINAL HISTORY

ADDITIONAL INFORMATION

ARE THERE ANY CO-DEFENDANTS? YES ☐ NO ☒
IF YES, PLEASE GIVE NAMES: _____

ARE YOU CURRENTLY WORKING OR PLANNING TO WORK THIS DEFENDANT? YES ☐ NO ☒

IS THE CI AVAILABLE FOR COURT? YES ☐ NO ☐

OTHER COMMENTS

THE FBI MAY BE ADOPTING THIS CASE, THE NARCOTICS HAVE BEEN SENT TO SLED AND ARE IN ILAB.

AGENCY I.D.

LAURENS COUNTY SHERIFF'S OFFICE

BC0300000

INCIDENT REPORT

1,5,0,0,0,2,0,2

INQ. SENT

EVENT	INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM								
	1. 35A - DISTRIBUTION OF HEROIN				☒ YES ☐ NO	☐ YES ☐ NO	20		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☒ Soc/Publi ☐ Other ☐ Unknown ☐ Police Off.								
	2.				☐ YES ☐ NO	☐ YES ☐ NO											
VICTIM	3.				☐ YES ☐ NO	☐ YES ☐ NO											
	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE										
	01/21/2015 1200 TO 01/21/2015 2100				28644												
SUBJECT	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE					
	OK																
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.									
NARRATIVE	VICTIM'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE	EVENING PHONE					
	SOCIETY/PUBLIC																
	HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																
ADDITIONAL	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.									
	VISIBLE INJURY (VICT. 1) ☐ YES ☒ NO EXPLAIN -																
	VICTIM (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK. DRUGS: ☐ YES ☒ NO ☐ UNK.																
ADDITIONAL	☐ TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED				J - This Jurisdiction S - State O - Out of State U - Unknown												
	☒ SUSPECT				SUBJECT NAME (LAST, FIRST, MIDDLE)				RACE	SEX	AGE	ETH	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
	☐ RUNAWAY				STEWART, TERRANCE EDWARD							N		6-1			
ADDITIONAL	☐ WANTED				FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.												
	☒ WARRANT				ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.					
	☒ ARREST																
ADDITIONAL	☒ JAIL				SUBJECT (NO. 1) USING: ALCOHOL: ☐ YES ☒ NO ☐ UNK.				ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO		DATE/TIME OF OFFENSE		DATE/TIME OF ARREST				
	☐ SUMMONS				DRUGS: ☐ YES ☒ NO ☐ UNK. TYPE:				TOTAL # ARRESTED 1		01/21/2015 1200		01/22/2015 0848				

Offenses:

DISTRIBUTION OF HEROIN

ON 01/20/16 I RECEIVED INFORMATION THAT INVOLVED MULTIPLE INCIDENTS THAT OCCURRED IN FOUNTAIN INN POLICE DEPARTMENT'S JURISDICTION AND SIMPSONVILLE POLICE DEPARTMENT'S JURISDICTION WHERE HEROIN OVERDOSES OCCURRED AS MULTIPLE CITIZENS NEARLY DIED FROM CONSUMPTION OF THE DRUG. INFORMATION WAS ALSO RECEIVED THAT AN INDIVIDUAL WITH THE ALIAS OF "CHEDDAR" WAS DISTRIBUTING HEROIN, AND THAT HE STAYED NEAR THE HAPPY VALLEY ROAD AREA OF LAURENS COUNTY. "CHEDDAR" WAS LEARNED TO BE TERRANCE EDWARD STEWART BY OBTAINING RECORDS FROM GREENVILLE CITY POLICE DEPARTMENT. THIS SUBJECT ALSO WAS FOUND TO RESIDE AT THE ABOVE LOCATION.

ON ABOVE DATE AND TIMES DEPUTIES WITH THE LAURENS COUNTY SHERIFFS OFFICE MET WITH A CONFIDENTIAL INFORMANT IN REFERENCE TO THE SALE OF ILLEGAL NARCOTICS AT ABOVE INCIDENT LOCATION, IN THE COUNTY OF LAURENS. OFFICERS WIRED SUBJECT WITH AUDIO AND VIDEO SURVEILLANCE EQUIPMENT AND THE C/I WENT TO THE INCIDENT LOCATION TO PURCHASE A QUANTITY OF HEROIN. C/I WAS GIVEN DOCUMENTED FUNDS AND MADE THE PURCHASE FROM SUBJECT LISTED. C/I RETURNED TO THE MEETING PLACE AND TURNED OVER ALL NARCOTICS AND EQUIPMENT USED. THE NARCOTICS THE C/I RELINQUISHED TO DEPUTIES WAS AN OFF WHITE IN COLOR POWDERY SUBSTANCE CONTAINED IN 5 SMALL PLASTIC BAGS. THE SUBSTANCE AND BAGS LATER YIELDED AN APPROXIMATE WEIGHT OF 1.18GM TOTAL WHEN MEASURED.

Date Entered: 01/23/2016 08:28:07 PM		Last Modified: 01/23/2016 08:42:32 PM		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY		
Print Date: 01/23/2016 09:10:37 PM								
P	TYPE (GROUP)	10-Drugs/Narcotic						TOTAL VALUE
R	Reason	Burned						
O	Count/Forced							
P	Dest/Damaged							
E	Recovered							
R	Seized							
T	Stolen							
Y	Unknown							
ADDITIONAL	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ADM. CLOSED	
	☒ YES ☐ NO		☒ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED UNDER 18	
							☐ EX-CLEAR UNDER 18	
ADDITIONAL	REASON FOR EXCEPTIONAL CLEARANCE:		1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION		3. ☐ EXTRADITION DENIED	
	4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE - NO CUSTODY					
ADDITIONAL	REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER	
	SGT STEVEN ROWE SWEAT		01/21/2015		220		LIEUTENANT BRIAN K. BRIDGES	
							01/21/2015 208	
ADDITIONAL	SGT MATTHEW A VEAL		01/21/2015		221		FOLLOW-UP INVESTIGATION OFFICER	
							☒ YES ☐ NO SGT STEVEN ROWE SWEAT	
							01/22/2015 220	

AGENCY I.D. LAURENS COUNTY SHERIFF'S OFFICE

CASE NUMBER

NCR

SC0300000

INCIDENT REPORT

1,500,020,2

BAG, ENTD.

THIS SUBSTANCE WAS DESCRIBED AS BEING HEROIN BY THE C/I. THE SUBSTANCE FIELD TESTED POSITIVE FOR HEROIN AFTER I CUT OPEN ONE OF THE SMALL BAGS TO OBTAIN THE SUBSTANCE FOR TESTING. I ALSO INITIALED THE BAG THAT WAS CUT OPEN. IT WAS PACKAGED INTO EVIDENCE SEPARATELY FROM THE OTHER FOUR SMALL BAGS.

THE C/I WAS SEARCHED BEFORE AND AFTER THE CONTROLLED BUY WITH NEGATIVE RESULTS.

THE INVESTIGATION WILL CONTINUE.

Date Entered: 01/23/2016 08:26:07 PM Print Date: 01/23/2016 08:10:37 PM		Last Modified: 01/23/2016 08:42:32 PM		JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
P	TYPE (GROUP)	10-Drugs/Narcotic					TOTAL VALUE
R	Burned						
O	Count/Weight						
P	Dist/Damaged						
E	Recovered						
R	Seized						
T	Stolen						
Y	Unknown						
A	SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER
D							☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
M	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINED COOPERATION 5. ☐ JUVENILE - NO CUSTODY						
I	REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
N	SGT STEVEN ROWE SWEAT	01/21/2016	220	LIEUTENANT BRIAN K. BRIDGES		01/21/2016	208
S	SGT MATTHEW A VEAL	01/21/2016	221	FOLLOW-UP INVESTIGATION OFFICER ☒ YES ☐ NO SGT STEVEN ROWE SWEAT		01/22/2016	220