VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

MARION BONDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2019-000447

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2010-GS-07-598,599, 602& 634

STATE OF SOUTH CAROLINA,

Plaintiff

VS

MARION BONDS,

Defendant

TRANSCRIPT OF RECORD
VOLUME 1

DECEMBER 13, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

APPEARANCES

ANGIE TANNER , Attorney at Law
Solicitor for the State of South Carolina

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(Whereupon Pre-trial Motions began at 2:08 P.M on December 13, 2010)

BAILIFF: All rise. The Honorable Judge Carmen Mullen.

THE COURT: Thank you. Please be seated. All right. We have at least two motions, Mr. Deysach, is that correct?

MR. IAN DEYSACH: Yes, at least two, I would say is an accurate characterization. I think the appropriate one to start with is the motion to sever. It's something that we did broach -- something that we broached in chambers, Your Honor.

At this point the jury has already heard all of the charges that Mr. Bonds is intended to be tried on by the Solicitor. But I would ask Your Honor to sever the -- the -- sever the armed -- Attempted Armed Robbery, Assault and Battery with Intent to Kill and Possession of a Pistol by a Person Convicted of a Crime of Violence portion of this trial from the Trafficking in Crack Cocaine portion of this trial, which also includes a Distribution within a School Zone charge -- in accompanying with a school zone charge.

And the authority that I am citing for the Rule that---

THE COURT: The City of Greenville versus Chapman

case. And its progeny State v. Tate and State v. Perry where it's got to arise out of a single chain of circumstances by proof of the same evidence are the same general nature and there's no real right of the defendant that is jeopardized. So that's final ---

MR. DEYSACH: That is the Rule. I've found it in State v. Rice which is 629SC7393. That is the same role, the chain of circumstances, the same evidence, the same general nature, and no real right of the defendant has been prejudiced. And so, I think the only way you can read that is if all of these conditions have to be met in order---

THE COURT: Well, let's go ahead and let the Solicitor address that. Ms. Tanner, let's talk about -- I don't think there's a question they arise out of a single chain of circumstances. Why don't you go ahead and put the facts on the record of this case so we can show that. And then we will go to the next ---

MS. ANGIE TANNER: That's correct, Your Honor. Mr. Bonds is on trial. He is charged with Assault and Battery with Intent to Kill, Attempted Armed Robbery, and a gun charge occurred, approximately, 07:00 a.m. on the 17th. He is developed as a suspect. They also developed some locations where he may be hiding out. They go to those locations. The third location they go

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to, they actually do find him hiding in the closet. Inside the closet where he is removed, arrested for the Assault and Battery with Intent to Kill, Armed Robbery and gun charge, they locate items that are related to this crime including a jacket that was described by the victim. They find a shoe right under the jacket that -- or right next to the jacket ---

THE COURT: In the closet ---

MS. TANNER: --- that was in the closet where he was hiding that contained the bulk of crack cocaine.

This is not a house he lived in at the time. He had lived there previously. But the homeowner gave them consent to come in and they do arrest him there. There would be no way to try the drugs later without mentioning the fact that he was being arrested for the assault battery and armed robbery at the time the drugs were found. So that leads to that.

He is taken to the detention center on the assault and battery, armed robbery, and gun charge. He's booked in for that first. The drugs were turned over to members of the drug task force for processing and to get warrants. Before the drug charges are served on him, he makes a phone call from the jail back to the house where he was arrested trying to get the homeowner to grab the drugs. He doesn't know law enforcement has

found them yet. He is telling him to hide the drugs, "I'll need them when I get out." Homeowner tries to tell him, "No, they found drugs that were in the closet with you." He says, "Well, I got some more in the trash can, check the trash can." Officers intercept those phone calls, send another officer back to the scene, they hold that while getting a search warrant to locate the drugs that he mentions on the phone call in the trash can -- from the trash can.

So they're all one chain of event, it's one thing after another. The arrest of one thing leads to the discovery of number two and then the arrest and placed in the detention center leads to the location of the number three.

THE COURT: All right. So it sounds to me that just the proof of the jacket that was identified in the earlier attempted arm robbery is what's found in the closet.

MS. ANGIE TANNER: That's correct.

THE COURT: Okay. Which, I think probably goes to -- even though I understand the drugs were found in the shoe -- goes to the trafficking and possession of the drugs found in the closet. Okay.

Well, I do think they are proved by the same evidence. Let's talk about are they the same general

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nature. Mr. Deysach, sit down.

MS. ANGIE TANNER: They do flow from one to the other and I believe, just in conversations in Chambers, the defense and the shooting is going to be that it was over some type of drugs or some drug deal or something. He made comments that there were -- it's a folk on a folk shooting. I think that he is going to try to use some type of bases of the drug trade for that. So I think that---

THE COURT: Someone help me out. Because I don't know the circumstances arising from the ABWIK and the attempted armed robbery. Where did that occur?

MS. ANGIE TANNER: This occurs at the victim's residence. The State is going to put up evidence that the defendant knocked on the door of the victim. They are cousins. He opens the door for the defendant. The defendant comes in, he's got a pistol. There is a second man with him, with a long gun, who just stands by.

THE COURT: When you say with him, with the defendant or the cousin?

MS. ANGIE TANNER: The defendant, with the defendant.

THE COURT: Okay.

MS. ANGIE TANNER: Cousin lets him in. Defendant

demands money from his cousin. Cousin says, "What money?" He makes statements that tells him, "I know you got more money than that". At that point, the victim was able to tackle or push the defendant. He runs for the door. Trips just outside of his residence. At which point, he looks up. The defendant shoots him once. It just hits him in the arm. He's able to run to another cousin's house. And the defendant and his cohort flee the area.

There are no drugs found on the victim. The State does not allege that this is drug related but I believe that based on comments made by the defense, that may be an area that they go to. So I don't know how... All the officers involved, they'll be the same offers testifying, oddly enough. The initial responding officer to the shooting is still on duty and is the officer sent back to the residence where they found the drugs. It's a different residence but it's the same officer. He's still on the same shift and he is sent to hold the homeowner while they did the search warrant the second time for the drug evidence.

So it's all the same witnesses, all the same investigators -- again -- it would be hard to go back and try the drug case without involving the assault and battery charges or without mentioning it in some way.

THE COURT: So that's how---

MR. IAN DEYSACH: I do have a response Your Honor. I think that given the -- the litany of the facts -- certainly I'm not going to challenge each fact but I do want you to understand some of the facts that she stated, I will be challenging. But I think that what she described was how the -- really meant more to prong two, how to prove same evidence and kind of gave short shrift to the arise out of a single chain of circumstances.

I certainly do not--the defense is not that because drugs were involved that somehow that means that Marion Bonds would be not guilty. I don't think that is a defense, to be honest with you. And they're saying that -- I'm not trying to allege that there were drugs involved at the first incident location, the [redacted] EttingsWhite location -- I'm not -- that doesn't have anything to do with the drugs that were found. And so when we talk about out of the chain of circumstances, it is the same chain of circumstances for the police. But as far as the charges themselves, there is not a relationship between the drugs found and the assault and battery, attempted armed robbery. And once he said, "Well, we couldn't try the drugs without bringing up the attempted armed robbery", you can certainly try

the attempted armed robbery without bringing up the drugs. There's no reason that the Jury would have to hear about drugs in an attempted arm robbery case.

THE COURT: I'm a little more concerned about -- I didn't realize -- that the simple chain of circumstances -- I think you've got to prove most of all, by the same evidence, are the same general natures where investigated a bit different. One is drugs and you know, one is a crime, a violent crime, against a person. So that will be, I think, where you need to focus.

MR. IAN DEYSACH: Well, certainly Your Honor. I mean, if you look at the code, you've got the crimes against the person and 16 -- Article 16, Chapter 16 -- I'm getting it mixed up. But they're at completely opposite ends of the code, offenses against a person versus offenses having to do with controlled substances. They really -- the nature of these offenses is -- I can't think of criminal offenses that are more different in nature, to be honest with you.

And so I think that without proving -- without making any type of a showing on this prong -- that trying the two cases together would be a mistake and that really, what we are doing is kind of bringing up more bad facts for the Jury to consider as opposed to

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whether or not there is proof beyond a reasonable doubt based on the evidence in the case and along the case as you would charge it. And so with these being such different types of offenses in nature then certainly, the rule is very clear.

MS. TANNER: Your Honor, if I may. The test is not whether or not the charges are different because you've got Assault and Battery with Intent to Kill and a felony possession of a gun. Those have different elements. They're different charges. But there's no question -- there's no arguing those shouldn't be together. The test is not about whether or the charges are different. It's clearly shooting someone and trafficking drugs, two different charges. The question is, is there a chain of circumstances that tie them together, the same evidence will be used to prove both cases. The same witnesses will be used to prove both cases. And finally the last prong is, there's no prejudice to the defendant if they're tried together. In fact, there's more prejudice if they're separated, because as discussed, there's a violent offense in each one of the cases.

If we broke it down, we could actually have three separate trials for found offenses. At the end of it, if the State was successful in all three, it's life

without parole, automatically. There is much more prejudice to give the State an opportunity to do that or we can try these all together, bunker down all, at once, through this chain of circumstances that are all tied together.

THE COURT: Counselor?

MR. IAN DEYSACH: Certainly, you know when the Solicitor said the question isn't whether or not they are the same general nature and her example of possessing a gun being not of the same nature as shooting somebody, that it rings hollow and it doesn't make common sense. I would-- I certainly would try to focus on prongs that are more favorable to me too, but there is this one that sits right in the middle of the rule that must be satisfied before the cases can be tried together and that's the one that's-- when asked about whether or not these cases are the same general nature, the Solicitor jumped to the other prongs and the question is whether or not this prong has been satisfied and it must be satisfied in order for these cases to be tried together.

THE COURT: Anything further, you all? Well, I would say obviously as you stated, arising out of a single chain of circumstance, clearly this case is. They are proved by the same evidence, clearly this case

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is by the same general nature. I think, certainly an argument can be made that I think is valid is that involved in drug trafficking includes the hearing and bonds.

Additionally, while I think as lawyers, we can all sit here and say that the Attempted Armed Robbery and ABWIK is very different than trafficking in a drug, I think we all still agree it is all a part of criminal activity and drug activity. And as a result, I think it is of by the same general nature as is required from the City of Greenville case and State v. Tate and State v. Perry. No real right of the defendant has been jeopardized.

And certainly we don't look at whether or not the defendant's rights have been jeopardized on the side of the State and what they think. But I think the Solicitor does make a point that there is some possible prejudice to it. And certainly, I'm not going to question Mr. Deysach's strategy in this. He's obviously a very good lawyer and he's thought this through. But I don't think there's any real and obvious jeopardy to the defendant as a result of this. And if he is convicted, it's likely he will come out better on the end anyway, certainly. So respectively, Mr. Deysach, I'm denying that motion to sever. What's

your next motion, sir?

MR. IAN DEYSACH: I do have a motion to suppress but that is the meatiest of the motions. And I was thinking that maybe I would hit some of the other ones that don't require ---

THE COURT: Sure -- Okay.

MR. IAN DEYSACH: We also broached the subject in chambers about whether or not a stipulation to Marion's status as a person who is prohibited from carrying guns under the -- the law that he's been charged with the -- umm ---

THE COURT: Why -- Is it because he has prior convictions for burglary in the second-degree nonviolent; is that correct?

MR. IAN DEYSACH: Correct.

THE COURT: Okay.

MR. IAN DEYSACH: The section is 162330. That prohibits people, not only who are convicted of crimes of -violence, but also under 21 -- under 18 now, I guess -- of being -- of possessing a pistol. And so just because you fall under that statue doesn't automatically mean that you've been convicted of a crime of violence. I think that it would be appropriate if Mr. Bonds were to stipulate that he has been convicted of a crime of violence. And I know that

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sometimes there's terms that are different -- differences between a violent crime and a crime of violence, and while the burglary that he was convicted of is not a violent crime, it is defined as a crime of violence in this statue that refers to--they give the definition in this chapter but of the statue.

THE COURT: How would you like it couched? He is being convicted of a crime of violence.

MR. IAN DEYSACH: I would like it couched that he is--he is prohibited by law from possessing a pistol.

THE COURT: Okay.

MR. IAN DEYSACH: He is in the class of persons prohibited from possessing a pistol. That way the Jury won't have to decide whether or not he has been convicted of a violent crime. I couldn't, obviously, argue that he isn't in that class of people prohibited from possessing a pistol. And they would simply decide whether or not he possessed the pistol.

THE COURT: The problem is that one of the elements that has to be proven by the State is that he is previously been convicted of a crime of violence.

MR. IAN DEYSACH: I ---

THE COURT: You know, you want me to stipulate--Do you want me to charge him, in fact, he did have a gun. You're not conceding that, are you?

MR. IAN DEYSACH: No. Separate element -- ya' know, separate element to the offense and I think that the possession of a pistol element is the one I'm asking them to prove. Whether or not he has been convicted of a crime of violence, is an element I would not require them to prove if the Jury were to be prevented from hearing what the crime of violence was. I mean, it's--the strategy is fairly transparent. What I'm saying is I don't want them to think that just because he's been convicted of a crime of violence or that they know he is convicted of a burglary that therefore, he must be a bad guy and he must have done this. I just want them to decide whether or not he's possessed a pistol. And if he has, he would be by stipulation, one of the people who is prevented by the statue for possessing that.

THE COURT: You can speak, Solicitor. I have a hard time though. Whether or--if you're choosing, it's two different charges of whether or not just possession of a pistol or ---

MS. ANGIE TANNER: Yes, Your Honor. I think -- I think, as you know, I don't have to stipulate. I can put up my evidence and prove that he's been convicted of a violent crime. I can put up evidence that he's been convicted of however many burglaries that are on

his record as part of my case; However, I did offer in Chambers not to do that but the language has to be so that all the elements of my statute to follow is that he is a felon convicted of a crime of violence and is prohibited from possessing a firearm. All that language has to be in there for the elements to be met. Otherwise, I get to put up evidence to prove it.

THE COURT: You allege that he's a felon convicted of a crime of violence ---

MS. ANGIE TANNER: And therefore, prohibited from possessing a firearm.

THE COURT: Okay. The only thing that I have a problem with and I can tell you that I'm assuming you would object to. I don't think we need to say that he's a felon. If he has been convicted of a crime of violence and therefore, prohibited from possessing a gun, he is, in fact a felon. So it's just saying it twice is all we're saying. So I don't think you need to say that he is a felon. I think you could just say the defense stipulates that the defendant has been convicted of crime of violence and therefore, prohibited from possessing a gun at the time of this alleged incident, okay?

MS. ANGIE TANNER: Okay.

MR. IAN DEYSACH: I would ask for--I do want to

clarify and make sure I understand what we are talking about. We're talking about telling the Jury that he is convicted of a crime of violence but not letting them know what it is?

THE COURT: Right. Unless your guy takes the stands. If Mr. Bonds takes the stand that's fair game.

MR. IAN DEYSACH: Right.

THE COURT: Okay. I think it's relevant. I assume it is. I assume she is going to use it for impeachment purposes. I don't know but I'll just take a wild guess. So, that is what we will stipulate to.

MS. ANGIE TANNER: And with that stipulation in, I wouldn't parade his prior record to prove that event.

THE COURT: Right.

MR. IAN DEYSACH: I certainly was asking the Court to do it my way, so I still have an objection.

THE COURT: I still don't know what your way is. You're going to go ahead and stipulate that he is what?

MR. IAN DEYSACH: He is in the class of people prohibited by section 162330, prohibited from possessing a pistol.

THE COURT: I would have to define it. I would have to define the statute. That's so nebulous. I think the way it is done. I mean, I quite frankly could elaborate on it and put it up but she has agreed

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not to so we're going to stick with that he is convicted of a crime of violence and therefore prohibited from possessing a gun at the time of this incident, alleged incident. Okay. What's the next thing we're hearing now?

MR. IAN DEYSACH: There is--well, I'll skip that one. Use a renewed discovery motion to make a motion to sequester ---

THE COURT: Any objection to the sequestering the witnesses other than your case officer and the victim?

MS. ANGIE TANNER: No, ma'am.

THE COURT: Okay.

MR. IAN DEYSACH: I would--I do--I see Officer Kelleher here. I guess while as the case is unfolding, that I wasn't sure if there was one or two lead investigators. And I was going to asked them to pick one but if it's Officer Kelleher then it's Officer Kelleher. And I---

THE COURT: And you are so electing?

MS. ANGIE TANNER: Yes, ma'am.

MR. IAN DEYSACH: I guess, we have a --- we do have a Neil v. Biggers motion. There's an eye witness ID. I was asked, Your Honor, to hear testimony from the officers so that the State -- if they wish to introduce it, meet their burden of showing lack of

suggestivity.

THE COURT: All right. Let's go ahead. If we are gonna have a Neil v. Biggers hearing let's go.

MS. ANGIE TANNER: Your Honor, I would first point out that the victim knew the defendant so actually the hearing is not required. And that would be under Emory Robert D. The hearing is not necessary if the victim knows the defendant.

THE COURT: That would be for an ID. What I thought that you were talking about is a separate -- you told me that there was a six-pack lineup back in Chambers and who was that subsequent ID by?

MS. ANGIE TANNER: The victim. They-- the night of the incident, victim gives law enforcement his name, Marion Bonds. The next day they come back with a six-pack, show it to the victim to confirm they're talking about the same guy.

THE COURT: Okay. If you intend on introducing that the night of the incident he's going to say when he looked up the person that was pointing a gun and shot at him was Mr. Bonds. But then additionally later on that night he had came back with six photos for him to ID. Then we do need a Biggers hearing of the six photos.

MS. ANGIE TANNER: Okay.

THE COURT: If you want to get that second subsequent ID in.

MS. ANGIE TANNER: Sure.

MR. IAN DEYSACH: Is there a burden on this?

THE COURT: She just needs to put up her investigator and maybe he needs to bring his photo ID lineup with him.

MS. ANGIE TANNER: The state calls John Kelleher.

THE COURT: And you did receive this, Mr. Deysach, right?

MR. IAN DEYSACH: I have.

THE COURT: You have a copy of it?

MS. ANGIE TANNER: Yes, ma'am. He has a copy of it.

First being duly sworn, **JOHN KELLEHER** testified as follows:

THE COURT: Sir, will you just spell your last name for my Court Reporter?

THE WITNESS: Sure. That's Kelleher, K-e-l-l-e-h-e-r.

DIRECT EXAMINATION

BY MS. ANGIE TANNER:

Q. Good afternoon, Investigator Kelleher.

A. Good afternoon, ma'am.

Q. Where are you employed?

A. Beaufort County Sheriff's office.
Q. And in your employment at the Sheriff's Office, were you working on February 17, 2010?
A. Yes ma'am.
Q. And were you part of the investigation to a shooting of victim Reginal Holmes
A. Yes, I was.
Q. As part of your investigation, did you interview Mr. Holmes about the circumstances of the shooting?
A. Yes, I did.
Q. As part of your interview, were you able to develop a suspect?
A. Yes.
Q. And where did the suspect's name come from?
A. The victim told me the suspect's name.
Q. And did the victim also tell you how he knew this person?
A. Yes, he did. He said he was related to him.
Q. And what name did he give you?
A. Marion Bonds Jr.
Q. Did he give you any other information about Marion Bonds?
A. He stated that it was his cousin. I believe he also stated that he lives across the street from

him, where his family lives.

THE COURT: Did he also say what degree of cousin he was?

THE WITNESS: No.

BY MS. TANNER:

Q. Based on that information, did you ever come back to Mr. Holmes to question him further about the suspect identity?

A. The victim?

Q. The victim.

A. Yes.

Q. All right. And when did you next speak with Mr. Holmes?

A. It was the day after the actual incident. That afternoon I went to the victim's residence and I presented him the photo lineup.

Q. Okay. And this photo lineup, did you prepare the photo lineup?

A. I did not prepare it, no.

Q. All right. How was that photo line up prepared?

A. It's prepared by a Beaufort County Sheriff's Intelligence Division.

Q. And how is that done?

A. It's done by a photo lineup with a crew of six individuals that are on their database.

Q. And what criteria is used to pick those photos?
A. The person that does it similar of race, the skin color, hair style, clothing, makes everyone very similar.
Q. And was that done with this photo lineup?
A. Yes, it was.
Q. And do you have that with you?
A. Yes, I do.
Q. Now once you have that prepared, what do you do with it?
A. I take the photo lineup to the victim's residence and that's when I met with him the next day.
Q. And what do you tell the victim about this photo lineup?
A. I read the back of the photo lineup, there's a statement there. He signs it. Then I flip the paper over. He takes a look at it and he immediately pointed out the individual I circled.
Q. What did you say to him prior to him picking out anyone in that photo lineup?
A. Something to the effect of, can you tell me who is the person that shot you yesterday, is he on this photo lineup?
Q. Did you make any suggestions to Mr. Holmes before he picked him out?

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A. No.
Q. And once he picks out the subject, what does he do?
A. The picture and the number is circled. I fill out the back of the form, and I turn it in to evidence.
Q. I have no further questions regarding the issue.
THE COURT: Okay.

CROSS EXAMINATION

BY MR. IAN DEYSACH:
Q. Officer Kelleher, when you took the photo lineup to Mr. Holmes to view, did you know that Marion Bonds was in the photo lineup?
A. Yes, sir, I did.
Q. Did you know which one he was?
A. Yes, sir, I did.
Q. Now when he-- where did this take place, this procedure, at the police department or at Reggie's home?
A. The viewing of the photo book?
Q. Correct.
A. As I stated, it happened at Reggie's home.
Q. And the first thing you did, was read the back, correct?
A. Yes.

Q. And you said that you don't fill the back out until after the person has already viewed the photo lineup?
A. Correct.
Q. So you read the back but it's left blank and then you show the photos to Reggie, correct?
A. Correct.
Q. And you were the one that circled the photo face?
A. I'm not sure if I circled it or he circled it that day. I'm not real sure.
Q. Okay. So if you said--you just said that you circled it and you're actually revising that, that maybe he circled it?
A. Possibly, yes.
Q. So then you go to the back and you fill out the date, time, and your initials at that time?
A. Correct.
Q. And you did Reggie's signature there?
A. Reggie signs it, once he reads the statement, he signed it first.
Q. But--okay, but before he makes the pick?
A. Correct.
Q. And he did, in fact, sign it in your presence?
A. Yes, he did.
Q. With his right hand?

A. I don't remember which hand he used, whatever hand the pen was in.

Q. Okay.

MR. IAN DEYSACH: I don't have any further questions Your Honor.

THE COURT: Anything further Solicitor?

MS. ANGIE TANNER: Nothing Your Honor.

THE COURT: Anything further from the State?

MS. ANGIE TANNER: Not unless you want to hear arguments.

THE COURT: I was just going to ask Mr. Deysach if he had any arguments to put up. Mr. Deysach?

MR. IAN DEYSACH: Your Honor, obviously, the alleged victim and the defendant know each other by name and sight through a family connection, they know what each other look like. And so the idea of putting the--I think that the Solicitor is right. If no photo lineup were done that there is law in place where Reggie could come up on the stand and point out ---

THE COURT: In Court identification.

MR. IAN DEYSACH: Do an In Court identification. But for them to introduce a six-pack photo ID seems like improper bolstering of what he's already -- already testified to. So even though I don't think it's suggestive, I ask that you suppress their six-pack

photo lineup identification procedure for that reason. I don't think it's necessary. I don't think is relevant. I don't think--I think it's improper bolstering.

THE COURT: Well, if the victim identified a second person in the middle--let's say you for a second as Mr. Bonds--that a photo ID, he had circled somebody else and then he came back into court and said no I was wrong it was Mr. Bonds. That certainly would be admissible.

MR. IAN DEYSACH: As a prior inconsistent statement, Your Honor?

THE COURT: Absolutely.

MR. IAN DEYSACH: But this is a prior consistent statement.

THE COURT: Solicitor?

MS. ANGIE TANNER: Your Honor, it's part of the investigation, it was for the law enforcement officers purposes, not for Mr. Holmes purposes, and it will cover any law enforcement officer's testimony, not Mr. Holmes. So it's not bolstering. It's part of the investigation, just another piece of evidence.

MR. IAN DEYSACH: Something being part of the investigation does not -- doesn't mean it's automatically admissible, Your Honor. They investigate

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lots of things that the Jury should never hear. Saying something is part of the investigation just kind of ignores the rules of evidence.

THE COURT: Respectively, I think they can enter it. So that's admissible. What is your next motion?

MR. IAN DEYSACH: I guess we should do the suppression motion Your Honor.

THE COURT: Okay.

MR. DEYSACH: Since it's my motion, I guess I'm the moving party. I will go ahead and call the witnesses.

THE COURT: Please.

MR. IAN DEYSACH: I guess I would ask Officer Kelleher to be the first witness.

THE COURT: Come on back up. I'm going to remind you that you are still under oath, sir.

THE WITNESS: Yes, ma'am.

THE COURT: Take a seat. Whenever you are ready, Mr. Deysach.

DIRECT EXAMINATION

BY MR. IAN DEYSACH:

Q. Good morning or Good afternoon Officer Kelleher.

A. Sir.

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Q. First question I want to ask you is about -- since this is the motion to suppress for drugs found or items found at [redacted] Ball Park Road. I want to ask you whether or not a search warrant or arrest warrant existed when the police entered [redacted] Ball Park Road. Was there -- You arrived at [redacted] Ball Park Road at around ten o'clock in the morning; is that correct?

A. Yes, sir.

Q. When you arrived at [redacted] Ball Park Road, had you applied to the Magistrate for an arrest warrant?

A. Not at that time.

Q. When you arrived, had you applied to the Magistrate for a search warrant?

A. Not at that time.

Q. When officers entered [redacted] Ball Park Road, were you present?

A. Yes.

Q. And when they entered, there was no arrest warrant nor search warrant in existence at that time, correct?

A. Not at that time, correct.

THE COURT: I'm sorry. What time did the attempted armed robbery ---

THE WITNESS: Approximately, seven o'clock that

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morning, ma'am.

BY MR. DEYSACH:

Q. So three hours have passed, you're at [redacted] Ball Park Road. Would you agree that the Ettings White address, the incident location on Ettings White and Ball Park Road are about two and a half miles apart?

A. I--I honestly don't know.

Q. Would it surprise you if that's what MapQuest said?

A. Being a MapQuest user, no I wouldn't be surprised but it's not always accurate.

Q. Okay. But... You had gone to Marion Bonds Senior's house prior to coming to Ball Park Road, correct?

A. Correct.

Q. And Marion Bonds Senior said he hasn't spoken to Marion Bonds Junior, the person on trial today, in -- he had not spoken to him lately; is that correct?

A. Something to that effect, yes.

Q. Did you see a room in that household that was identified as Marion Bonds Junior's room?

A. Not to my knowledge, no. I -- I think all the talking was done outside.

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Q. Okay. So you never did go into Marion Bonds Senior's house?
A. I don't recall going in, no.
Q. When did you apply for an arrest warrant for the attempted armed robbery, the ABWIK, and the weapons charge?
A. After he was picked up over at Ball Park Road and a county ticket issue was issued.
Q. So you arrest him at Ball Park Road and issue him a ticket?
A. Yes.
Q. And then, at that time, you hadn't sworn in front of the Magistrate for any type of a warrant?
A. Correct.
Q. In fact, before you applied for the arrest warrant, you performed a gunshot residue test, didn't you?
A. Yes.
Q. Do you know what time it was when you got to the warrants to have them sworn out?
A. I don't recall off the top of my head, no.
Q. Do you know if it was within an hour, within two hours, within three hours of the arrest?
A. It was sometime after the arrest but I don't have a time.

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Q. Do you when Marion was served with the warrants for that?
A. Not off the top of my head.
Q. Do you know who served him the warrants?
A. I believe it was a civil deputy but not sure.
Q. Would it help you if you had your report?
A. If you have a copy of it.
Q. All right. On page 5 of 6, at the very top, does it say that Civil Officer M. Carter served the warrants on Mr. Bonds?
A. Yes, sir.
Q. Now as the case officer, you maintain the case jacket? I guess you maintain all the evidence that you dig up as part of the case?
A. I obtain the evidence that I collect.
Q. Let me ask you this, did you -- did Civil Officer Carter turn in her report to you?
A. No.
Q. Did she turn in the Miranda form that she had gotten filled out along with -- along with service of the warrants that she got filled out by Mr. Bonds?
A. I--did she turn into me? No, sir. As I stated as continuing in the fact that her actions and documentation will be noted in her supplement.

Q. Okay. So you didn't review her supplement?
A. No, not 'til later.
Q. I'm going to hand you up a document and ask you if you recognize it?
A. Yes, sir.
Q. What is it?
A. It's a Beaufort County Sheriff Department statement of Miranda Rights.
Q. Okay. And what's the date on it?
A. The date?
Q. Yeah, the date that it was filled out?
A. It's February 17th, 15:40.
Q. Okay. And so February 17th is the date in question, correct?
A. Yes, sir.
Q. And 15:40 that refers to 3:40, correct?
A. Yes, sir.
Q. So if Misty Carter, Civil Officer Carter, Mirandized Marion Bonds at the same time that she served the warrants then she would have served the warrants at 15:40, correct?
A. With that statement, yes.
Q. Okay. But you're just not sure if she Mirandized him at the same time---
A. I don't know who filled this out.

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Q. Okay.
A. It doesn't say who filled it out.
Q. Did you see where Marion Bonds signature is?
A. I assume that's his signature, yes.
Q. All right. Now, were you -- were you present when there was a return to [redacted] Ball Park Road?
A. No.
Q. So you had nothing to do with any search warrant that would have been applied for to search that residence, correct?
A. After the defendants left that area, I left the area also.
Q. Let me ask you this. Did you have prior knowledge that Marion Bonds stayed at that [redacted] Ball Park Road address?
A. Prior knowledge to when?
Q. Prior to the 17th?
A. No, I found out that morning.
Q. Before you arrived?
A. Yes.
Q. Who did you find out from?
A. Investigator Fraser, Investigator Chapman.
Q. And they told you that Marion Bonds was known to stay at that address?
A. They worked that area. I don't primarily work

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that area so they know the area and we went through different locations along I guess the trail where they found Mr. Bonds at that location.

Q. Okay. And why they thought he was there, you don't know the answer to that question?

A. He obviously knows that location. I -- I don't know why.

Q. Okay. You never spoke to Marion Bonds as part of this investigation, correct?

A. Before I took Marion in to be arraigned?

Q. Before you did the whole thing, yeah?

A. At [redacted] Ball Park, I did ask him in the car, when he was in the back of the civil deputy car, if he had a statement.

Q. Okay, and he said no?

A. He refused to talk to me. I then mirandized him there verbally.

Q. Did you ever ask him for his consent to enter [redacted] Ball Park?

A. No, I didn't.

Q. And to your knowledge, nobody did, correct?

A. Asked Mr. Bonds?

Q. Right.

A. I don't think anybody asked Mr. Bonds, he was in the closet.

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Q. Nobody asked Mr. Bonds what?
A. He was in the closet, I believe.
Q. Okay. So he was--but even after he's in the closet, even after he's taken to the patrol car, nobody asks though, do they?
A. Nobody asked, I believe, whoever owns the house or the renter of the house. The person that resides at that residence gave consent.
Q. So when the room is searched, where are you?
A. I was outside.
Q. The whole time?
A. Not the whole time, no. I did step in the house a little later.
Q. When the officers searched the room and find the jacket and the drugs, where is Mr. Bonds at that time?
A. I can't tell you, sir. I wasn't in the room.
Q. Was he -- so you don't really know when the officers entered the room?
A. I don't have an exact time frame, no.
Q. In relation to where Mr. Bonds was?
A. No.
Q. Do you know if they arrested him first, took him into custody and then did the search?
A. I would assume so.

Q. So when he was in custody, was he in your patrol vehicle or somebody else's?
A. He was in one of the other officer's patrol vehicle.
Q. Okay. So it was after he was detained and in a patrol vehicle, secured in a patrol vehicle, that the officers continued the search?
A. I was outside---
Q. You're not sure?
A. Yeah, I'm not sure.
Q. All right.

MR. IAN DEYSACH: I don't have any more questions for Officer Kelleher.

THE COURT: Solicitor, anything further?

MS. ANGIE TANNER: Yes, ma'am.

CROSS EXAMINATION

BY MS. TANNER:

Q. Investigator Kelleher, at the time entry is made into the Ball Park Road residence, do you have consent from the homeowner?
A. Yes.
Q. And that was who?
A. Mr. Lewis, better known as -- I know him as Old School, that's how I know him.
Q. At the time you enter Ball Park Road residence, is

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it your intention to arrest Marion Bonds or to find him?

A. Yes, yes.

Q. And in fact, when you find him at Ball Park Road, is he placed under arrest?

A. Yes.

Q. And where in the residence do you find him?

A. I believe Investigator Fraser located him in the closet. I didn't go in there.

MS. ANGIE TANNER: No further questions.

MR. IAN DEYSACH: All right. Just a couple follow-ups.

REDIRECT

BY MR. IAN DEYSACH:

Q. You say the homeowner, Richard Lewis, he is -- did you know him to be the home and owner or just somebody who lives there? Do you know that he actually owns the home?

A. I don't know, sir.

Q. And you made sure you got consent from him because you knew he lived there before you went in, correct?

A. Once again, I believe that Investigator Fraser had him fill out a Beaufort County Sheriff's office consent to search warrant.

Q. You wouldn't have gone in except you had that consent, correct?
A. Not necessarily.
Q. But you waited to get the consent before ---
A. You mean the actual form or consent?
Q. Consent from the -- consent?
A. I would have obtained the search warrant later. I would basically secure the residents outside and got a search warrant.
Q. If he didn't consent, you would have gotten a search warrant?
A. Most likely.
Q. But because he consented---
A. I'm only assuming because that didn't happen. So I--I'm assuming at this time.
Q. Let me you ask you this. When the officers approached the house, there is no way anybody in that house could escape without getting caught, right? The officers surrounded the house?
A. Yes, sir.
Q. In fact, one person tried to get out and then went back in?
A. Yes, sir.
Q. That wasn't Mr. Bonds?
A. No, I do not think so.

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Q. You actually saw him slam the door -- slam the window shut?

A. Yes.

Q. Were you aware that Officer Fraser had to -- well this is going outside of what he's testified to.

MR. IAN DEYSACH: So that's all I have Your Honor.

THE COURT: Anything further?

MS. ANGIE TANNER: Nothing further.

THE COURT: You can step down.

MR. IAN DEYSACH: I got some more witnesses.

THE COURT: Okay.

MR. IAN DEYSACH: Officer Chapman.

THE COURT: Come on forward, Officer Chapman.

First being duly sworn, **Brian Chapman** testified as follows:

THE COURT: Please give my Court Reporter your name for the record.

THE WITNESS: Chapman, C-h-a-p-m-a-n.

THE COURT: Thank you, sir.

DIRECT EXAMINATION

BY MR. IAN DEYSACH:

Q. Do you have a copy of your report, Officer Chapman?

A. I do, sir.

Q. Okay, with you?

A. Yes, sir.
Q. When you -- when you entered [redacted] Ball Park, it was without a search warrant or an arrest warrant, correct?
A. That's correct, sir.
Q. To your understanding, Investigator Fraser had asked for consent from Richard Lewis to enter, correct?
A. Correct.
Q. And you didn't enter until after that, at least, verbal consent was obtained, correct?
A. Correct.
Q. Because there is a written consent that exist, correct?
A. Correct.
Q. But you may not have waited until that was filled out before you actually entered?
A. I believe that's correct, sir.
Q. So if you had not gotten his consent, you would have applied for a search warrant, correct?
A. Most certainly, yes. We went with what was there, he gave his consent.
Q. Okay. When you went to [redacted] Ball Park Road, you were checking for the last known addresses for Marion Bonds, correct?

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A. Correct. The information we received where he possibly could be.

Q. One of the residences you were provided was a residence across from the Brown Medical Clinic on Ball Park Road. You wrote that in your report, correct, on page 105?

A. That's correct.

Q. And in fact, it was the alleged victim in the case who let you know that Marion may be staying near the Brown Medical Clinic, correct?

A. I believe that's correct. Yes, sir.

Q. And the Brown Medical Clinic is on Ball Park Road, correct?

A. Yes, sir.

Q. And in fact it's directly across the street from [redacted] Ball Park Road, correct?

A. Yes, sir.

Q. And when Mr. Holmes, the alleged victim, when he told you about the clinic on Ball Park, a residence near there, you knew right then that it was Richard Lewis's house that should be checked, correct?

A. I did not know who lived there at the time. I knew where the clinic was and just from working the area, I knew that there was a residence across

from there.

Q. Right. And we're talking about a neighborhood though, correct, on Ball Park Road?

A. What type of neighborhood are you referring to?

Q. One in which peoples homes and yards are right next to each other.

A. In most cases, they're--some of them on Ball Park Road are spread out.

Q. But if you're talking about residences in the area of Brown Medical Clinic, you're talking about a number of different residences, aren't you?

A. There are several homes in that area, yes, sir.

Q. But you guys went straight to [redacted], correct?

A. Correct.

Q. And had Investigator Fraser told you that from prior dealings, he knew that Marion had stayed there?

A. I believe so. Yes, sir.

Q. All right. Now you said Richard Lewis is the permanent resident there, do you know about how old he is?

A. He's a middle-aged gentleman. I don't know his exact age ---

Q. They call him Old School so he's a little bit older than everybody else, right?

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A. That's his nickname, I....
Q. Now you -- you were not present on the return trip to [redacted] Ball Park Road, were you?
A. Not initially, no. But I did go there.
Q. But as far as this initial entry into [redacted] Ball Park Road, you heard noise in the bedroom prior to entering the house altogether, correct?
A. Yes, sir, we did.
Q. And you knew that that was the bedroom that Marion stayed in when he stayed in Ball Park?
A. No, sir. I had no knowledge that Marion Bonds actually stayed there. When we got there, we heard the noise in the floor of the house.
Q. Okay. So it was Reggie telling you about the clinic and Fraser's prior knowledge that led to the address of [redacted]?
A. Yes, sir.
Q. When you entered the house, who was the first to go to the bedroom?
A. That would be Sargent Fraser. We made our way in that--going that direction.
Q. Okay. So when you enter, because you heard the noise coming from there, that's the room that you went to first?
A. Correct.

Q. Okay. Was Fraser able -- was Officer Fraser able to enter that room immediately?
A. I did not see him immediately. We encountered an individual coming out of the bathroom.
Q. You encountered that individual or both of you guys did?
A. We both did. Like I said, Sargent Fraser was in front of myself, and I was behind him, and we encountered the one individual coming out of the bathroom. I then took custody of that person and that was actually in the living room portion.
Q. And that person was Larry Holmes?
A. Yes, sir. I believe that's who that was.
Q. So you take that person out of the house altogether or do you keep him in the house?
A. No, sir. I secured him in handcuffs and placed him on the ground.
Q. And so while this happens, Investigator Fraser is in a place where you can't see him?
A. He's just around the corner. I can see where he's going, but I can't physically see him.
Q. Did he immediately enter the room?
A. I--again I didn't see him. He was around the corner.
Q. Did you hear him shouting commands?

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A. I did. I heard him give verbal commands for people to come out of the bedroom.
Q. Who did he come out of the bedroom with?
A. I believe the first person who came out was another individual, not Mr. Holmes.
Q. Mr. Thomas, correct?
A. Yes, sir. It was Jason Thomas.
Q. And when -- and then after Mr. Thomas is secured, Fraser goes back to the room?
A. No, sir. I had the first individual down on the ground. Mr. Thomas came out. I had him at gunpoint. Had him lay on the ground just outside of the hallway.
Q. Where is Mr. Bonds when you first see him?
A. He's being escorted out by Sargent Fraser.
Q. So you never see him in that bedroom at all, just once he's emerged?
A. Correct.
Q. But you heard Mr. Fraser shouting the commands for Mr. Bonds to come out, correct?
A. I didn't know it at the time that it was Mr. Bonds. I just heard him give a verbal commands to ---
Q. To somebody.
A. -- to somebody. Right. Yes, sir.

Q. Did you -- what did you do with the subject's next, all three of them?
A. The other two individuals were placed in handcuffs and then they were escorted out -- I believe out of the house.
Q. So all three have been taken out of the house, correct?
A. Yes, sir.
Q. And there's no way they can get back into the house, correct, because they're secured?
A. Yes, sir.
Q. Did you participate -- and they end up in patrol vehicles, don't they?
A. Yes, sir, armed patrol vehicle.
Q. Did you participate in the search?
A. Yes, sir, I did.
Q. Where were the individuals when the search took place, locked in the patrol vehicles?
A. The individuals that we removed from the house?
Q. Yes.
A. Yes, they were in patrol vehicles.
Q. And where was Mr. Lewis?
A. I'm not exactly sure where Mr. Lewis was. I believe he was still outside the house. He stayed outside the entire time.

Q. And was there anybody else in the house, when you guys arrived?
A. There was a black female. She was probably about the same age as Mr. Lewis.
Q. And when the search took place, were any of those individuals inside the house?
A. No, sir.
Q. Did you -- did you notice a change of clothes in that room?
A. I did notice some clothing items. I don't know if they would be a change of clothing. There were some clothing on his bed.
Q. Multiple pairs of jeans, correct?
A. I don't recall how many pairs of jeans were there, sir.
Q. And Mr. Bonds was wearing clothes when he was arrested, correct?
A. Yes, sir.

MR. IAN DEYSACH: I have pre-marked these for the Defense for identification for the suppression hearing. I would like to approach the witness and show them to him. I'm showing him what's been marked Defense -- Defendant's Exhibit No. 1. I guess I should show them to the Solicitor first, although I did get them from her. There nothing ....

BY MR. IAN DEYSACH:

Q. I'm showing you what's marked as No. 1. Can you tell me what that is?

A. Yes, sir. That appears to be an unknown brand of steam iron. Looks like GE, by the emblem. A bag, and I think Vaseline.

Q. So when the room is searched you guys take pictures, correct?

A. Yes, sir.

Q. And that's one of the pictures that you took, correct?

A. Yes, sir.

Q. And what you see in that picture is a steam iron and some lotion, correct?

A. Correct.

Q. I'm going to show you No. 2. Can you tell us what that is and what's in the picture?

A. You can also see the bottle of Vaseline and the blackened colored hat, and at least one pair of jeans.

Q. And No. 3?

A. This appears to be a night-stand with a container of, possibly, Axe deodorant and then an alarm clock.

Q. When you -- I'm going to show you six and seven at

the same time. I'm going to ask you to tell the Court what they are?

A. Number six is a picture of inside the closet, appears to be at least one pair of jeans. I can't make out what the other is. And then Number seven is a pair of jeans also.

Q. These are separate pairs of jeans from the ones we saw on the dresser in the first place, correct?

A. To the best of my knowledge, yes.

Q. And these jeans were found where?

A. That was in-between the mattress and box spring.

Q. Do you know the purpose of somebody causing creases in their jeans like that?

A. No. I've never seen that done before.

Q. Okay. So you returned later in the afternoon, correct?

A. Yes, sir.

Q. And when you returned, where was Richard Lewis in relation to his residence, inside or outside?

A. When I got there?

Q. Uh-huh?

A. Mr. Lewis was in the back of a patrol vehicle.

Q. Was Officer Fraser there?

A. Yes, sir. I believe we rode together, if I'm not mistaken.

Q. Okay. All right. Did you have a search warrant with you when you arrived there?
A. I do not. No, sir.
Q. Did anybody?
A. I believe one was being sought by the Drug Task Force but other than that, I don't know. I did not have one with me.
Q. And neither did Investigator Fraser to your knowledge?
A. No, sir.
Q. While you were there, did you enter the house without a search warrant?
A. Me?
Q. Correct.
A. I believe I went in with Mr. Lewis and Sargent Fraser.
Q. So the three of you entered the room of the house at that point?
A. He -- he told us where the items were located.
Q. He let you inside the house, correct?
A. Correct.
Q. And he pointed out items that appear to look like crack, right?
A. Yes, sir.
Q. And the only reason that you went in there at that

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time is because you had Mr. Lewis's consent, correct?

A. I went in there with my officer for officer safety, Sargent Fraser. I can't tell you what their conversation was, I wasn't there.

Q. All right.

A. Sargent Fraser asked me to go with him back inside the house.

Q. You saw the alleged crack? Did you see what was pointed out, crack?

A. Yes, sir.

Q. Was it in the bathroom or in the kitchen?

A. I believe it was in the bathroom under the sink.

Q. Under the sink in the bathroom?

A. Yes, sir.

Q. After you saw the crack, what did you do?

A. I went back out of the house.

Q. Did you pick up the crack?

A. No, sir. I did not.

Q. Did you take it into evidence?

A. I did not.

Q. You and Investigator Fraser just basically left it sitting there?

A. Yes, sir. The house was secured, yes.

Q. And so when you got out of the house, did you tell

Officer Rice, who was applying for the search warrant, that you actually seen the crack?

A. I did not. No, sir.

Q. Did you hear Investigator Fraser do that?

A. There was a lot of stuff going on. I couldn't make out Mr. Fraser -- I couldn't exactly make out what he said.

Q. So you didn't hear him having conversation with somebody else or you're not -- you don't remember?

A. I don't remember.

Q. Now, you're the one who listened to -- who listened to the phone calls that were being placed from the detention center?

A. Yes, sir.

Q. And you wrote in your report that when those phone calls are placed, the caller gets a warning that the phone calls are recorded?

A. Yes, sir. I believe that's also posted on the phones.

Q. Have you seen it posted on the phone?

A. I -- I personally haven't, no, sir.

Q. And you have never placed a phone call from that phone, have you?

A. No, sir. I've never been incarcerated there to make a phone call.

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Q. You never had to make a phone call while you were there?
A. Correct.
Q. And so you've never actually heard that prompt from the automatic phone system, have you?
A. From inside the jail?
Q. Correct.
A. No, sir. When you -- when you listen to the system it tells us from start to finish. It tells them that your phone calls are being recorded.
Q. So you've heard that just not from the same phone that somebody would have to call from in jail?
A. Correct.
Q. Those phone calls that you listened to were at 14:05 o'clock, correct?
A. I don't recall the actual time but it...
Q. Did you note it in your report on page 35?
A. Yes, sir, it is. It says at 14:05 that was the phone number the call was placed to.
Q. And then do you see, half way down that, another phone call at 14:11, right above the next summary?
A. Yes, sir.
Q. Okay.
A. About the second phone call.
Q. And then a third phone call that takes place again

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shortly after the second one?
A. Correct.
Q. And so they all--when you say 14:05 and 14:11, we're talking about 2:05 and 2:11?
A. Yes, sir. The 14:05 is just military time.
Q. Just like -- so at this point you have know way of knowing whether or not an arrest warrant has been served on Marion Bonds?
A. No, sir.

MR. IAN DEYSACH: I don't have anything further for Investigator Chapman. I would call Investigator Fraser next but ---

MS. ANGIE TANNER: I have a couple of questions.

MR. DEYSACH: Okay. I'm sorry. Out of order.

THE COURT: That's okay.

CROSS EXAMINATION

BY MS. ANGIE TANNER:

Q. Investigator Chapman, prior to going into Ball Park Road residence, did you check other residences looking for Mr. Bonds?
A. Yes, ma'am.
Q. And where did you go?
A. We went to Marion Bonds Senior's house and then we also went to Marion Bonds' grandmother's house.

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Q. And did you have information that those were places he also stayed?
A. Yes, ma'am.
Q. Now when you arrive at Ball Park Road, can you kind of describe for the Court -- what happens first? You guys knock on the door and then what? Who comes to the door?
A. Well, when we first got there, it was Sargent Fraser, myself, Investigator Kelleher. We got there and we started walking around what would be the right side of the trailer and as we were walking by we could hear noise in the room. It sound like shuffling, people moving around in there. Mr. Lewis uses the back door as his front door. We went, I believe if I'm not mistaken, Corporal Kelleher stayed by the corner where we heard the noises. I went about half way up to the door and then Sargent Fraser opened the door and made contact with Mr. Lewis.
Q. And were you able to determine if Mr. Lewis was the primary resident?
A. Yeah. Sargent Fraser knew that Mr. Lewis had lived there and then he said he did stay there.
Q. Now when you guys actually get consent and enter the residence, where is Mr. Thomas taken from?

A. I believe it's from the same room. Again, I was securing Mr. -- Mr. Holmes on the ground at the time and then Mr. Thomas came around the corner. I put him immediately at gunpoint and pushed him on the ground.

Q. And did you get information from the other investigators that he attempted to leave through a window in the bedroom?

A. Yes, ma'am, after we secured everyone.

Q. And Mr. Deysach showed you photographs of the bedroom. In this bedroom, do you locate any underwear?

A. I don't recall any underwear?

Q. How about shirts?

A. I don't recall any shirts.

Q. So you got a couple pairs of jeans, some lotion, and some deodorant?

A. Right.

MS. ANGIE TANNER: No further questions.

THE COURT: Anything further, Mr. Deysach?

MR. IAN DEYSACH: Just briefly, Your Honor. I haven't marked this one yet. I will mark it. It's Defense ID No. 9.

REDIRECT

BY MR. IAN DEYSACH:

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Q. I'm actually going to show you what is marked as Defendant's Exhibit No. 4. Do you see a bag in that?
A. I see a large clear bag, yes, sir.
Q. Does that appear to be a bag of clothes?
A. From this picture, I couldn't tell you what's in there, sir.
Q. Here's No. 5. Can you tell from that picture what is in there?
A. Again, it's a--it's a bag. I can't tell you what is in the bag, sir.
Q. The plaid material?
A. Let me look it up.
Q. Back to No. 4, does the plaid material look like underpants there?
A. I--again, I can't tell you if that's underwear, that's pants, or if that's a shirt or jacket. I don't know. I can't tell you.
Q. Did you look in the--
MR. IAN DEYSACH: I'll leave these up here, Your Honor, if you want to...
Q. Did you look in the bathroom?
A. Personally, I did not look in the bathroom. I don't believe so.
Q. So you wouldn't have seen Mr. Bonds' toothbrush if

it were there?

A. I -- I -- If I didn't go in there, I wouldn't have seen it, sir.

MR. IAN DEYSACH: I don't have anything further Your Honor.

THE COURT: Anything further Solicitor?

MS. ANGIE TANNER: Nothing further, Your Honor. All right. Please step down, sir.

MR. IAN DEYSACH: I would call Fraser if I was going to do it in the order I've asked but Officer Rice is here. I know Fraser, Officer Fraser, is otherwise engaged. I can though go ahead and ask Investigator Rice some questions.

MS. ANGIE TANNER: I need a restroom break.

THE COURT: Five minute break, absolutely. Now, we're going to go ahead and change that to a ten minute break.

(Whereupon the Court took a break at 3:17 P.M.)

(Whereupon Court resumed at 3:29 P.M.)

THE BAILIFF: All rise.

THE COURT: Please be seated.

MS. TANNER: Investigator Fraser is on the stand in the other courtroom.

THE COURT: He can be in two places at one time. I understand. You can call Investigator Rice.

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MR. DEYSACH: Certainly, Your Honor.

THE COURT: Come on, Investigator Rice.

First being duly sworn,

ANDREW RICE testified as follows:

THE COURT: I assume your last name is spelled R-I-C-E?

THE WITNESS: Yes, ma'am.

THE COURT: All right. Whenever you are ready, Mr. Deysach.

DIRECT EXAMINATION

BY MR. IAN DEYSACH:

Q. Good afternoon, Investigator Rice. When you got invited to [redacted] Ball Park Road by Investigator Fraser or Kelleher after they found drugs at that residence; is that correct?

A. Yes.

Q. Because you're a member of the Drug Task Force, right?

A. Yes, sir.

Q. And so because there are drugs, they thought that maybe this was the case that you should help them on?

A. Yes, sir.

Q. And so when they find the drugs, they actually ask you to take custody of them?

A. Yes, sir.
Q. So as part of that -- what time was it when you showed up at [redacted] Ball Park?
A. The first time around, I never actually made it all the way there. I was coming from a pretty good way. I met them at their office to receive the drugs.
Q. Okay. So you didn't even come to Ball Park. You came to investigations?
A. Yes, sir.
Q. Here across Ribaut Road from the courthouse?
A. Yes.
Q. All right. And they had in their custody drugs they had seized?
A. Yes.
Q. Handed them off to you, correct?
A. Yes.
Q. You developed a report as part of your work on this case, right?
A. Yes, sir.
Q. I mean, you developed a couple of reports, didn't you?
A. Yes, sir.
Q. But you didn't develop the report based on receiving those drugs from the call you got from

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Investigators Fraser and Chapman, correct?
A. Yes.
Q. Do you have a copy of it?
A. Not with me, no, sir.
Q. Do you mind if I hand you a copy of it?
A. No, sir.
Q. That's one of your reports, correct?
A. Yes, sir.
Q. On the third page of your report, you indicate that statements of the homeowner, Richard Lewis, indicated that Bonds often stayed inside of the bedroom where he was arrested, correct?
A. Yes.
Q. So really the only place that he would have gotten that information was from Investigators Fraser and Chapman?
A. I do not recall.
Q. Had you talked to the homeowner at this point?
A. I believe I had but I don't remember.
Q. So you're not sure if the homeowner told you that Marion Bonds often stayed in that bedroom or if one of the other officers told you that?
A. I believe I heard it from both places that he had stayed there off and on.
Q. You wrote often, correct?

A. Yes, sir.
Q. Now you also were the one who applied for the search warrant, for the later search in the day, at Ball Park Road, correct?
A. Yes, sir.
Q. You applied for it and you executed it, correct?
A. Yes, sir.
Q. So in order to get a search warrant, you have to swear an affidavit out to the Magistrate, correct?
A. Yes, sir.
Q. And you have to put the reasons that you believe that the property sought is on the subject premises, correct?
A. Yes, sir.
Q. And the property sought was drugs, correct?
A. Yes, sir.
Q. And other evidence of drugs and drug dealing?
A. Anything of a drug nature, illegal drugs, ledgers, and also weapons were being sought.
Q. Anything that could possibly be connected with drugs would be covered by the search warrant, correct?
A. Yes, sir.
Q. All right. One of -- now you knew that the room had already been searched, correct?

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A. Yes, sir.
Q. And you also knew that no guns were found in that room, right?
A. Yes.
Q. As part of your reason for the belief that drugs would be on that premises was -- one of the reason was that you found drugs -- drugs had been found earlier that day, correct?
A. Yes, sir.
Q. That's number one that an estimated 66.4 grams of crack had been found there earlier that day?
A. Yes.
Q. Number two was that -- do you have a copy of the search warrant?
A. Not with me, no, sir.
Q. Okay. I'm going to hand this to you. Is that a copy of your search warrant?
A. Yes.
Q. Number two was further investigation revealed an additional quantity of suspected crack, right? That's how number two starts?
A. Yes, sir.
Q. But you never swore, to the Magistrate, what that further investigation was?
A. No, sir.

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Q. Did you know what it was?
A. Yes, sir. I knew what it was.
Q. What was -- was it the phone calls?
A. The phone calls placed from Mr. Bonds to Mr. Lewis.
Q. Okay. Now when you applied for this right to search, the second quantity of drugs had already been located in the house, correct?
A. As I was applying for the search warrant, I don't believe it had. I believe that it was just the phone call saying that it was there.
Q. In number two, does it go on to say that Lewis with the benefit of Miranda admitted to hiding the suspected crack under the kitchen sink and pointed it out to Investigator Fraser?
A. Yes, it does. I apologize.
Q. Okay. So the drugs that are seized pursuant to the search warrant had already been visually seen by one of the officers in there?
A. Yes.
Q. And number three is kind of a boiler plate language that you put in pretty much all the search warrants that you apply for?
A. Yes, sir, if it applies.
Q. If there's nothing specific to [redacted] Ball Park Road

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other than to list that address again because that's the premises to be searched?

A. Yes, sir.

Q. So when you arrived, you are -- you served the search warrant. You executed the search warrant?

A. Yes, sir.

Q. Would you say you're in charge of executing the search warrant?

A. In a -- in a way, yes.

Q. Is somebody else in charge?

A. There is a supervisor that's present but you are the case officer per se that would be able to call the shots as we call it.

Q. Okay. So if anybody needed any shots called, they'd come to you?

A. Yes.

Q. And you develop a report as a result of this activity of executing the search warrant, correct?

A. Yes.

Q. And one of the things you do is assign -- different tasks are assigned to different people, correct?

A. Yes.

Q. And somebody was assigned the task of taking video and pictures of the execution of the search

warrant?
A. Yes, sir.
Q. Do you know who that was?
A. It was Bluffton police department's Detective Mitchell.
Q. Did you ever -- what happened to the video?
A. I'm not sure. I don't know -- know what happened to it.
Q. Do you know a video was taken?
A. Yes, sir, it was. I witnessed it. I observed him videoing it.
Q. But to this day, you have no idea what happened to that video?
A. No, sir.
Q. Were pictures taken?
A. Yes.
Q. Who took the pictures?
A. The same, Detective Mitchell.
Q. Those pictures have been recovered?
A. Yes, sir.
Q. You don't have the video but you do have the pictures?
A. Yes.
Q. Now who is it that located the suspected crack cocaine? Do you know the answer to that question?

A. It would be ultimately Investigator Fraser to begin with but then it was recovered by Detective Mitchell and myself.
Q. So you fill out a search warrant inventory, correct?
A. Yes, sir.
Q. And that was everything that you find that you are going to seize as a result of the search warrant?
A. Yes, sir.
Q. Do you have a copy of that?
A. No, sir, not with me.
Q. It's a little light copy. But can you tell The Court what number one is?
A. It's suspected crack cocaine that was located in the bathroom cabinet by Detective Mitchell at 17:05 hours.
Q. Okay. But for a couple other drug related things, everything is found by Detective Mitchell pursuant to the search warrant, correct?
A. Yes, sir.
Q. And Detective Mitchell is no longer with the DTF, the Drug Task Force?
A. No, sir.
Q. You knew he was fired for lying or you didn't know that?

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A. I knew he was fired.
Q. You didn't know why?
A. I don't know the details of it. No, sir.
Q. You didn't know it was for lying?
A. No. I didn't know it was for lying.
Q. So if he locates the drugs, what does he do with them?
A. He would turn them over to me as the case officer.
Q. So he takes them from the bathroom and gives them to you?
A. Yes.
Q. Were you in the bathroom when this happened?
A. Yes.
Q. Okay. So you're just kind of over his shoulder?
A. Yes. It was the most important piece of evidence that needed to be collected. It was also, if you could see the photograph, in pieces. I actually held the evidence bag open as he -- and we kind of use the card to scrape up the remnants and pieces to put into the bag and without getting it all over our hands.
Q. I know I'm jumping around a little bit. Back to the search warrant. Number one reasons for affiants belief that property sought is on the premises.

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A. Okay.
Q. You're talking about the 66.4 grams of suspected crack cocaine that was found that morning at about 10:10, correct?
A. Yes.
Q. And the -- you swear to the Magistrate that the Investigators, J. Fraser and B. Chapman, obtained consent to search the residence in an attempt to recover evidence of this shooting?
A. Yes.
Q. That the reason they went in there was because of consent?
A. Yes.
Q. And that's information you got from them, correct?
A. Yes, sir.

MR. IAN DEYSACH: I don't have any further questions, Your Honor.

THE COURT: Solicitor?

MS. ANGIE TANNER: I don't have any questions, Your Honor.

THE COURT: You may step down, sir.

MR. IAN DEYSACH: My next witness will be Investigator Fraser.

THE COURT: Come forward, sir.

First being duly sworn,

JEREMIAH FRASER, testified as follows:

DIRECT EXAMINATION

BY MR. IAN DEYSACH:

Q. Did you spell your name for the record? Will you please spell your name for the record, state your name and spell your name?

A. Investigator Jeremiah Fraser, F-r-a-s-e-r.

Q. Good afternoon, Investigator Fraser. We're here talking about February 17, 2010, the investigation surrounding Marion Bonds. You got involved in this case when you interviewed the alleged victim, Reggie Holmes, at the hospital, correct?

A. Yes, I interviewed the victim.

Q. And it was during that interview that he did tell you that Marion Bonds and somebody named Jason had done this, correct?

A. Yes, sir.

Q. When you left the hospital, where did you go?

A. I met with Investigator Kelleher who was on scene, I believe. I began helping him.

Q. On Ettings White Road?

A. I think we met and then went Ettings White Road. I don't recall specifically how we met up but that's what we did.

Q. Now when you spoke with Mr. Holmes, he told you

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that Marion might be in the area of the Brown Clinic?

A. Yes, sir. That was one of the places, yes.

Q. Did you check any of the other places that you thought he might have been?

A. I did.

Q. And was he there?

A. At any of the other places?.

Q. Correct?

A. No.

Q. Did you enter any of those other places?

A. Yes, sir.

Q. Which places did you go into?

A. His great-aunt, I believe, his father, both of those were consensual. We went to Jason Taylor's mother's house. Then we went to Mr. Lewis' house.

Q. So you're talking about Jason Thomas, I think?

A. Thomas. I'm sorry.

Q. Now when you went to these places, were you with Investigator Kelleher?

A. Yes and Investigator Chapman.

Q. So all three of you went to Marion's dad's house?

A. I believe so, yes, sir.

Q. Did you see a room in his house that looked like it was Marion's?

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A. I couldn't be sure.
Q. Did his dad tell you that he hadn't seen Marion lately?
A. Yes, he did.
Q. What about great-aunt, did you see a place for Marion to sleep in that house, Marion's room?
A. I mean, they could of, it was hard to tell. She said that he did stay there from time to time.
Q. Okay.
A. I couldn't tell which room specifically.
Q. I got you. So by the time you've gone to the scene and gone to these two places, there were actually three places counting Jason Thomas's mom's house, is it about ten o'clock by the time you make it to Richard Lewis' house?
A. Sounds right, I couldn't tell you for sure.
Q. Would you say that Richard Lewis' house is about two and a half miles from the Ettings White address?
A. Yeah. Yes, sir, I believe.
Q. At the time, did the victim say that the people who had shot him got away in a car?
A. I don't recall.
Q. Did he tell you they got away on foot?
A. Again, I don't ---

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Q. Not sure. When you end up at [redacted] Ball Park Road, you do not have an arrest warrant or a search warrant, correct?
A. No, sir.
Q. And the information you've gotten from Reggie was that the house was near the clinic, right?
A. Yes, sir.
Q. And there's lots of houses near the clinic, right?
A. Yes, sir.
Q. But you knew to go to [redacted] Ball Park Road, Richard Lewis' house, correct?
A. Yes, sir.
Q. That's because from previous dealings, you know that Marion occasionally stayed with Old School in the past who is Richard Lewis at [redacted] Ball Park Road?
A. Yes, sir.
Q. And that's the place that happens to be right across from the clinic?
A. Yes, sir.
Q. So you had your prior knowledge plus what Reggie had told you already, before you ended up at [redacted] Ball Park Road?
A. My prior knowledge of...
Q. Any of your previous dealings ever result in you

knowing where Marion occasionally stayed?
A. Yes, sir.
Q. When you approach the residence you heard movement in the bedroom nearest to the driveway, correct?
A. Yes, sir.
Q. We're talking about a trailer here. I mean to say it's perfectly rectangular, right?
A. Yes, sir.
Q. And it's not that big from front to back?
A. Yes, sir.
Q. And when you hear this movement, you know that that's the bedroom Marion occupied when he stayed with Richard?
A. I -- I don't know that I know that.
Q. Did you write that in your report?
A. I may -- I may have. I don't recall.
Q. Would you have written that in your report if it weren't true?
A. No, I wouldn't of.
Q. Do you have a copy of your report?
A. Not in front of me, I don't.
Q. Okay. I'll hand you one?
A. Thanks.
Q. You're welcome.
A. Which page am I looking at?

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Q. Page 304.
A. Yes, sir.
Q. About four lines down.
A. Yes, sir. I see it. That's correct.
Q. That this is the bedroom Marion occupied when he stayed with Richard?
A. Yes, sir.
Q. And that's something you would know from your previous dealings not from what Reggie told you?
A. Right.
Q. Richard tells you that Marion still comes by the house and stays with him?
A. Occasionally.
Q. He told you that that day?
A. Yes, he did.
Q. That the last time Marion had stayed the night was about a week ago?
A. Yes, sir.
Q. And that when Marion stayed he stayed in that back bedroom where he was located, correct?
A. Yes, sir.
Q. All right. You took the pictures -- let me back up. You're the one who obtains consent from Richard Lewis to enter [redacted] Ball Park, correct?
A. Yes, sir.

Q. And did you get written consent before you went in or just verbal and then later written?
A. I think we got verbal and then we went in.
Q. And when you went in, did you go straight to that bedroom?
A. Yes, sir.
Q. Was it open?
A. When I came in, someone came out of the bathroom. Right there I had to deal with him immediately. That's when I heard the bedroom window slam open. And the officers that I had called in started screaming "show me your hands", "Sheriff's office, show me your hand".
Q. So you enter. You see somebody coming out of the bathroom. Is this the same bathroom where the drugs were later found?
A. Yes, sir.
Q. That person was Larry Holmes?
A. Yes, I believe so.
Q. Investigator Chapman is with you, right?
A. Yes, sir.
Q. When you encountered Mr. Holmes, were you able to see in the bedroom that you're headed towards?
A. When I encounter Mr. Holmes?
Q. Yes.

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A. No. The door was shut.
Q. Door was shut. And then you hear the opening of the window?
A. Yes, sir. I heard it slamming.
Q. You heard yelling from a police officer outside?
A. Yes, sir.
Q. And you heard the slamming shut of the window after that?
A. Yes, sir.
Q. So from that you could tell that the person had not gone outside that they had stayed in?
A. Yes, sir.
Q. And you don't which that person was?
A. No, sir.
Q. So when you go to the door, are you just able to walk in?
A. After I pushed the door open. Yes, sir.
Q. Did you force the door open?
A. Yes, sir.
Q. So you had to force the door open?
A. Yes, sir. It was an immediate reaction because of what I had heard. And because I knew it was a good possibility that they were still armed.
Q. Well, were they armed?
A. No, sir.

Q. Did you find guns in the room?
A. No, sir. But at the time I didn't know that.
Q. And so you didn't ask if you could enter the room?
A. Correct.
Q. The door was shut and you had to force your way in?
A. Yes, sir. But I -- yes, sir.
Q. And when you force the door open, you encounter Mr. Thomas first?
A. Yes, sir.
Q. Do you see him hitting on top of the bed?
A. No. He's coming back at the door at me.
Q. And what you do to him?
A. I bring him out of the room and give him to Investigator Chapman.
Q. Did you have to use force or was he compliant with your command?
A. He was compliant.
Q. You had the gun drawn?
A. Yes, sir.
Q. And you were wearing a bullet-proofed vest?
A. Yes, sir.
Q. You said you passed him off to Investigator Chapman?
A. Yes, I believe so.

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Q. And once he is secured by Investigator Chapman then you turn your focus back to the door to the bedroom?
A. Yes, sir.
Q. And do you actually enter the bedroom?
A. No, sir.
Q. Do you shout commands?
A. Yes, sir. I did.
Q. And obviously this is not playing around time that you're fairly forceful with these commands that you're shouting. And as a result you see hands coming out from the closet?
A. Yes, the floor. Yes, sir
Q. On the floor? I want to -- this is a rough sketch of the residence and I don't know if it would be helpful or not but I'm going to pass you a copy. We are talking about bedroom one, correct, or I don't know if you can tell? I know you didn't make this sketch.
A. Well, it's missing a bathroom.
Q. Where is the missing bathroom?
A. There's two listed as bedroom one.
Q. There's bathroom one and then bedroom one.
A. Sorry. Yeah, it would be bedroom one, I think.
Q. So where is the closet in bedroom one? Do you

know? Can you remember?
A. Yes, sir. As soon as you come in the door it's right -- it's directly in front you.
Q. So you're walking straight into the closet?
A. Yes, sir. The door is facing -- if I'm walking in this way, the door is facing out that way.
Q. The hinge on the closet door?
A. Yes, sir.
Q. Pulls outward. Would the two doors hit if they were both open?
A. No, sir.
Q. There's enough space there?
A. Yes, sir. But the closet door swings the other way, I remember.
Q. When you first entered and got Thomas out of there, the closet door was closed?
A. No, it wasn't.
Q. Could you see in the closet?
A. No, I couldn't. I didn't know he was in the closet until his hands came out of the closet.
Q. And so he just comes out of the closet but you can't see into the closet you can just see that's where he's coming from?
A. That's where his hands are.
Q. And then the rest of his body follows?

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A. He came -- I came -- when his hands came out, I could see his hands. That's why I entered the room. That's when we went in and took custody of him.

Q. Did he come out to you?

A. Out of the closet? Yes, sir.

Q. And so he comes out of the closet then what did you do?

A. I took him into custody.

Q. When you took him into custody, where did you take him, outside?

A. Into the living. It was still, I mean, we didn't know if anybody else was around. It was still a tense situation at that point.

Q. Was there anybody else in that bedroom?

A. No, sir.

Q. Did you -- then -- at some point you take Jason, and Marion, and Larry, and Richard, they all exit the home, correct?

A. Yes, sir.

Q. And there's another female guest that's there?

A. Yes, sir.

Q. And so before you search, you take everybody out of the house?

A. I believe I did, yes.

Q. In fact, if you open your report on page three or four at the bottom of the opening paragraph, you wrote that all three individuals were searched and placed in patrol vehicles and then began a search of the bedroom where Marion and Jason were hiding correct?

A. Yes, sir.

Q. So you secure the defendants and then you search?

A. I didn't -- I did not secure them. There were several officers on scene. They were secure.

Q. I guess as I read it, all three individuals were then searched. I guess it doesn't say that you actually did the search.

A. That's right.

Q. And placed in the patrol vehicles -- that you wait until they are placed in the patrol vehicle before you do the search?

A. I'm still in the house when they take them out, yes.

Q. You'd agree that your report indicates, "I then began the search of the bedroom", correct, indicating that it's after they are taken into custody and put in the patrol vehicles?

A. I'm not sure of the wording, sir.

Q. But you wrote it, right?

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A. Right.
Q. All right. And so the first thing you do is start taking the photographs? Have you reviewed the photographs that since you've taken them? I have exhibits one through nine and they are a little bit out of order, could you look at them and tell if these are the photographs that you took?
A. I could. Yes, sir.
Q. All right, so is... I just want to make sure I'm not trying to pull a fast one and show different pictures or anything. But these are the photos that you actually take and that you can tell from these photos that there are extra shoes in the room other than the ones that he's wearing?
A. Yes, sir.
Q. There are a bag of clothes in the closet?
A. Yes, sir.
Q. There is deodorant on the night stand?
A. Vaseline.
Q. Well, there's lotion, correct, on the dresser, an iron on the dresser, correct?
A. Yes, sir.
Q. There's a pair of jeans on the dresser?
A. Yes, sir.
Q. A lot of clothes are there, correct, three pairs

of jeans.

A. I -- I...

Q. You don't think there's a lot? You don't want to say there's a lot?

A. Right. There's three pairs of jeans.

Q. Three pairs of jeans and a bag of clothes, a couple of hats, some jackets.

A. I'm sorry, some?

Q. There is the camouflage jacket. There's one on the bed. I mean, I'm giving you a picture that demonstrates it. One hanging out of the closet.

A. Okay.

Q. There are jeans being pressed underneath the mattress. Are those in the pictures?

A. No, they're not. I mean, yes, they are.

Q. An alarm clock on the night stand?

A. Yes, sir, very similar to a hotel.

Q. Okay. And from prior dealings with Richard Lewis, is that the way he runs this room?

A. No, sir. I mean, not that I know of.

Q. Not that you would know of. And so after you take the pictures, is it true that the jacket that you see on the floor in the closet has importance to you?

A. It is, right.

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Q. Because Reggie describes Marion as wearing a camouflage jacket?
A. That's right.
Q. And so, at this time, you move the jacket?
A. Yes, sir. I picked it up.
Q. You picked it up? The point being to keep it for evidence, correct?
A. Right.
Q. And it was after you pick up that jacket that you say that you see the crack in the shoe?
A. Yes, sir.
Q. Let me hold those pictures real quick. I'm showing you number four and number nine and they're both similar pictures. I'll flip them out in front of you to look at. That is the jacket before you move it; is that correct?
A. Yes, sir.
Q. And so from that picture you cannot see any crack?
A. No, sir.
Q. Do you know -- there's a shoe ---
A. The shoe was covered up by the jacket.
Q. So there's a shoe that you can see, right?
A. Yes, sir.
Q. But obviously shoes come in pairs, correct, and that the other shoe is underneath the jacket?

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A. Yes, sir.
Q. So it's only after you seize that jacket that you could possibly see the crack?
A. Yes, sir.
Q. And that picture represents how you first encountered that closet?
A. Yes, sir.
Q. You hadn't moved anything back when you took that picture?
A. No, sir.

MR. IAN DEYSACH: You can be putting these up or if you want to hold them.

Q. All right. Did I ask you this, that you went in the bedroom without consent from Richard Lewis?
A. That's correct.
Q. I'm going to shift to the afternoon. You respond back to [redacted] Ball Park, correct?
A. Yes, sir.
Q. Officer Green is there?
A. Yes, sir.
Q. Richard Lewis is in a patrol car when you arrive; is that correct?
A. Yes, sir.
Q. You talk to Richard Lewis again?
A. Yes, sir.

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Q. And is he in the patrol car when you talk to him?
A. No, sir.
Q. He's out?
A. Yes, sir.
Q. Is he cuffed?
A. I believe so.
Q. At that point do you get consent again to go into his house?
A. I Mirandized him and told him why we were there and asked him where the crack was. He said it was under the sink in the bathroom.
Q. And so were you -- you did enter the house, right?
A. Yes, sir.
Q. Did you do that because you had already gotten consent earlier in the day?
A. No, sir.
Q. Did you do it because you got consent right ---
A. No. He took us in the house.
Q. So you don't really come out and ask him for consent but you follow him in as he leads you in?
A. Yes, sir.
Q. And he points out the ---
A. He's still in handcuffs at this point.
Q. Still handcuffed, but he shows you where the drugs are?

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A. Yes, sir.
Q. And then you called Investigator Rice?
A. We had already called.
Q. Did you call him to let him know that you've seen this crack again -- or did you call to let him know that you found that crack again -- that you found this crack in the bathroom?
A. I'm sorry. You lost me.
Q. It was not an artful question. I want to know if you called Investigator Rice after you find the crack?
A. I called him before we even left the office.
Q. So how would you have found out about the crack?
A. Marion Bonds was talking about it on the jail phone.
Q. But if you were to put that Investigator Fraser went in and observed the crack at Richard Lewis' house that afternoon, he wouldn't have gotten that information from you?
A. Yeah. I told him when I got there that I had seen it. It was under the...
Q. When he got there?
A. No. I think -- yeah, I think it was him. I'm not sure. I believe I called him on the phone. I'm not -- I don't recall specifically.

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Q. Because did you ever generate a report about this second visit?
A. No. I don't think I did.
Q. And so you don't have one of those to refer to that would help you remember what happened?
A. No, I don't.
Q. The first time you talk to Rice was when he appears with a search warrant?
A. I don't -- we spoke to Investigator Rice before we even left the Sheriff's office. He knew what was going on. There were several others at the office listening to the phone call.
Q. You listened in on the phone call?
A. I did.
Q. Did you have anything to do with the application for an arrest warrant for Marion?
A. I did not.
Q. Did you know whether or not an arrest warrant was even in existence when you were listening to these phone calls?
A. I -- I think there was. I know he was incarcerated. I know Investigator Kelleher was working on it.
Q. But he was secured from the moment you got him out of the bedroom, right?

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A. Yes, sir.
Q. He went straight to jail from there as far as you know or do you know?
A. I don't know. I think Investigator Kelleher went to interview him. I'm not sure.
Q. You're telling me you're not sure whether or not warrant was in existence or if a warrant had been served on Bonds when you were listening in on these phone calls?
A. I don't know.
Q. When you were talking to Richard Lewis at any time did you indicate to him that he might bear some criminal responsibility for the drugs that are found in his house?
A. Yes.
Q. Yes?
A. Yeah.

MR. IAN DEYSACH: I don't have anymore questions, Your Honor.

THE COURT: Solicitor?

MS. ANGIE TANNER: Just briefly, Your Honor.

CROSS EXAMINATION

BY MS. ANGIE TANNER:

Q. Investigator Fraser, Ball Park Road, that was the third or fourth location where you went looking

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for Mr. Bonds?
A. I believe it was the fourth.
Q. And when you arrive, who do you come in contact with first?
A. I came in contact with Mr. Lewis.
Q. And what were you able to determine about who lived in that location?
A. Mr. Lewis told me that he was the only one who lived there at that time. I had spoken to his mother, Ms. Bond. She said that he was the only one supposed to be there.
Q. And that Mr. Lewis' mother?
A. Yes, ma'am.
Q. Who does the property actually belong to?
A. Mr. Lewis's mother.
Q. At the time you enter the first time around ten o'clock on the 17th, did you have consent from Richard Lewis?
A. I did.
Q. And at the time you went looking for Marion Bonds, was it your intention to arrest him?
A. Yes, it was.
Q. In fact he was arrested from that residence?
A. Yes, he was.
Q. And at that residence where did you find him?

A. In the closet -- at the base of the closet in the bedroom nearest the driveway.
Q. And this closet, what would be the size of it?
A. Very small. Smaller than -- about the width of this box.
Q. Would everything in the closet be within arms length?
A. Yes, ma'am.
Q. And what did Mr. Lewis tell you about the last time Marion Bonds had been inside the residence?
A. He said that he had been there a week ago. He had been in that room a week ago. He said he had moved him out, months back.
Q. He actually moved him out months ago but he had been by a week ago?
A. Right.
Q. And once Mr. Bonds is placed under arrest for the Assault and Battery, Armed Robbery, and the gun charge, are you there reviewing the phone calls from the detention center?
A. Yes, ma'am. I am.
Q. And based on your review of that, you go back to Ball Park Road?
A. I did.
Q. And at that time is Mr. Lewis cooperative?

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A. Yes, he is.
Q. And does Mr. Lewis consent to allow you back into the home?
A. Yes, he does.
Q. Prior to Investigator Rice arriving with the search warrant, are you collecting evidence from that residence?
A. No, I don't.
Q. What is your purpose for going in the residence with Mr. Lewis?
A. Essentially to ensure that he hadn't destroyed the evidence that we heard him talking about on the phone, that there was no further danger of any other evidence being destroyed.

MS. ANGIE TANNER: No further questions.

MR. IAN DEYSACH: Just briefly.

REDIRECT

BY MR. IAN DEYSACH:

Q. Now when you arrive Mr. Lewis was in the back of the patrol car handcuffed, right?
A. Yes, sir.
Q. There wouldn't be any way he could have destroyed the evidence from there; is that right?
A. There's also another female who had been around.
Q. Was she ---?

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A. I believe she was still there.
Q. Was she inside the residence?
A. Not when I got there.
Q. So when you go in, there's nobody else in the residence?
A. No, sir.
Q. So there wouldn't have been anybody there to destroy the evidence?
A. It could have been.
Q. So did you look for people first or did you look for the evidence first?
A. He showed us where the evidence was first.
Q. You did listen to the tapes? Nothing on the tapes said anything about anybody trying to destroy the drugs, correct?
A. No. He was trying---
Q. The opposite.
A. --keep the drugs, yeah.

MR. IAN DEYSACH: No further questions for Investigator Fraser.

THE COURT: Do you have anything further, Solicitor?

MS. ANGIE TANNER: One more quick question.

RECROSS

BY MS. ANGIE TANNER:

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Q. Investigator Fraser, when you arrested Marion Bonds, did he have a key to this residence?
A. Not that I'm aware of, no.
Q. Thank you.

MS. ANGIE TANNER: No further questions.

MR. IAN DEYSACH: I don't have any further questions for Investigator Fraser.

THE COURT: Mr. Deysach, do you any other witnesses?

MR. IAN DEYSACH: Your Honor, for purposes of testimony about when he stayed and what the arrangement was between Mr. Lewis and him, I would put Marion Bonds, call him to the stand to testify to that relationship.

THE COURT: You're on Mr. Bonds.

First duly sworn, **MARION BONDS** testified as follows:

THE COURT: I'm going to ask you to speak up for my Court Reporter. Please state your name.

THE WITNESS: Marion Bonds.

DIRECT EXAMINATION

BY MR. IAN DEYSACH:

Q. Marion, will you please tell the Court, what the arrangement was between you and Richard Lewis, Old School, for him to allow you to stay there?

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A. Every time I stay there Mr. Old School tell us to always give him cash anywhere from thirty to fifty dollars to stay there because he never let -- he never let me stay for free.
Q. So on this day, had you given Richard Lewis any money to stay there?
A. Yes, sir.
Q. How much did you give him?
A. I gave him $40.
Q. How long were you expecting to stay?
A. A whole week. I stay there.
Q. How many nights a week you think you stay there?
A. Four or five times a night.
Q. When was the last time you had stayed there?
A. On Monday, on Monday before this past Wednesday.
Q. Had you ever had a key?
A. Yes.
Q. When you're not staying at Old School's, where do you stay?
A. I sleep at my girlfriend's house.
Q. Who does she live with?
A. She lives with her mother.
Q. Is it just her and her mother?
A. Her mother and her family.
Q. Why would you need another place to stay besides

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her and her family's house?
A. Because that's -- that's like her mothers house and that's their family and I can't stay there.
Q. What all items did you keep there?
A. At my girlfriend's or...
Q. At Richard Lewis' house?
A. All of my clothes, underwear, everything I got to use every day.
Q. What were you doing with those jeans underneath the mattress?
A. I was keeping it creased because I just had got them from the cleaners.
Q. So when were you planning on wearing them?
A. I just had put them underneath there because I had just -- I wore them on Valentines Day.
Q. Did you have a toothbrush in the -- did you keep anything in the bathroom?
A. Toothbrush.
Q. Anything else?
A. Deodorant, rag.
Q. Was the deodorant, and the Vaseline lotion yours?
A. Yes. Everything was mine in the room.
Q. How often do you have to use that lotion?
A. Everyday if it was cold, winter.
Q. So did you have a key at the time?

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A. I had the key but I just had lost the key and I was going to get another one made. I just had lost the key like New Year's night. I lost it that night when I went out for New Year's.

Q. So you had been making some other arrangements?

A. Yeah. He would leave the door open for me. Being that he knew I had lost my key, he would leave the front door open for me at all times.

Q. Would he allow you to bring guests?

A. Yes.

Q. Would he have let Holmes or Thomas in the home without you?

A. No.

Q. Did any of them stay over there?

A. No.

MR. IAN DEYSACH: That's all I have, Your Honor.

MS. ANGIE TANNER: Just briefly.

CROSS EXAMINATION

BY MS. ANGIE TANNER:

Q. Mr. Bonds, prior to you coming over to the Ball Park Road residence on February 17th, didn't you call Mr. Lewis and ask him if you can come over and freshen up?

A. No.

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Q. You didn't?
A. No.
Q. If I showed you phone records where you called Mr. Lewis, you going to deny calling him?
A. I never called him to tell him I was coming to freshen up.
Q. What did you call to tell him?
A. I always call to make sure either he's home.
Q. And when you arrived, you knocked on the door and he let you in?
A. Yes, I went to the back -- I went to the back door because he was home. So he had the front door locked. Normally, when he not there he'll leave it open for me, but when he there he'll have it locked and if it's locked, I go to the back door.
Q. And wasn't he upset with you because you showed up with two fellows and not just you freshening up?
A. No. Not to my knowledge, he wasn't.
Q. So he didn't say anything to you about you know all these people aren't supposed to be here?
A. No.
Q. And months prior, wasn't it his mother who told you you had to get out?
A. No. That was when Mr. -- when Mr. Old School got locked up. I used -- okay, when I was there

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before like months ago, like the beginning of the middle of the year, I used to pay his mother through a rental agreement $50 every week. I was staying there, me and my girlfriend. Then we moved out because Richard Lewis got locked up in Beaufort County. So we moved out because he got locked up. His mom say that she didn't want us over there. When he got out, that's when I moved back. And my girlfriend stayed at her mother house and that's when I moved back with Richard Lewis.

Q. Isn't it true that after you moved out, he would let you come back and it was because you would provide him with crack?

MR. IAN DEYSACH: I object to that on fifth Amendment's ground, Your Honor.

THE COURT: He needs to claim it.

MR. IAN DEYSACH: I think by not answering, he's remaining silent, Your Honor.

A. I didn't understand. What you had said?

BY MS. TANNER:

Q. I asked you isn't it true that after you moved out, Mr. Lewis let you come back to his house and hang out there occasionally in exchange for you giving him crack?

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A. No. I always gave him cash every time I come there.
Q. And isn't it true that prior to this date, you hadn't stayed there for over a week?
A. No. I just had stayed there Monday night. I just had stayed there Monday night because -- well, Sunday night because Valentine's Day was that -- that Sunday. So I was there Monday and Sunday.
Q. But you weren't there Tuesday or Wednesday?
A. Tuesday or Wednesday? No, I came back there Wednesday morning.
Q. Do you get any bills, like telephone bills, medical bills? If you were to get bills in the mail, where would that go?
A. I would get a bill in the mail and give it -- sent to my mother's address.
Q. And how about your driver's license? What address is on your driver's license?
A. [redacted] Etting White Road. My mother's address.
Q. Not Ball Park Road?
A. I get everything goes to ---
Q. Because that's not your home?
A. That's where I stayed at, yes. That's where I stayed at but I had all my mailing like all my legal work, I would have them mail it to mother's

house.

Q. Because you also stayed at your mother's house some?

A. No. I don't stay at my mother's house.

Q. You stay at your dad's house some?

A. At my dad house? My dad stay with my mother. I don't stay there.

Q. And at your aunt's house, you stay there some too.

A. That's my grandmother. I just be over there during the day, but I don't stay there.

Q. And your girlfriend's house, you live with her too?

A. No. I don't live with her. I can get to be there some nights with her and my kids but I spend most of my time instead at Mr. Lewis' house.

MS. ANGIE TANNER: No further questions.

MR. IAN DEYSACH: Nothing from me, Your Honor.

THE COURT: Anymore witnesses, Mr. Deysach?

MR. IAN DEYSACH: I do not have anymore witnesses, Your Honor.

THE COURT: Solicitor?

MS. ANGIE TANNER: No other witnesses, Your Honor.

THE COURT: Okay. Argument?

MR. IAN DEYSACH: I've got some of that, Your

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Honor. I guess I'll start with a general rule which is that it is unconstitutional-- it is unconstitutional to conduct a warrantless arrest of somebody where they enjoy a reasonable expectation of privacy and that's Payton v. New York that's the Supreme Court. And we know that there is no arrest warrant or any search warrant in existence at this time. So I think probably the threshold question is whether or not in this bedroom that we've been talking about, whether or not Marion Bonds enjoys protection of the Fourth Amendment when he is there.

And I think that based on what we've gotten from the police department -- well I guess I'll -- let me back up. That the Supreme Court has told us in Minnesota v. Olsen that, I'm really citing Jones, that a person can have a legally sufficient usage in a place other than his own home so the Fourth Amendment protects him from unreasonable government intrusion into that place. So it's not a question of what's on his driver's license, where his bills go, or what have you. I know that until I actually -- first, until I bought a house all my legal mail would go to my parent's house also. And so I don't think that that's to determinative really of anything.

The question is whether or not according to State

v. Missouri which is the South Carolina case from 2004 and Raycus v. Illinois, the U.S. Supreme Court case, that the defendant must show that they have a legitimate expectation of privacy and the expectation is one that society recognizes as reasonable. We think that society would recognizes a houseguest as a legitimate expectation of privacy. That's the Supreme Court in Minnesota v. Olsen also.

And so I think that when you look at who's the owner, and his clothes, his lotion, his ironing board, his pants being creased, that is very clear. The police -- whether it's a week or a couple days before that he stayed there overnight, he's still in the category of houseguest or overnight guest. So there's no question but that he enjoys that Fourth Amendment protection.

Now I think the question then turns to whether or not Richard Lewis can himself consent to a warrant less, not just search, but a warrantless arrest of Mr. Bonds when he is in his own room, his own bedroom because it is different. You know, I have not found, and I probably have sold myself a little short, Your Honor, because the testimony of Mr. Bonds is that he is indeed not just a guest but a tenant. And I think that even Investigator Fraser took note that the place

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looked like a hotel room more than it did just some empty room. Obviously there was lots of items -- I don't wanna -- so the relationship that he has with that room goes well beyond what is the bare minimum required by the Supreme Court Juris Prudence and the Constitution itself.

But it is my position that Old School cannot consent to the arrest of somebody in their own bedroom. The question is if there's one whether or not consent could be given in such an incidence. I think it's all pretty clear in this scenario, he can't. But you cannot -- I rely on a State v. Cannon, which is the South Carolina case that has in its opinion. It's a CDV case in which the ability for an officer to make a warrantless arrest is kind of hinging on the CDV and how it stands by the CDV statute, but the Court's very clear that the focus here should be on the person's arrest, not the manner in which the arresting officer enter's his home. And so, when we talk about consent this but it is consent for two different things and the idea that one person can consent to the arrest of another person, I couldn't find a case where that actually, to be honest with you, occurred. Now I looked in South Carolina cases and Supreme Court cases. I didn't look in other jurisdiction.

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THE COURT: There's nothing in any case law that it states what a hot pursuit of a fleeing felon is, correct? I mean I cannot find any.

MR. IAN DEYSACH: Even if you could, you know, hot pursuit, I think, would at least require the police to see somebody go into the house. They would require a chase, you know, as oppose to three hours later showing up at a last known address. I think that would pretty much twist the hot pursuit idea.

THE COURT: What about the eminent destruction of evidence?

MR. IAN DEYSACH: Well, if you're talking about drugs, it's one thing. But if you're talking about a gun and a jacket which is the only thing they could have been looking for, you know, that's not flushable and it's not -- it can't go down the toilet. How do you destroy a gun?

THE COURT: Well it can certainly go in a lake or in some other body of water somewhere where it's never to be found. I've had plenty of cases where the gun was never recovered.

MR. IAN DEYSACH: There's no lake in Richard Lewis' house, you know. They have him cornered in the bedroom. And so if they wanted to -- they can't arrest in Richard Lewis' bedroom to prevent him from going to

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a lake and throwing the jacket and gun away.

In fact, like we said, there's no gun ever even found. But, you know, so the eminent destruction of evidence doesn't make any sense for a reason to arrest him. Because that didn't exist at the time. I have other cases a landlord may not consent to a tenants room, a hotel manager may not consent to a person's room, a person's room at a hotel which is kind of an analog where you've got a tenant in this situation that doesn't stay a whole month. I guess it's what makes it like a hotel room.

And Georgia v. Randolph, a 2006 case, tells us that a co-tenant may not consent to search when another co-tenant objects. So even if we do get Richard Lewis' consent with a present co-tenant where they have to force their way into a room, they haven't gotten that consent from Mr. Bonds. We've got the slamming of the window. We've go the locking of the door and what other powers that is gun strong and the rest is police work at the time. And there's certainly no way that Richard Lewis could legally consent to or constitutionally consent to the arrest of Marion Bonds in his bedroom in this scenario.

And then certainly we can come back and try and think of the destruction of evidence and things like

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that. The whole reason the police said they went in was because they had consent. And Investigator Fraser who went into the bedroom to do the arrest said he would not have gone in if he didn't have consent. And so if we want to give them some other -- this is not what the police were thinking at the time.

I have bifocated my arguments not only as to the arrest but then also the search that comes afterwards because the testimony was that the people in the house are secured. And then we go back and photograph and then search. Investigator Rice in his search warrant application indicates that's a consent search. I think Mr. Fraser indicated that that was consent that he was using as a bases for that. But we've got the same problem an objecting present co-tenant who had a gun drawn on him but never given any consent to the room or he obviously does not want the officers to be in; otherwise, he wouldn't have made it so they had to force open the door. And so for them to use that consent to search, yet again. It's still the same problem. You can't consent where there's a -- a landlord can't consent. It's the same thing for consenting to arrest that I've named but you can't have a landlord consenting to a tenant's -- a search of a tenant's house. You can't have a hotel manager do the

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same.

And so it's the same problem and I kind of through testimony tried to bring out why we can't say search incident to arrest because they're in a patrol car. They're not in a place where they could grab evidence or destroy it or anything like that. And so a search incident to arrest, not that they even brought that up as a justification, is not appropriate for -- is not appropriate for a reason to search. And it is a search. It's not a plain view situation because they've taken pictures of the jacket as it's covering up the -- what they find the drugs and they have to seize that jacket and manipulate that jacket, seize it-- is really what I've got Investigator Fraser to admit to -- before they can even look in that shoe. And so it's -- even to get that jacket, they need a warrant or valid consent which they can only get from the person who's room it obviously is. And it really is a little bit disconcerting to try and hear the police say well we don't think it's his room or this or that. The whole reason that they go there in the first place is because they know it's his room and which house they're talking about. Nobody has to say [redacted] Ball Park for them to know this is where we're going to find Marion Bonds. And even when they hear the rustling in the room, they

know that that's the room that he stays in and so the police definitely know that's his room. They tell us in the report.

THE COURT: Solicitor?

MS. ANGIE TANNER: Your Honor, first of all, the State's position is that Mr. Bonds has absolutely no expectation of privacy in his bedroom. He does not live there. He hasn't live there for months. The fact that he might have stayed overnight one night a week prior to that still does not give him an expectation of privacy on the day this occurred. Because there are a couple pair of jeans in that room does not indicate someone lives in that room. There's no underwear, there's no shirt. The fact that some lotion is left behind, that is not indication that he was living in this room. That he stops by, maybe, but stopping by does not create an expectation of privacy.

Beyond that, when officers arrive at this scene, this is the fourth location they search. They aren't told this where he lives and that's where they go immediately. This is the fourth location they check because it is given in a list of places where he might be hanging out, not that this is his one residence. So when they go there this is the fourth place they check.

When they arrive, the homeowner answers the door

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and tells them yeah. They give the motion, he's in there but they didn't want him to hear it. He gives a head nod. He's down there. He gives consent to go in. Under protective sweep, the officers had every right under the homeowner's consent to go in and do a protective sweep. Upon the protective sweep of that room, they find Jason Thomas trying to jump out of the window and Marion Bonds hiding in the closet. They were looking for Marion Bonds to arrest him for assault and battery with intent to kill, attempted armed robbery, and possession by a felon of a firearm.

Under U.S. v. Robinson, a custodial arrest based on probable cause and a search for a person, the area within it's immediately control, the weapons and destructable evidence is a reasonable intrusion and requires no additional justifications.

So search incident to arrest, at a minimum they can search that closet, because that's where he's found. Officer Fraser testified that everything within that closet is within arms length. That's where he finds the jacket. It matches the description of the shooter. They also find the drugs. It's in the shoe right beside the jacket. Under State v. Fryberger, it is not necessary that he was under arrest at the time of the search, only that he was going to be under

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arrest. And he absolutely was going to be under arrest. That's why they're looking for him, that's why they did a protective search.

First, we don't believe he had any expectation of privacy period. The consent to search by Richard Lewis is fine enough to search everything in that home. Secondly, if there's any doubt about that, there's no question the State has a right to go into a protective sweep. They heard the noises in the trailer. They knew what direction the noises were coming from. They were looking for a subject who had just committed an armed robbery. They had every right to produce a protective sweep of that room. They locate him, they arrest him. Search incident to arrest, they can search that closet.

MR. IAN DEYSACH: I have a couple of responses whenever you are ready, Your Honor. I think that the -- I guess I'll go with the second first. The search incident to arrest does not work once you've removed the person from the area that was searched. The testimony was that they removed Marion Bonds, secure him in the patrol vehicle. And the picture you see after that is the untouched closet. So the closet is not searched until after these guys are removed from that area. The search incident to an arrest, the

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justification for it, is to prevent the eminent destruction of evidence or possibly officer safety. So that somebody who could reach into the door and pull out a gun to resist an arrest as easy as they can reach into their pocket.

When they are taken out to the car, they no longer have that justification for a search incident to arrest. I rely on Chamel v. California, that's at 395 US 752 State v. Brown is a South Carolina case that stands for the same thing. Arizona v. Gant is a similar case where you can't do a search incident to arrest of a vehicle, if you've already arrested the person out of it. So I think the idea that it's a search incident to arrest doesn't stand up to what the law is, the constitutional juris prudence is.

Also, I guess, to go with the first point last or second is that we can't do a search incident to arrest unless the arrest is valid at first. You cant do an illegal arrest of somebody -- unconstitutional arrest of somebody and then justify the search of the area where they were by search incident to arrest. That search is only as constitutional as the underlining arrest.

Protective sweep, there is no --I don't understand -- one thing I guess I would point out is that the

police did not tell you that they were doing a protective sweep. They told you they were going in because they had consent. And that they clear the room of all the people. You know, they get all the people in the house outside, before they do the search. And you can tell by looking into that picture that Investigator Fraser took, that there's not a person in that --- a protective sweep is for people. There's not a person in that closet. And so if we're doing a protective sweep -- you know, the jacket is not going to hurt anybody. You know, the protective sweep is for somebody who might jump out and you know, so they've already swept by the time they get back in there and do that search.

Obviously, the Solicitor is relying -- she's trying to revise some of the reasons and find some reasons why it would be constitutional even though this is not what was testified to as far as the reasons the officers gave for going in.

It is, you know, we have a law requirement. And there's some exceptions but they didn't have any here. And that's why these drugs and the jacket and I've got some other things that are fruit of this poisonous arrest and search that also should the suppressed but I don't want to go all into the phone calls and the

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second search right this second because some of those arguments are based on what the ruling would the on this first search.

THE COURT: Yes.

MS. ANGIE TANNER: Clearing the room for people, that is a protective sweep, so using different language doesn't change it. I'm not inventing -- that's what they did. So if you're advising me as making that up now, is wrong. They cleared the room. They grabbed individuals, that's the protective sweep. They move the guy out of the bathroom, they move Jason Thomas from the window, they find him in the closet-- protective sweep, yes they move them. They get them where it's safe. And then they have the right search incident to arrest to look in that closet. There's just -- I don't know what else to say about that. That's clear constitutional law.

THE COURT: All right. Well, respectfully I think there was no expectation of privacy. I think Richard Lewis gave permission and he was the only one home and I'm not going to suppress the results of that search or the results of that arrest. What is your next motion?

MR. IAN DEYSACH: Your Honor, I understand your ruling, but I do want to put the cases that I'm

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relying. I think Minnesota v. Olsen 495 US 91 ---

THE COURT: Defendant was actually hiding in the closet that case, too.

MR. IAN DEYSACH: Right. And he had a legitimate expectation of privacy.

THE COURT: Of course the facts are different, I believe. It was in fact his girlfriend's house if I am correct?

MR. IAN DEYSACH: Correct.

THE COURT: Anything else you need to put on the record?

MR. IAN DEYSACH: So if we don't reach the threshold of reasonable expectation of privacy, then you haven't --- you don't even rule on whether it's a search incident to arrest, or protective sweep, or eminent destruction of evidence, or anything like that? You don't even reach that. Nothing more on this but I would continue to -- I do want to put some things on the record as to the next time they come back to the house. The ---

THE COURT: The conversation ---

MR. IAN DEYSACH: The phone calls.

THE COURT: Okay.

MR. IAN DEYSACH: The phone calls are -- I know that you ruled that this arrest was

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constitutional. If it were not constitutional---

THE COURT: Any subsequent information they would find would have been ---

MR. IAN DEYSACH: Would be fruit of the poisonous tree. And I would object to the introduction of those phone calls because he hadn't even been served with the warrants as far as we can tell at this time. We don't even know if warrants are in existence at this time. And so the phone calls are, clearly, fruit of the poisonous tree and then you take that and that's what ends up in the search warrant, the phone calls -- which, I'm objecting to, the arrest I'm objecting to and the search that I'm objecting to from early in the morning, are reasons for the beliefs that the drugs would be found in the second visit to [redacted] Ball Park Road. And so there's some more fruit in that search warrant. And the search warrant alleges that the drugs are underneath the kitchen sink when they're in fact in the bathroom. And that the drugs are actually found before the search warrant even arrives.

THE COURT: Let me ask you, what was the actual statement. Did anyone transcribe the actual recorded statement from the jail?

MR. IAN DEYSACH: From Mr. Bonds?

THE COURT: Yeah.

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MR. IAN DEYSACH: I did not transcribe it.

THE COURT: What was said that allowed the police officers to go and believe that there were still drugs left at the house?

MR. IAN DEYSACH: Without playing it for Your Honor, I would have to admit that the, you know, the content of what's on the phone call, I mean, I think it's -- If you know -- especially if you know that there are -- they've already found the drugs in the shoe and the content of the phone call, I think it's -- it's basically clear. I can see why they thought that there would be more drugs in the house based on what they were hearing on the phone conversations.

I mean I don't want to say too much but I don't want to play the tapes, really, either. I probably can admit that if they did listen to those phone calls that it would give them, at least some sort of suspicion that maybe something was afoot. Whether it would be enough for a search warrant, I'm not going to admit that to you, but there's some stuff there. And they wouldn't have had it if they don't arrest him without a search warrant or without an arrest warrant. That's why I'm objecting to all that. To be honest with you like I said it's found not even by a search warrant. Because even though there was some confusion by

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Investigator Fraser, the search warrant says the drugs were found before the warrant even arrives. That's what's in number two.

THE COURT: There are pill bottles underneath the bed; the mattress?

MR. IAN DEYSACH: There are pill bottles underneath the mattress. Certainly, I think, even as a search incident to arrest those are not -- the mattress isn't in the closet.

THE COURT: I'm just trying to figure out the different charges. He's charged with trafficking 28 to 100 is that for the drugs that were in the shoe and then the trafficking crack. Is that what's found in the pill bottle?

MR. IAN DEYSACH: I think they added the pill bottles and the shoe together, and then they came back with the bathroom later.

MS. ANGIE TANNER: Your Honor, I can clear it up. There's over 40 grams in the shoe and then inside the two pill bottles, I think it comes out total, with the shoe and the pill bottle, somewhere around 65 grams. So it's over 28, just in the shoe but it's also -- the pill bottles are added in.

THE COURT: And where did those come from? Where were those found?

MS. ANGIE TANNER: The pill bottles were found between the two mattresses.

THE COURT: So what's the bathroom then? He said something about the bathroom.

MS. ANGIE TANNER: That's the second go round after the phone calls. The phone calls indicate there's more in a trash can, in the kitchen. Mr. Lewis grabs that at the same time officers are coming back to the resident after they've intercepted the phone calls. He throws them into the bathroom under the sink as an officer arrives at his door. That's how they end up in the bathroom, he throws them after he finds them at the direction Mr. Bonds where it would be located.

MR. IAN DEYSACH: It is a little bit odd because you take for the first set of charges two -- really three separate quantities -- two pill bottles under the mattress and where Jason Thomas was sitting and then stuff them in his shoe. Add that -- all those different quantities together for one trafficking and then basically because the police don't find the rest, get a whole separate trafficking charge. I think at some point, I would ask -- I don't know if it's appropriate for pretrial. But I was thinking at the direct verdict stage, we've got -- these charges need to merge. Marion Bonds is not at the house after he

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was arrested. It's clear that the drugs were, the police just didn't find them. And whoever the bases of the charges not because he didn't have them at the same time he had this other group of drugs, it was just that the police didn't end up finding them. That's at least the theory that they are going under. I did want to -- -

THE COURT: Excuse me, Mr. Deysach. What does the case law say about -- don't say anything else -- numbers of whatever that whatever and they all added up to equal a trafficking charge? I mean is it the position of the State because they find all these different and can put them all together and charge that person, or that defendant, with trafficking?

MR. IAN DEYSACH: I don't have a lot of -- I'm not going to reach into my mental library of legal research here and give you anything that is very well researched.

THE COURT: I think you need overnight to look at that. I think that would be your best argument for what I think you are trying to say that they should only be going forward on one. What I'm hearing from you based on the quantities, it sounds like what you are saying is that even if you take the new crack that was found, if you add it to the old, it still doesn't

exceed the 28 to 100. So maybe if you could find some case law. I don't know if it requires them to put it all together but if you can find something let me know.

MR. IAN DEYSACH: The last thing, I just wanted to do to button up is that as I read the -- and I may have done it during the testimony --read the search warrant. Lewis, with the benefit of Miranda, admitted to hiding the suspected crack cocaine under the kitchen sink. Pointed it out to Investigator Fraser and I think that represents the same crack that is found pursuant to the search warrant. Objecting to -- specifically the drugs, the jacket, the phone calls, the second set of drugs, those are pieces of evidence that I think should be suppressed through the exclusionary rule, through the fruit of the poisonous tree doctrine, through ya' know -- because of an unconstitutional arrest, an unconstitutional search of a bedroom that -- I think it's pretty clear that nobody else has their stuff in there. And that when Mr. Bonds shows up that morning, he doesnot have all his -- all his iron, his deodorant. Those things are still in there from when he was there before. So, I think that's factually --though if you look at the case law --that he would fall squarely within somebody, a houseguest, who enjoys that reasonable expectation of

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privacy. And that's of course the whole issue that we've argued this afternoon. That's the bases of my objection, your ruling.

THE COURT: Anything else?

MS. ANGIE TANNER: No.

MR. IAN DEYSACH: Different pretrial motions. One thing that I did want to do, assuming a prior record for lay witnesses. I know that some times the Solicitor's office takes the position and it may be the correct one but they don't have to give it to me until they testify. I would like that as soon as I can get it.

THE COURT: Can he get it?

MS. ANGIE TANNER: Which one was it?

MR. IAN DEYSACH: It's Richard Lewis and Reggie Holmes are the ones that are, I think, they're the only non-police officers.

THE COURT: Can you have this for him tomorrow morning at 9 o' clock?

MS. ANGIE TANNER: I can give them to him before he leaves today.

THE COURT: Thank you.

MR. IAN DEYSACH: I did want to, before we got too far, and I know there wasn't consensus, because I've discussed it with the Solicitor's office, the rule

or the case law on subsequent drug arrest. I know that this probably -- isn't ripe until and unless there were to be conviction. We've argued whether these properly third and aboves or properly just second offenses that we're dealing with hear that before we get there at the last minute -- I did want to at least tell the State that I'm relying on Robinson v. State 387SC568 and State v. Boyd 288SC206 and they clearly state that when somebody's arrested with multiple different substances as long as its at the same time that those count as one drug offense. It is my understanding from what he had before, marijuana, crack, and powder, all in one arrest. I do have the incident report from that arrest with me in court today and I do have that with me in court today. And I have researched that. I don't want us to -- to have to -- I just wanted to preview that.

THE COURT: Thank you.

MR. IAN DEYSACH: I guess the only other thing is that I have not -- we've talked about it before the possession of a pistol by a person convicted of a crime of violence. I understand the ruling but I have not yet decided whether or not it would be better for my client to let the Jury know that he has five prior burglaries so they don't think he's murdered somebody or to let them know -- just say he has some crimes of

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violence on his record. And so that was something I wanted to think about tonight and try to figure out what made the most sense. And so I didn't want us to get here tomorrow and say well Deysach you said you were going to do the stipulation and now you've changed your mind. So I did want a little bit of time to think about that and I can let the Solicitor know probably before I leave tonight or early in the morning. Which my plan was but I didn't want her not to be prepared to approve those if I changed the course or remained the same. I don't have any other pretrial motions, Your Honor. That exhaust my list.

MS. ANGIE TANNER: I have just one brief issue, Your Honor. There are two witnesses on the State's witness list. They are both very short, chain witness, Eileen Rios and Ramona Cooper. There are only two items in the case that would even require a chain and that would obviously be the drugs. And I believe the officers will testify, Officer Rice, will testify that he put them in a sealed, it's called Best bag. So it is a sealed bag. He takes them into evidence. Eileen writes down one and I think Ramona writes down the second or vice versa. They watch him put it in a drop box which is a sealed box. Renita Berry will testify that she removes it from the sealed drop box.

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For economy, I don't know if these two witnesses are actually necessary. The chain can be completely fulfilled without them testifying because Officer Rice can say he took both items to the evidence room in their presence. While they're doing the paperwork that they received it from him into evidence, he puts them in the drop box. So that's two witnesses we can take off the list that would shorten the trial somewhat.

MR. IAN DEYSACH: You know, I'm not usually -- as easy as I am to work with, sometimes the idea of stipulating to things it always kind of -- I always think what's the problem. But my concern is that these are not the only two people in the chain that could -- there's one other person -- person who is on the search warrant return who I don't see on the State's witness list. So there is another person missing from the chain. And so I don't want to say well I don't mind if Rios and -- I don't know who the other person is, I forget her name -- I don't mind if the two lab workers don't come but I still would like to make an issue of the other missing police officer, the one who locates the drugs and does the film that is missing that still may have a problem -- cause a problem in their chain of custody. So I probably in an abundance of caution do not want to stipulate. I guess the short answer is, I

could change my mind but right now I do not want to stipulate.

THE COURT: Solicitor, they're both local, aren't they?

MS. ANGIE TANNER: Yes, ma'am. They're just across the street.

THE COURT: Okay.

MS. ANGIE TANNER: That's fine.

THE COURT: Anything further?

MS. ANGIE TANNER: I don't have anything.

THE COURT: All right, ya'll. Good night.

--- END OF TRANSCRIPT OF RECORD ---

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I, the undersigned Deborah E. Everett, Official Court Reporter for the Fourteenth 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 Beaufort County, South Carolina, on the 13th day of December, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 2, 2011

Deborah E. Everett
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2010-GS-07-598,599,602& 634

STATE OF SOUTH CAROLINA

Plaintiff

VS

MARION BONDS,

Defendant

TRANSCRIPT OF RECORD
VOLUME II

DECEMBER 14, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

DEBORAH E. EVERETT
Official Court Reporter

APPEARANCES

ANGIE TANNER, Attorney at Law
Solicitor for State of South Carolina

IAN DEYSACH, Attorney at Law
Attorney for the Defendant

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(Whereupon Court began at 10:24 A.M.)

THE BAILIFF: All rise. Judge Carmen Mullen presiding.

THE COURT: Thank y'all. Please be seated. All right. Is the State ready?

MS. ANGIE TANNER: The State is ready, Your Honor.

THE COURT: Is the Defense ready?

MR. IAN DEYSACH: Yes, Your Honor.

THE COURT: All right, let's bring the jury in, Al.

THE BAILIFF: Yes, ma'am.

(Whereupon jury entered at 10:26 A. M.)

THE COURT: Good morning, ladies and gentlemen of the jury. Welcome back. Ladies and gentlemen, at this time, what we're going to do is we're going to swear you in as the jurors of this case. I'm going to give you a few short instructions and the attorneys are going to do their opening statements. All right. So if you would.

(Swearing in of the jury.)

THE COURT: Ladies and gentlemen, what I'm now going to say to you is intended to serve as an introduction to the trial of the case. These remarks are not a charge of the law. I'm going to

instruct you on the law that's applicable to this case at the end of the trial before you retire to consider your verdict. This is merely an explanation of the procedures that we're going to follow during the trial so that you can better understand what's going on.

Ladies and gentlemen, the defendant in this case, Marion Bonds, is charged by indictments, filed in this court with crimes of assault and battery with intent to kill, attempted armed robbery, possession of a weapon by a felon, trafficking in crack cocaine, more than 28 but less than 100 grams, and trafficking in crack cocaine more than ten but less than twenty-eight grams.

Now, ladies and gentlemen, these indictments are simply the charges by which the case was brought into the courtroom and it's not in any sense evidence of any of the allegations that they contain.

Ladies and gentlemen, the defendant, Mr. Bonds, has pled not guilty to these indictments. The State therefore, has the burden of proving his guilt on each of the element's in the indictments beyond a reasonable doubt and it's your duty,

ladies and gentlemen of the jury, to decide whether the State has met that burden.

Now, your purpose as jurors is to find and determine the facts. You are the sole judge of the facts. If at any time I make any comment regarding the facts of this case, you must disregard it and you are only to determine the facts of this case from the testimony you are going to hear, up here on the witness stand, as well as any other evidence that's introduced into the court. Now, it's up to you to determine the inferences which you feel may properly be drawn from the evidence. It's especially important, ladies and gentlemen of the jury, that you perform your duty of determining the facts in the case diligently and conscientiously, because ordinarily there is no way to correct an erroneous determination of the facts by a jury.

On the other hand, with equal emphasis, the same law that makes you the judges of the facts makes me the judge of the law. The law that is given by the Court is the only law that you may follow. You must accept and follow it even though you may disagree with it. I cannot tell you what the facts of this case are and you cannot disagree

with me about what the law is or should be. Your job is to take the law, as I give it to you, and apply it to the facts as you find them. Again, from the testimony of the witnesses and the other evidence that's introduced into this Court and after doing that, ladies and gentlemen, you will render your verdict, a true and just verdict under the oath you just took as jurors.

Now, ladies and gentlemen, until I advise you to begin your deliberations you must not discuss this case with anyone and that includes your fellow jurors, friends, family members, or anyone that's involved in this case. And after the case is submitted to you, you must discuss it only in the jury room with your fellow jurors. The attorneys and parties and witnesses in this case have been instructed that they are not to talk to you. So again if see anyone involved in this case either coming or going from the courthouse, if they don't say hello please understand, they're not being unfriendly they're simply following my orders.

Ladies and gentlemen, during the trial of this case you are not to read, listen to, or watch any news reports about the case and this includes anything

that may be in the newspapers or on the internet, the radio or television. Ladies and gentlemen, you must not consider anything you may have read or heard about this case outside of the courtroom, whether before or during the trial.

Ladies and gentlemen, it is especially important that you keep an open mind and not decide any issue of the case until all the evidence has been presented, the party's have made their closing arguments, and I've instructed you on the law in this case. It is your solemn responsibility to determine the guilt or the innocence of the defendant and your verdict must be based solely on the evidence as it's presented to you in this trial and on the law, as I've instructed you during the close of the trial.

Now, ladies and gentlemen, in just a moment the Solicitor is going to make what is called an opening statement in which the Solicitor is going to explain to you the issues in this case, or at least what she believes the issues are in this case. The Attorney for the defendant may also make an opening statement, although he is not required to do so. What these attorneys tell you in their opening statements is not evidence in

this case, again it's their contention as to what the issues are. And as I reminded you, and I'll tell you again, the evidence in this case will be presented to you by sworn testimony from here up on the witness stand and any other exhibits that are introduced into evidence.

Now, ladies and gentlemen, from time to time during the trial of the case you may hear one of the lawyers say something like, "your honor I believe we have a question of law or a matter we need to take up with you", or "may we approach the bench", or sometimes I, myself, may have to excuse you back to your jury room. I want you to understand something, we're not hiding anything from you. Sometimes when I have to rule whether or not something's admissible under the law, I may make a comment on the facts of this case and again I wouldn't want anything I say to influence you or your decision on the facts. Because, again, I don't have a role in the facts of this case. And again, out of an abundance of caution, I can only excuse you and do it outside of your presence so you can't be influenced.

Ladies and gentlemen, in determining what the true facts are in this case you must decide

whether or not the testimony of the witnesses is believable. It's my responsibility to rule as the matter of law as to whether certain testimony is admitted or not, but once the testimony is admitted whether or not you believe it, is solely for you to determine.

In deciding whether to believe a witness you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness. You can look at the opportunity for the witness to have seen the matters and things about which the witness may testify. You can also look at the way the witness acts on the witness stand. You have the right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means, ladies and gentlemen, it is your duty to pay close attention to the witnesses, to observe them, to listen to them, so at the very end, when you begin your deliberations, you can accurately recall the testimony as taken during trial. Ladies and gentlemen, because this is going to be relatively short, I am not going to permit you to take notes but if at some point I think it may aid you in some way or it might be necessary, we will provide

you pens and pads.

At this time, ladies and gentlemen, I just ask that you sit back and pay close attention to the testimony as it's presented to you during the trial, ladies and gentlemen. Now, in order to preserve everyone rights I'm going to ask the attorneys if there is any objection from anyone?

MS. TANNER: Nothing from the State.

THE COURT: From the defense?

MR. DEYSACH: No, Your Honor.

THE COURT: All right, ladies and gentlemen, the trial will begin. Solicitor.

MS. TANNER: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

MS. TANNER: Good morning. Welcome to jury duty. Not on your holiday to do list, I'm sure. It's an important role. And I think so far, based on yesterday and what you've seen this morning, you've already learned this is nothing like TV. You have learned this is not CSI and I really hope that all of you understand that is fiction, it's for entertainment purposes. It's not how it works. You can't pull down a screen and use my hand and tell you how many women from Hilton Head

wore a read sweater yesterday. It doesn't work like that. In the courtroom what you're going to hear about during your jury duty is about real life, it's not entertainment, it's not fiction, it's about real life. You're going to hear about events that occurred right here in your community, things that happened right here in Beaufort County, real life things.

You're going to hear from witnesses, various kinds of witnesses. And you're going to hear from eyewitnesses and you're going to hear from investigators who looked into the case. And you're going to hear from other professionals such as doctors and chemist and through listening to each one of those witnesses, one at a time, you're going to hear about a chain of events and you're going to put the big picture together. And you're going to hear what happened on February 17, 2010 this year, right here in Beaufort County.

After listening to all the witnesses, you're going to hear the chain of events and you're going to hear about choices that were made. You're going to hear about paths that were taken on that day. And basically, in summary, what you're going to hear, what the State is going to prove to you,

is that on February 17, 2010, here in Beaufort County, Marion Bonds started out that day by knocking on his cousin's door, his cousin, Reginal Holmes. At seven A.M. he knocks on Reginal's door and that decision changed both their lives. Set a motion in path that brought us here today. Seven A.M. Reginal opens his door, where he is waking up. He sees his cousin Marion so he opens the door. Marion comes in Reginal's home and he is pointing a pistol at him. He demands money. He brings along a friend, some guy we think is named Jason, with a shot gun standing in the background. But Marion points his pistol at Reginal and says "give me the money, give me the money". Reginal hesitates for a moment and then he tries to get out. He pushes into Marion -- pushes into him and tries to run out the front door, trips going down the stairs, lying there he looks up and there is Marion at the top of the stairs pointing that pistol. And he fires. Reginal flinches, luckily Reginal's arm takes the bullet and he's shot in the arm and he was able to scramble up and get away.

At the end of the case the Judge will tell you what the law is. She'll give you the law you and

what you are to use to base your decision on. Let me tell you in the courtroom and the law, it's about the who, you've got to decide who, the what the where, the how. Those are the facts that you are going to need to decide to make your decision.

Now, as humans, we always want to know why. Why would Marion do that? Why would Marion go to his cousin's house and shoot him at seven o'clock in the morning? We don't know and that's not something you have to decide. Because quite frankly, we've all, even all the way back to the ancient Greeks, we've always tried to figure out why humans do what they do. And if during this trial you can figure it out, you'll be the first. So while we all want to know why you are to consider who, what, where, and when. Those are the facts. You can form your opinions about why. Feel free to do that. But the facts are who, what, where and when.

So back to that. Marion runs off after shooting Reginal and he ends up at a guy's house. His name is Richard Lewis. You'll hear from Richard. He is going to testify for us as well. In the mean time, Reginal, he's upset, he's been shot, he's mad, and he wants to handle this

himself. Eventually he calms down and he cooperates with law enforcement and he tells them what happened. Cousin Marion shot me, gives them his clothing description, and gives them some ideas about where they can go find -- where he may be hiding out and then he goes to the hospital.

Marion goes over to Richard Lewis' house, takes a shower. Law enforcement figures out that that could be a place he's hiding. They show up at Richard Lewis' house and knock on the door and Richard answers the door. They want to know if Marion is there and he says, "no", (nodding her head vertically up and down), so law enforcement finds Marion. He's hiding in a closet inside of Richard Lewis's home. He's arrested for the shooting, assault and battery with intent to kill, what you are charged when you shoot somebody. Attempted armed robbery and he's charged, because he's a felon, for possession of a fire arm. He shouldn't even be possessing a firearm because of his past. He's charged with those three things and taken into custody to the County jail.

Now, when they find him in the closet they find a couple of other things. They find a jacket that he was wearing that Reginal was able to

describe to them. And they find a tennis shoe and stuffed in that tennis shoe was over 40 grams of crack cocaine, in this little closet where Marion was hiding. So they turned those over to the Drug Task Force. They're working on their warrants for that charge, so that's coming. He's going to now be charged with trafficking more than 28 grams of cocaine.

However, before he knows that's coming, Marion gets on the phone at the jail and starts making some phone calls. He calls his girlfriend, calls a friend named Larry, and then he calls Richard Lewis and you'll get to hear some of the things he says in his phone call. The gist of it is, "man you gotta hide my dope cause I'm going to need it, so you need to hide it". Not only does he describe the dope they found in the shoe but he gives us another location. Apparently the trash can that has got some dope in it that we don't know about yet. Officers go back out to Richard Lewis' house, make contact with Richard Lewis, who's on the phone with Marion and he's trying to hide the crack they find in the trash can.

Okay. Now there are some more charges. That would be conspiracy to traffic cocaine and he's

charged with that as well and that's another charge. And finally, drug trafficking. There is a charge -- if you traffic drugs -- if you do it within a half a mile of a school or a park, that's another charge. So he's been charged for that because right around the corner from Richard Lewis's house where first we find 40 grams of crack then we find another 20 grams of crack is St. Helena Elementary School. And as I tell you this started at seven A.M. and he's arrested by ten A.M. Trafficking crack right around the corner from an elementary school.

I told you you're going to hear from witnesses, you're going to hear about a chain of events, you're going to hear about decisions made and paths taken. You are now on a path as a juror, you have a juror duty to follow. Your duty is to make a choice at the end of this case based on the evidence you've heard by a verdict. I will tell you the word verdict has a root in Latin comes from vere dictum and it means speak the truth. That's your duty. And at the end of this case that is what I will come back in closing arguments and ask you to do. I'll ask you to speak the truth. I'll ask you to find Marion

Bonds guilty for choosing the path and making decisions in committing assault and battery with intent to kill for shooting Reginal Holmes, attempted armed robbery for trying to rob him in his own home and being a felon in possession of a fire arm. Trafficking between 28 and 100 grams of the crack that is found in the tennis shoe in the closet where he was hiding. Conspiracy to traffic between ten and twenty-eight grams from the 20 grams of crack found in the trash can that he told Mr. Lewis to hide and finally doing all that within half a mile of an elementary school. Thank you.

THE COURT: Thank you. Mr. Deysach.

MR. DEYSACH: Thank you, Your Honor. Solicitor Tanner. Good morning. My name is Ian Deysach and I represent Marion Bonds. I've written down notes of a number of things that I want to tell you but this is what I want to start with, I wanted to let you know that sitting in that chair and hearing the Solicitor give a version of facts, that is not evidence, that doesn't come from the witness stand or any exhibits that will be in front of you and to hear things that I disagree with makes me want to hop

out of my chair and tell you, "no this isn't what happened, no that isn't what happened, no this is what happened". I'm not going to go bit by bit and get into some little argument or get into an argument with the Solicitor in front of you about she's wrong when she says this fact, she's wrong when she says that fact. I'm going to rely on you to go by what is said from the witness stand and what comes from the exhibits that are going to be admitted into evidence. Because that wasn't evidence and when you hear things differently from the witness stand and proved different from what she just said it will give you a little window into the mistakes that the Solicitor is making when she jumps to the conclusion that she's come to. All right.

But this is what I really want to talk to you about, what I want to talk to you about right now are all the concerns that I have about 12 to 14 citizens coming off of the neighborhoods and areas of Beaufort -- different areas of Beaufort and what their initial impression would be about what's going on here. Right? I think everybody knows that when somebody gets arrested there is an automatic tendency to think that that person who

was arrested must be the guy and he must've done everything that they're accused of. That's not how it works here. What's even worse here is that there's a long list of charges and the more charges that you hear the more you think that he must be a bad guy or that this must have really happened. There's a -- there's a -- a quality to the quantity of charges, I don't know the difference but it sounds kind of stupid when it comes out of my mouth but just because there's so many charges it makes him look worse. But yet the Solicitor's burden to prove beyond a reasonable doubt and all the things that go along with your duty in delivering a verdict none of that changes, and in fac,t you're supposed to disregard. You're not supposed to think that just because somebody did this that then they must have done that. But in this case we've got two different incident locations. We've got this accusation for seven in the morning and then what's supposed to happen at ten in the afternoon that are separated in this case and yet when you hear about one it sheds the defendant in a negative light -- sets Marion in a negative light as to the other. And I'm asking you to even though as a human that might be what

you do but as a juror it is what you cannot do.

I've written down a list of the reasons why I think, ya' know, people would think any time somebody is arrested that they must be guilty, they must be the one, they must have done what the Solicitor has said, but I'm not going to go through that list but one of the reasons that I have put down was that well, if the police and the Solicitor's office are telling me that this is what happened then I would defer to their judgement. That it's easy to think that the police got the right guy. It makes us feel safer. We don't want to think that innocent people are spending time charged with crimes they didn't commit or that the real perpetrator would be somewhere on the loose. And we want to have that faith and trust in our police and we can, I think we can. But when we're jurors you cannot. You have to look at what they do with a degree of skepticism. But what I want to point out to you is that people who are in the law enforcement profession lack the independence that are required to make good judgment about what has occurred. I think that the -- the -- well, what I am saying is there is a case called the competitive endeavor of

ferreting out crime. Ya' know, that it is cops and robbers, things of that nature, where there is an element of competition. When that element of competition means exists, there are times when you wouldn't want the police, you wouldn't want the Solicitor's office deciding who was guilty, who was not guilty. We want somebody with a degree of independence. That's why we have judges, that's why we have magistrates, that's why we just don't rely on the government to tell us who did this and who didn't do this and so that's what I wanted to point out to you that you're the ones with the independence. You're the ones who do not have a stake in this. And so, I'm asking you to use that independence when you make your decisions on -- on this case.

The Judge said something and I note, she was speaking for -- for -- for a few minutes I'm not sure if anybody else picked out but she made the point that an error of judgment of the facts made by the jury that there is really no way to reverse that error. Okay. If I make a mistake there's a process for checking on what I do. If the judge makes a mistake there's a process for looking over her shoulder. But if there's an error in applying

the facts to the law made by you there is no process for overturning that. Okay. So I guess what I'm saying is that the decision that you make on this case has a degree of permanence that the way I behave on this case or the way the judge behaves on this case doesn't have. So with that permanence comes the responsibility. I don't think that I have to explain to anybody how dire the consequences are of being convicted of some or all of these charges that you just heard about. I don't think that -- it's fairly obvious to everyone that convictions of those charges would have dire consequences and the decision that you make has the added element of the permanence. And so it is with that weight of responsibility that you have to decide on this case. And so that is what the Judge told you basically that -- well this is what I'm telling you, this is not what the Judge is told you. I can't think of anything worse that could happen in a courtroom other than a wrongful conviction by a jury. There is nothing worse that could happen in a civil courtoom or -- or in a criminal courtroom. And so that is, as a lawyer, when I have clients I give them worse possible case scenario examples of what could

happen. And the worst possible case -- you're not my clients -- but I'm going to tell you that the worst possible case scenario for you guys, as jurors, is to return a wrongful conviction.

And so the Judge is gonna give you a roadmap to avoid it and that roadmap is proof beyond a reasonable doubt, the burden of proof on the State beyond a reasonable doubt. And how that's explaind to you really acts as the roadmap to avoid the wrongful conviction, the worst possible scenario that could occur. And we are lucky in Beaufort County because, the jurors that we have, come with a huge variety of life experiences. They spend a lot of time either at -- in school, at work these are just regular life experiences that -- that they all bring something special and that -- what I'm saying is that their smart. And that you -- this jury is no different. It's another one of those typical smart Beaufort jurors. And so I'm gonna try to take advantage of that.

And I want to let you know that this isn't a case -- a wrongful conviction whether it's -- this is what -- what -- the point I'm trying to get to. I don't want you to think that the choice is he's

guilty or he's not guilty that is a choice. But it's six different charges. You've got six different charges and the State has to prove Mr. Bonds is guilty of each element of each charge. And that a wrongful conviction as to one charge isn't made any less worse of a consequence. It doesn't have any more of a dire consequence independent of the other charges. So what I'm saying is we've got to look at each charge separately. Now, we've got a whole list of charges that makes him look bad because he's charged with so much but that's more that the solicitor has to prove. And a wrongful conviction on anyone of those charges would have dire consequences, a permanent dire consequences that could not be reversed. And we've got the mental capacity on this jury to analyze each -- each piece of evidence, each fact, each element of the offense, everything that I just said that you could look at it analytically as opposed to just having an emotional reaction. Because the emotional reaction is what I think the Solicitor wants you feel. I want you to be analytical, intellectual and focused on exactly what your job is. And it's important and it's -- it's not a fun

job, it's hard work, it is hard work but I'm asking you guys to do -- but because of what's happening here is so important that's why I'm doing it.

The last thing I kind of want to flag for you is that -- second to last -- there's a few things that the Solicitor said during her opening that this isn't CSI, we don't have to prove the why. Things that she said that were, I perceive, maybe you did not perceive as a way of trying to minimize what she has to prove, or what level of proof you should expect. And I don't want you guys to fall into that trap. I want you to be, I guess, aware of things that the Solicitor might say that would try to minimize what she thinks the burden of proof beyond a reasonable doubt. But what I think you need to remember is that not just what is proof beyond a reasonable doubt but why is proof beyond a reasonable doubt and that sets a roadmap to avoid a wrongful conviction on each and everyone of those charges.

And then the last thing that I want to say is that there will be facts that will come out at this trial that will make you question the Solicitor's judgment for bringing these charges.

I'm not going to sit here and say this is what the fact is this is what the fact isn't. To be honest with you when the witnesses testify I do not -- I know what they have said but I do not know what they are going to say. But I do know that there are facts and pieces of evidence that you will hear that directly contradict the story that the Solicitor just tried to tell you today. I appreciate your patience and I know I'm asking a lot -- a lot of attention but it is difficult work but there's nothing I haven't asked you to do that isn't fair and a look forward to talking to you after the evidence has been presented.

THE COURT: Thank you. Solicitor, call your first witness.

MS. TANNER: Thank you. The State calls Paul Green.

THE COURT: Come on forward and be sworn.

Being first duly sworn, **PAUL GREEN**, testified as follows:

THE CLERK: Please state your first and last name and spell your last name, please.

THE WITNESS: Paul Green. G-r-e-e-n.

THE CLERK: Thank you, sir.

DIRECT EXAMINATION

BY MS. TANNER:

Q. Good morning, Corporal Green. Where are you employed?

A. Beaufort County Sheriff's Office.

Q. And how long have you worked with the Sheriff's Office?

A. Fifteen years.

Q. And in what capacity do you work there now? What's your main job?

A. (No response)

Q. Are you an investigator, are you road patrol?

A. Road patrol.

Q. Is that what we think of when we hear about first responders?

A. Yes, ma'am.

Q. And were you working on February 17, 2010?

A. Yes, ma'am, I was.

Q. And did you respond out to [redacted] Eddings White Road?

A. Yes, ma'am.

Q. What area of the county is that in?

A. That's near St. Helena.

THE COURT: Corporal Green would you mind pulling yourself a little closer just to make sure my court reporter and my jury can hear you, as well.

Q. Do you recall about what time you were first dispatched to Eddings White Road?
A. Right close to 0700.
Q. That's military time. For normal people time what time is that?
A. Seven o'clock.
Q. Seven o'clock in the morning?
A. Seven A.M.
Q. Now once you arrive, what's the first thing you see, what kind of place is this?
A. A double wide mobile home that was divided into two separate apartments like a duplex.

MS. TANNER: May I approach the witness, Your Honor?

THE COURT: You may.

BY MS. TANNER:

Q. I'll show you what's been marked as State's Exhibit 1. Can you identify that?
A. Yes, ma'am. This is the residence that I responded to at seven o'clock that morning.
Q. And you say some type of a duplex?
A. Yes, it's a duplex.
Q. How many homes are there?
A. In that particular, there's like two apartments -- divided into two apartments.

Q. And do you speak to anyone when you get there?
A. Yes, I spoke to some people that lived in the apartment, in one of the apartments.
Q. Based on your conversations with them were you able to determine anything about what had happened?
MR. DEYSACH: Objection as to hearsay, Your Honor.
MS. TANNER: I'll withdraw it.
BY MS. TANNER:
Q. What type of call were you responding to out at Edings White Road?
A. Shots fired. An individual had got shot at the apartment.
Q. When you get there did you actually come in contact with the person who was allegedly shot?
A. Not right away.
Q. Okay. And how long were you there before you see him?
A. I would say a minute. I looked around and then I found him and made contact with him.
Q. And who would that be?
A. That would be Mr. Holmes.
Q. Do you know his first name?
A. It is Reginal.

Q. Are you able to observe an injury on Mr. Holmes?
A. Yes. I asked him to show me where he was shot and he showed me his right arm where he was shot.
Q. And do you call for EMS for him?
A. Yes, I did.
Q. Now, you're basic duty as first responder once you find a scene like this, do you conduct a whole investigation, what are you doing on the scene?
A. Well, I'm a first responder. I just try to gather information on hand right there and then I call my supervisor and let him know what I have and he takes what we need to actually investigate.
Q. Now, in this case did you turn that over to investigators?
A. Yes.
Q. Now, once you turn this scene over to investigators what do you do; do you go back to patrol?
A. Pretty much. Once it's completely turned over, I'm no longer needed at that point.
Q. So how long would you say one of your shifts lasted?
A. Shifts last 12 hours.
Q. Twelve hour shift?

A. Yes.
Q. So what time did you come on that day?
A. I got in shift meeting approximately 6:25 that morning.
Q. Was this your first call of the day?
A. Yes, my first call.
Q. And once you leave this call are you back patrolling the roads?
A. Yes. On St. Helena.
Q. Now, oddly enough, while you're still on this shift, do you then get a call later in the day to go to Ball Park Road?
A. Yes, ma'am, I did.a
Q. Is Ball Park Road also in St. Helen?
A. Yes, it is.
Q. And that's all in Beaufort County?
A. Yes.
Q. Do you recall about what time you got that phone call or that call out for dispatch?
A. It was somewhere around ten that morning, I believe, I'm not sure.
Q. Could it have been a little bit later?
A. Could have been. Yes. Could have been.
Q. Now, this phone call or this dispatch, what type of call were you responding to?

A. I wasn't exactly dispatched to that, I was told to go to a particular residence up there.
Q. And what were you headed out there to do?
A. To make sure no one leave the residence.
Q. And this is the residence at Ball Park?
A. Yes, ma'am.
Q. And when you arrive there do you come in contact with any people or person?
A. Yes, I did.
Q. And who do you come in contact with?
A. I believe his name was Lewis, his last name was Lewis.
Q. And what do you do with Mr. Lewis?
A. Well, I told him he couldn't leave the residence. He was just standing outside talking on the cell phone. I just told him to stay in the residence.
Q. So when you arrived Mr. Lewis was on the phone?
A. Yes. He was on the cell phone.
Q. And again as the first responder, do you then turn that scene and Mr. Lewis over to investigators?
A. Yes. After -- after a while they arrived on the scene.
Q. Would it be fair to say that you're holding it down until they get there?
A. Yes.

MS. TANNER: Your Honor, The State would move Exhibit 1 into evidence.

THE COURT: Any objections?

MR. DEYSACH: No objections, Your Honor.

THE COURT: It's in evidence without objection.

MS. TANNER: Thank you. I have no further questions. Answer anything from Mr. Deysach.

BY MR. DEYSACH:

Q. Good morning, Corporal Green?

A. Yes, sir.

Q. So at seven in the morning, or around that time, you arrived at [redacted] Eddings White Road; is that correct?

A. Yes, sir.

Q. And when you initially arrived there you don't encounter anybody; correct?

A. No. Not right away.

Q. The first person that you encountered was Earl Holmes?

A. It was the people that lived in the other apartments that I spoke with.

Q. Two people?

A. Two people.

Q. Male and female. And not from -- not [redacted] Eddings

White but from, maybe, [redacted] Eddings White?
A. It was at the same at duplex.
Q. Okay, so they have the same address?
A. Yes.
Q. So did you knock on the door to -- to ---
A. Yes, I did.
Q. And you got the names of those people?
A. Yes, I did.
Q. And you put it in your report, correct?
A. Yes, sir.
Q. And you actually spoke with them, correct?
A. Correct.
Q. And you put what they said in your report?
A. What they told me.
Q. All right. How long was it before you saw Reginal Holmes?
A. It was a few minutes.
Q. So you arrive at the scene and you meet two people from the adjoining apartment and then as you say, maybe three to five minutes before...
A. I can't say exactly how long but it wasn't very long.
Q. Okay. Mr. Holmes was not in that side of the apartment -- Reggie Holmes was not in the other side of that apartment that's not ---

A. Correct.
Q. When he came up to the residence where did he come from?
A. He came up from around the house.
Q. The back of the house?
A. The back of the house; yes.
Q. Was he -- was he doing anything to treat his wound?
A. He had, like, a t-shirt or something wrapped around his arm.
Q. So at first you couldn't see the wound because of the t-shirt?
A. No. I couldn't see it.
Q. But you do ask to look at it; correct?
A. Yes. He told me he was shot and I asked him to let me see it.
Q. Okay. And you noted the entry wound to his lower right arm, correct, the lower right arm?
A. Yes.
Q. And the exit wound was in the right bicep area?
A. The bicep area. Right.
Q. It didn't come out up here right? Was it towards the back of his arm?
A. Yes. It was towards the back.
Q. So how could you tell what was an entry and what

was and exit?
A. I just saw a bullet hole.
Q. Okay. So you really have no way of knowing which way the bullet traveled?
A. I'm not sure.
Q. But from here to here is that fair? Now did you see any -- now the wound was bleeding, correct?
A. Yes, it was.
Q. Was the shirt bloody?
A. Yes. There was blood on the shirt also.
Q. Did you see any blood on the ground when you arrived at Eddings White?
A. No.
Q. Did you see blood anywhere?
A. No.
Q. Other than on Reggie Holmes?
A. No.
Q. Did you see a -- umm, a shell casing or anything like that?
A. No. I didn't find any shell casings.
Q. Did you look for one?
A. Yes, I did.
Q. Did you look for a bullet?
A. Well, we looked -- we looked on the side of the trailer to see if there was any impact or anything

like that on the side of the trailer right in the general area.

Q. Looking for a bullet hole?

A. Yeah, bullet hole, yes.

Q. Did you find some bullet holes?

A. No.

Q. You didn't find any -- you didn't find any bullet holes at Reggie's house?

A. No. I didn't find any.

Q. Did you -- and no bullet and no shell casings, correct?

A. Right.

Q. And no blood?

A. Right.

Q. Now, and when you get there is one of your jobs to make sure that nobody messes with the scene?

A. Yes. I secure the scene. Yes.

Q. That picture that we saw, number one. There you have it It shows the yellow crime scene tape?

A. Yes.

Q. Is that something that you put up there?

A. Yes.

Q. And so the idea is that it says do not cross, right?

A. Yes. Keep everyone out.

Q. Right. So you get everybody out from the area where you think there might be evidence to be collected?
A. Yes, sir.
Q. And make sure nobody disturbs it, correct?
A. Yes.
Q. And so Earl Holmes or the other two people that were in the duplex next door they were not allowed to go inside that crime scene?
A. Right. They were not allowed to leave their apartments.
Q. So when you secure the crime scene, you don't just leave after that, correct?
A. No. No.
Q. You wait for other officers to arrive?
A. Yes.
Q. And those officers might take over?
A. Correct.
Q. Did -- were you the one who called EMS or asked for EMS?
A. Well, EMS was on standby because how the call came out. That person had possibly been shot so after the scene was secure we had EMS come in.
Q. So you're not saying that you waited until you saw a wound and then notified that EMS might be

needed, EMS was already notified to be on standby?
A. Yes, they are on standby and once we verified there was an injury they come out.
Q. Gotcha. So how long were you at the Eddings White address before you leave?
A. Well over an hour or so, I guess.
Q. You wrote a report, correct?
A. Yes.
Q. Okay. Do you have a copy of that report?
A. Yes, I do.
Q. Did you write on the report that you departed at 8:43?
A. Yes.
Q. Okay. And who all was on the -- who -- who else were there when you left?
A. I know Investigator Kelleher was.
Q. Investigator Kelleher was there? Do you know who else?
A. A couple more investigators came out also.
Q. Okay. Do you not remember which ones?
A. No. I can't remember the ones.
Q. Do you remember how many investigators were there?
A No, not exactly.
Q. Were you there when Reggie left?
A. Yes. I was there when the ambulance took him

away.

Q. Okay. And so once your finished at Eddings White Road, it's back to work for Corporal Green?

A. Yes.

Q. And at some time later you're -- the Solicitor, I guess, asked you about another event that happened later in the day, correct?

A. Yes.

Q. You said something about ten o'clock and she said isn't it -- wasn't it a little later, do you remember that?

A. Yes.

Q. Is it possible that what you're talking about happened at 14:16?

A. Hey, it could have been. I just -- just not aware of the time.

Q. Okay. You did write a report about this also, right?

A. I don't believe I wrote anything about that one. I'm not sure.

Q. I'm going to hand you a document and I'm going to ask you about it. Is that a report that you wrote?

A. Yes. It is a supplement to the original report.

Q. Okay. Does it reference the visit to Ball Park

Road, [redacted] Ball Park Road?
A. Yes, it does.
Q. Okay. Does it -- does it give the time that you were dispatched to Ball Park Road on the first line?
A. Yes, it does.
Q. What time does it say?
A. Fourteen sixteen, which is 2:16 in the afternoon.
Q. Two sixteen in the afternoon. When you go to Ball Park Road you said that your job is to make sure nobody left the residence?
A. Yeah. Secure the resident. Yeah.
Q. Okay. So does that make sure that nobody goes into the residence or nobody leaves the residence?
A. Nobody left the resident. That's what I was told.
Q. So when you arrived, the man, you said, Mr. Lewis was outside, correct?
A. Yes, sir.
Q. And while you were there he walked inside, correct?
A. Yes. He ended up going inside.
Q. Okay. Which is fine because you're just trying to make sure nobody leaves the residence, right?
A. Right.
Q. So while he's in the residence -- after he goes

into the residence, you follow -- you go into the residence also, correct?

A. I went to the door.

Q. And you ordered him to come out of the residence?

A. Yes.

Q. And in fact you actually reached into the residence, didn't you?

A. Yes.

Q. And you grabbed him by the elbow, correct?

A. Yes.

Q. All right. And you reached into the residence and pulled him out even though you didn't have any type of a search warrant or arrest warrant to do so, correct?

A. Right. I was, I was told to detain him.

Q. You were told that by another police officer?

A. Yes.

Q. Okay. And so you thought if another police officer told you that you may not need a search warrant or an arrest warrant or -- you didn't even think about it?

A. I didn't search anything. I was just detaining him.

Q. Okay. So it's standard procedure to just go into somebody's house and pull them out and detain

them?

A. No. It's not standard procedure but he was told to stay outside and he walked in and I told him, "sir, stay outside".

Q. Was he told to stay outside or was he told not to leave?

A. Well, he was outside and after I was told not to let him -- not to let him go into the residence I told him, "Sir, stay outside".

Q. All right. Isn't it true that the first thing you were told is not to let anybody leave, and then then you were later told not to let anybody in the residence?

A. Right.

Q. So you got two different sets of instructions?

A. Yes.

Q. Okay. It wasn't your idea to get him out of the residence it was something that a supervisor told you you should do?

A. Yeah ---

Q. Another police officer?

A. Another investigator.

Q. Okay. So when you detained him where did you put him?

A. I put him in handcuffs, I put him in the back

seat -- seat of the car.
Q. So he's -- he's handcuffed behind his back?
A. Yes, sir.
Q. And placed in your patrol car?
A. Yes, sir.
Q. And, you know, it's obvious that I -- you can't open a patrol car from inside, he's locked in the patrol car?
A. Yes, sir.
Q. And other investigators arrived, correct?
A. Yes.
Q. Were they the same investigators that told you to keep anybody from leaving the scene and then later get anybody out of the residence who was there?
A. No. It was another investigator. It was another officer that came -- a couple of other officers that came.
Q. Who was it that told you to secure the scene?
A. It was Investigator Fraser.
Q. Okay. Did he also arrive?
A. Yes.
Q. Okay. When -- when did you leave? If you know?
A. I don't know exactly when I left. When it was turned over to Officer Rice..
Q. Officer Rice? Okay. So Officer Rice is there

before you leave?

A. Yes.

Q. Correct? Okay. Obviously when you leave you don't still have Richard Lewis in your patrol car, correct?

A. No.

Q. And that is basically the extent of your involvement in this case?

A. Yes, sir.

MR. DEYSACH: I don't have anything further, Your Honor.

MS. TANNER: Nothing further. Your Honor may this witness be excused and go back to work?

THE COURT: You have any objections?

MR. DEYSACH: I don't have an objection. I don't want him excused completely from the trial, may want to recall him if there's that possibility.

THE COURT: Corporal Green you may go back to work, sir, but we may need to recall you.

MS. TANNER: The State calls Reginal Holmes.

THE COURT: Come on forward at this time, Mr. Holmes.

First being duly sworn, **REGINAL HOLMES**, testified as follows:

THE COURT: All right, Mr. Holmes, if you will come on around, sir. Give us your full name for the record and spell your last name for my Court Reporter and pull that microphone up to your mouth, sir.

THE WITNESS: Reginal Holmes. H-o-l-m-e-s.

DIRECT EXAMINATION

BY MS. TANNER:

Q. Good morning, Mr. Holmes.

A. Good morning.

Q. Where do you live?

A. [redacted] Eddings White.

Q. Where is that?

A. Off of Seaside Road; St. Helena Island.

Q. How long have you lived there?

A. The past three years. Three or four years, since I moved back from Columbia.

Q. And what kind of property is that?

A. It's like private property a lot of family around.

Q. Who owns [redacted], I'm sorry, [redacted], Eddings White Road, who actually owns that building?

A. Earl Holmes.

Q. Who is Earl Holmes to you?

A. My uncle.

Q. And your neighbors, who lives around you?

A. Aunts, uncles, cousins.
Q. So this area of Eddings White is family land?
A. Yes.
Q. All right. Mr. Holmes, let's talk about February 17, 2010?
A. All right.
Q. Tell me how that day starts for you?
A. I heard a knock at the door. I was sleeping. I was hoping that the knock would go away. I didn't feel like really getting up. I asked who it was. I asked -- I asked twice who it was. And he said Pooh. And I waited and I looked and I see him standing at the door.
Q. What time is this?
A. It was just daybreak, so I'll say it was close to seven, like 6:45, I mean, sometime around there.
Q. All right. When you asked who it was he said Pooh?
A. Uh-huh.
Q. Who is Pooh?
A. Marion Bonds.
Q. And are you familiar with Marion Bonds?
A. Yes.
Q. Who is Marion Bonds to you?
A. My cousin.

Q. And how cousins, y'all share an uncle or an aunt; how does that work?
A. Grandaunt.
Q. How long have you known Marion, have y'all grown up together?
A. Most of his life.
Q. Now, did you grow up in Beaufort County?
A. Yes.
Q. So you've lived here your whole life?
A. Yes, just about.
Q. And how about Marion?
A. From what I know, yeah, his whole life.
Q. So you know who Marion's parents are?
A. Yes.
Q. You know their names?
A. Yes.
Q. What are they?
A. Jeanette Bonds and Johnny Bonds
Q. How often would you see Marion?
A. At least twice a week, I mean, he lives on St. Helena so I would see him in passing?
Q. So there's no question you're familiar with what he looks like?
A. Yes.
Q. Do you know if Marion has any tattoos?

A. Like a teardrop--

MR. DEYSACH: I would object to this. I don't know the relevance or -- and I think it's prejudicial.

MS. TANNER: It goes to identity.

THE COURT: Do you need to approach?

MR. DEYSACH: I would like to, yes.

(Sidebar with the Judge.)

MR. DEYSACH: Can you get her to ask her question again.

BY MS. TANNER: (Resuming)

Q. Mr. Holmes, you are familiar with Marion?

A. Yes.

Q. Is there any identifying markings on his face that you can identify?

MR. DEYSACH: I am objecting, Your Honor. I want to place my ---

THE COURT: The objection is noted for the record.

MR. DEYSACH: I need to get my grounds out there. I don't think it's relevant.

THE COURT: Okay. Hold on a second Mr. Deysach, you need to come up here for a second.

(Sidebar with the Judge.)

THE COURT: All right. Mr. Deysach, your

objection is noted for the record.

MR. DEYSACH: Rules 401 and 403, Your Honor.

THE COURT: Thank you.

BY MS. TANNER: (Resuming)

Q. All right, Mr. Holmes, back to you. You said, "yes". What identifying mark does he have on his face?

A. He has a tattoo on his face.

Q. Where --

A. A tear drop.

Q. Where is it located?

A. The left side of his face.

Q. So you see him at your door the morning of the seventeenth; is that correct?

A. Yeah.

Q. And what happens then?

A. I open my door.

Q. And why did you do that?

A. I mean, I had no reason not to open my door, I mean, it was him, so.

Q. What do you look out to see who it was, can you you see out of a window?

A. Yes.

Q. And where is Marion located when you see him?

A. Like, standing in front of the door.

Q. How close is he to the door?
A. Like, maybe eight inches away from the door. Standing right in front of it.
Q. And once he comes in, do you say anything?
A. I open my door and say, "what's up".
Q. And what did Marion say?
A. He said nothing at the time. As I opened my door I said, "what's up", and I turn my back, and that's when he, like, -- that's when I heard the gun -- the gun went -- cocked back and he said to me, "get your money" and then I pretty much stood there, like, sort of like disbelief as if it was a joke and I turned around and he had me at gunpoint and he slung the gun. I sort of was dodging the gun sort of got, like, a grazing of the head and I sort of went down and sat on the couch and tried to collect myself and reevaluate myself and this second person came in. So I just sat and evaluated myself for a minute as he started asking for money and asked me do I think I'm better than him and stuff like that.
Q. So what kind of gun did he have? Could you give any kind of description of it?
A. It was black. Like a nine...
Q. Nine millimeter?

A. Yeah.
Q. Is that a pistol or is that a long gun?
A. Handgun.
Q. You said a second guy came in, do you know who that is?
A. No, not sure.
Q. Did you tell the police who you thought it might be?
A. I'm not -- I told them who I lot thought it might be but I'm not exactly sure.
Q. Now, what does that guy do?
A. Sort of standing in the corner with the shotgun up to his face, sort of shaking with the shotgun in his hand.
Q. Does he say anything?
A. No.
Q. So back to Marion, are you looking at Marion when he's saying these things to you?
A. Straight at him.
Q. And what's he doing with his gun while he's making these comments?
A. Pointing the gun at me.
Q. What is he saying to you?
A. He's saying -- he's asking me do I think I'm better than him, and let me get your money, let me

get your money, he keeps saying that I tell him -- I told him to calm down cause he looked like he was out of control, so I did have a few dollars right around my pocket so I figured after reevaluating that would sort of distract for a moment, so I handed him that and that's when he was still pointing the gun and as he was like handing the money over his friend and that's when I rushed up and grabbed him and threw him up against the wall. I tried to keep the second guy in the back of my mind and what he was gonna do cause, like I say he seemed like he was shaking with the gun so I went out the front door and tripped over the top step. I fell and fell down the step. As I fell down the step and I looked up and he was pointing the gun as he pointing the gun I tried to get up and I got up with my arm and he shot. The bullet went right through my arm and came out the back. And I left the scene. I went to seek aide from my cousin.

Q. All right. Let's go back inside the house. How big is this room you're in?

A. Typical small living room area.

Q. And who's closer to the door, you or Marion?

A. He's closer to the door.

Q. And when you push by him which direction does he go in?
A. Towards the -- towards the wall to the left, a little towards the left.
Q. So how many steps is it to get you out the door?
A. At that point, maybe, four to five steps from after the time after I grabbed him.
Q. So all in all how long do you think all of this is taking, how much time passes?
A. From the time I opened the door or from the time I grabbed him?
Q. From the time you open the door?
A. It went pretty quick, I don't know, it couldn't have went longer than ten minutes, couldn't have been longer than ten minutes, or a little less than that.

MS. TANNER: May I approach the witness, Your Honor?

THE COURT: You may.

BY MS. TANNER : (Resuming.)
Q. I'm going to show you what's in evidence already, the States exhibit number 1. Can you identify the item?
A. Yes.
Q. And what is this?

A. It's where I stay.
Q. Is this where this occurred?
A. Yes.
MS. TANNER: Your Honor, may I publish this to the jury, using the Starboard?
THE COURT: You may.
MS. TANNER: May I have the witness come off the stand?
THE COURT: Yes, you may.
MS. TANNER: Mr. Holmes, could you come and stand down here beside me, please?
(Whereupon witness stepped down from witness stand)
BY MS. TANNER: (Resuming)
Q. All right. This is the photograph that we showed you. Could you describe to the jury what this is?
A. (Inaudible)
THE COURT REPORTER: He's going to have to speak up. I can't hear him.
MS. TANNER: Can you talk like this like you're yelling at somebody.
BY MS. TANNER: (Resuming)
Q. Describe to the jury what's in this picture.
A. This is the front door, my front door.
Q. And can you show us -- you said you came out and you tripped, where were you when you tripped?

A. I came up here. We were getting -- there's, like, a piece of wood covering a broken piece of step and I tripped off the top step and I fell down there. That's where I fell.

Q. And in what position is your body in on the ground?

A. I'm laying on my butt, right here.

Q. And where is Marion when you see him again?

A. He's standing right here.

Q. And what is he doing?

A. He's aiming his gun, pointing the gun.

Q. And does he shoot the gun?

A. Yes.

Q. How many times does he shoot?

A. Once.

Q. And once he's done that what did you do?

A. I got up, I ran towards my cousin's house. I ran back there back towards my cousin.

Q. Right. Did you see where Marion went?

A. No. I didn't see where Marion went. He could have went back inside. I went back that way.

MS. TANNER: You can go back to the stand. Thank you.

(Whereupon witness went back to stand)

BY MS. TANNER (Resuming)

Q. Mr. Holmes, do you still have a scar where you were shot?
A. Yes.
Q. And can you get to it? I know that you have a jacket on and can you take that jacket off for us? Can you point out for the jury -- and if you need to stand up, please and speak loud.
A. This is a entry wound. It went up , shot down. The second wound that went inside right here and came out right here.
Q. What position was your arm in when you got shot?
A. Sort of blocking my chest.
Q. Thank you. You can sit down back down. And did you come back to your house that night?
A. That evening ---
Q. Or that morning, I'm sorry, we're still in the morning, did you talk to the police that morning?
A. Not right away. I was on the backside. I was about to get in my car and drive myself to the hospital.
Q. But you don't?
A. No.
Q. What did you do?
A. I spoke with the officer and he told me -- he just advised me that it would be better to wait on EMS.

And at the time I was, like, pretty angry and irate and did not -- I just wanted to drive myself there and get to it.

Q. Did you end up waiting on EMS?

A. Yes.

Q. Did you let them treat you?

A. Yes.

Q. Did you go to the hospital?

A. Yes.

Q. Tell me about your first conversation with the police; Were you cooperative?

A. Not at first.

Q. Why not?

A. I was just angry and real irate at the time.

Q. So why does that translate to you didn't want to tell the police nothing?

A. Because my mind set was more, like, just getting back. I was confused as to why it even happened. I just was angry.

Q. So you said your initial reaction was that you were going to take care of him?

A. Yes.

Q. Is that what you ended up doing?

A. No.

Q. What did you do?

A. Got with EMS and went to the hospital where my mother and father finally got there and I eventually spoke to the detectives and said who it was that shot me.

Q. And did you give them a full explanation of what happened that morning?

A. Yes.

Q. And were you able to tell them the name of the person that shot you?

A. Yes.

Q. What other information did you give about him as far as what he looked like that day?

A. He had on a camouflage jacket. He was light skin and short.

Q. Did you also give them some information of where you might think he would be?

A. Yes.

Q. All right. Reginal, we need to talk just a few minutes about your background.

A. Yeah.

Q. You haven't always been an angel; is that correct?

A. No.

Q. And you've actually had some problems--

A. Yes.

Q. --and some struggles?

A. Yes.
Q. Tell the jury a bit about your background and your troubles?
A. Two instances I made a poor decision by possessing a controlled substance and the second time I think it was, like, maybe three years ago I was pulled over for driving under suspension and a controlled substance.
Q. All right. Now, when you say a controlled substance, what was that substance?
A. It was cocaine and marijuana.
Q. Now, is that something that you've used in the past?
A. Yes.
Q. Is that something that you still struggle with that little bit?
A. Not right now.
Q. Not right now?
A. No.
Q. All right. Well, tell us what you're doing right now to work on that.

MR. DEYSACH: Object to the relevance.

MS. TANNER: It goes to the whole weight of the event.

THE COURT: Okay. You can be very limited.

MS. TANNER: Yes, ma'am.

BY MS. TANNER: (Resuming)

Q. Since the shooting what are you doing?

A. Just graduated with my second degree.

Q. And what is that degree in?

A. In industrial technology.

Q. Okay. Are you still living here in Beaufort County?

A. No. I've left and went to Columbia where there is better job opportunities.

Q. Do you still have contact with Marion?

A. No.

Q. On February the 17th of this year, were you having problems with Marion?

A. Not that I know of; no.

Q. Everybody wants to know why he would try and rob you and shoot you, then?

A. Maybe a false perception of, I don't know -- I'm thinking I may have it -- maybe because of the fact my uncle who was just moving back --

MR. DEYSACH: I object. I don't think that there's a foundation for this opinion that he's giving. I don't think he should be able to give an opinion with evidence like this, Your Honor.

THE COURT: I agree. I sustain the objection.

BY MS. TANNER: (Resuming)

Q. All right. Mr. Holmes, I need you to tell me who shot you on February 17, 2010?

A. Marion Bonds.

Q. Who tried to rob you February 17, 2010?

A. Marion Bonds.

Q. And how do you know Marion Bonds?

A. He's my cousin.

Q. And do you see, your cousin Marion Bonds, who shot you on February 17th in this courtroom?

A. Yes.

Q. Could you please point to him for the jury?

A. Right there.

(Witness points to defendant.)

Q. Can you tell me what he's wearing?

A. White shirt and a tie.

MS. TANNER: Please have the record reflect that he has indicated the defendant. Thank you, Mr. Holmes. Answer anything the defense council asks.

CROSS EXAMINATION

BY MR. IAN DEYSACH:

Q. Good morning, Mr. Holmes. My name is Ian Deysach and I'm Marion Bonds' attorney. I'm going to ask you some questions about what happened and what

you just testified to when asked questions by the Solicitor. You told the jury just now that you were sleeping when you heard the knock at the door?

A. Yes.

Q. You told Investigator Kelleher -- let me ask you this -- back up a little bit. You had the opportunity to speak to the police officers on a couple of different occasions about this, correct?

A. Yes.

Q. The first one that you spoke to was Officer Green. Do you remember speaking to him?

A. Was that the first guy that ---

Q. That was the gentleman who just testified right before you?

A. Yeah.

Q. You spoke with Investigator Fraser and Chapman when you were at the hospital; you remember that?

A. Yes.

Q. And you spoke -- and that was the same day?

A. Yes.

Q. The 17th. And you spoke to Investigator Kelleher on the 18th at your home, correct?

A. Yes.

Q. You told Investigator Kelleher that you were

getting ready for classes when you heard the knock at the door, correct?

A. Excuse me?

Q. That you weren't asleep when the knock came at the door. You were getting ready for school. Do you remember telling Investigator Kelleher that?

A. No.

Q. Back up again now. When you're speaking to police, it is very clear to you that this is a serious subject that you're speaking about, right?

A. Yes.

Q. And for one thing, you never want to lie to the police, correct?

A. No.

Q. And you never want to leave anything out that's really important when you're talking to the police?

A. No.

Q. And you certainly don't want to do it when the subject matter is something that's so important, correct?

A. Correct.

Q. Not only is it an important subject matter, it directly deals with you, correct?

A. Correct.

Q. So you want to make sure that what you're telling the police is the complete truth?
A. Um hmm.
Q. Make sure you answer with a yes or no because she's taking it down. You want to make sure you don't leave anything out that is important, correct?
A. Correct.
Q. And you don't want to -- you want to include every detail that they might want to know, correct?
A. Correct.
Q. You say that you just graduated with a CAT Degree?
A. A second degree.
Q. So you already had a degree at this time when this happened?
A. Yes.
Q. So I guess my point is that, ya' know, you're no dummy, ya' know?
A. No.
Q. Correct. Now when this occurred, you had cocaine in your system, correct?
A. Yes.
Q. And you had marijuana in your system, correct?
A. Yes.
Q. How -- when did you use the cocaine and marijuana

before this?
A. I'm not sure. Perhaps, a couple of days before. I'm not sure but that was a long time ago.
Q. You think it was just a couple of days?
A. I'm not sure.
Q. Had you had a party at your house?
A. Well, I was playing a game and a few friends were drinking.
Q. That's when the drug use took place?
A. I'm not sure when that took place. I'm just saying I was drinking the night before. We were partying and playing video games.
Q. Were you trying to tell the Solicitor that you had a drug problem at the time?
A. I've had problems with drug use.
Q. Were you having problems with use on February 17th?
A. That morning?
Q. No, I mean ---
A. A couple of days before I did experience -- well, it wasn't ---
Q. You said experience, did you mean experiment?
A. It wasn't experimenting cause it wasn't the first time. I've had trouble with it before.
Q. Right. You had trouble with it because you had to

go to court for it in May of 2009, correct?
A. I believe, I think that's when it was.
Q. And it was for PWID, wasn't it?
A. I'm not sure if that's what it was. If that's what you have then it is.
Q. So what you're saying is you went to court May of '09 on drug charges and you're not exactly sure what the drug charges are?
A. I'm not sure exactly what you're reading. I'm not sure it was PWID. I know I did get in trouble with possession of cocaine.
Q. So it's possible that it was PWID?
A. It's possible.
Q. It stands for possession with intent to distribute.
A. Yes.
Q. And you pled guilty, correct?
A. Yes.
Q. And you're actually -- you got three years of probation, right?
A. Yes.
Q. And so you were on probation when this occurred?
A. Yes.
Q. And you were on probation when you were experiencing with the drugs, correct?

A. Yes.
Q. So I already asked you -- you're telling the Jury that you never did tell Investigator Kelleher that you were getting ready for classes that morning, correct?
A. I said I had classes that morning. I had classes that same day but I was just waking up.
Q. And what you told the Jury was that when you heard the first knock you were in bed?
A. I was laying in the living room.
Q. Okay. And -- uh, asleep?
A. Yes.
Q. And that you didn't respond to the first knock, correct?
A. No.
Q. You hoped that the person would go away?
A. Yes.
Q. Now when -- before you open the door, you hear a voice on the other side, correct?
A. I asked them who it is.
Q. And after you ask who it is and you hear the response you then look out the window?
A. Yes, I did simultaneously at the same time.
Q. You asked and looked out the window at the same time, correct?

A. Yes.
Q. Was the window that you looked out of the same window that has a bullet hole in it?
A. No.
Q. Different window?
A. It's the window right beside the door.
Q. And the bullet hole is in a different window?
A. Yes.
Q. And that bullet hole that's in that window your saying did not come from this event on the 17th?
A. I'm really am not clear where that bullet hole came from.
Q. Do you know if it was there before this happened?
A. Yes.
Q. It was there?
A. Yes.
Q. So there's no way it could've occurred on the 17th?
A. No.
Q. There's another bullet mark in your house, isn't there?
A. I'm not sure.
Q. There might be?
A. There shouldn't be.
Q. When ---

A. There is a hole where that bullet came through that window. There's a marking in that wall.
Q. Inside the home?
A. Yes.
Q. When you look out the window are you telling the Jury that you see one person or two people?
A. I see one.
Q. Did you tell Investigator Green -- not Investigator Green -- Patrolman Green that saw Marion Bonds and Jason Thomas standing there? You never told him about Jason Thomas?
A. Not before I open the door.
Q. But you did give him the name Jason Thomas, correct?
A. Yes.
Q. But you're saying that you didn't see Jason Thomas standing there?
A. That was the last person that -- that he was around -- that was around -- I figured it was him.
Q. So you know Jason Thomas?
A. Yes.
Q. And are you related to Jason Thomas?
A. Yes.
Q. What's the relationship?
A. Cousins.

Q. Are Marion Bonds and Jason Thomas brothers?
A. Excuse me?
Q. Are Marion and Jason brothers?
A. No.
Q. So you see the other person, correct?
A. Not clearly.
Q. Not clearly? Not at first, not clearly?
A. Not clearly it was -- it kind of like on a glance because there's a gun pointing in your face and the other one with the shotgun, I'm trying to make -- focus on the one that was ---
Q. Who's face?
A. The other person.
Q. What was it covered with?
A. It was covered up with the shotgun.
Q. What was that person wearing?
A. He was wearing black.
Q. A black overcoat?
A. A big, black coat.
Q. A black coat or a black jacket?
A. Like a black coat on.
Q. So you're saying that there's a person with a shotgun pointed at you and you don't really pay attention to that person?
A. Because he's not the one pointing a firearm.

Q. But I thought you said he was pointing a shotgun?
A. Yeah. He wasn't the only one pointing a firearm.
Q. He wasn't the only one, I didn't hear the word only. So when the door opened -- well, when you opened the door, the only person who walks in at that time, you're saying is Marion Bonds?
A. When I initially opened the door, I saw it was Marion Bonds. He came in, I immediately turned my back and walked away when I saw it was him.
Q. So you didn't see Jason Thomas at that time or Jason anybody at that time?
A. I'm not sure if it was Jason or anyone else. I'm not positive on the second person. I'm just positive on who the first was when I opened the door.
Q. But your positive there was a second person?
A. Yes. I am positive there was a second person at the door.
Q. And you don't see that person until after Marion comes into the room?
A. Until afterwards. When he came -- when he came in, when I heard the gun cock, that's when that second person must of came in right within that time.
Q. When you opened the door for Mr. Bonds ---

A. It was just him there.
Q. --nobody shuts the door behind?
A. I don't recall.
Q. So you don't know if this other person comes through an open door or closed door?
A. Yeah, he came in through an open door.
Q. So the door was left open when Marion Bonds comes in?
A. I think so. All of the events were occurring at the same time.
Q. Now when that person comes in, you do or do not initially see their shot gun?
A. Of course you see the shot gun.
Q. Because there's no way to conceal a shotgun?
A. No.
Q. And there's no way given what this person was wearing that they could have concealed a shot gun?
A. No.
Q. Because they're too big, right? Shotguns are too big, right?
A. Yes.
Q. So you say that you handed over some money?
A. Yes.
Q. Where did that money come from?
A. A small amount of money that I had in my pocket

from change left over from the store.
Q. How much money?
A. I don't recall, maybe like $30 or so.
Q. Isn't it true that you never told Corporal Green that you turned over any money, correct?
A. He didn't ask me that.
Q. What about Investigators Fraser and Chapman?
A. No. They just asked me who did it.
Q. But they never asked you what it was? They never asked you what happened?
A. Yeah, they asked me what happened. They asked who it was. That's the one point they wanted to get down to. They said that the first twenty-four hours is the most important.
Q. So what you're saying is that they're talking to you about what you've alleged is an armed robbery or an attempted armed robbery and they never asked you whether anything was given to the person who supposed to of done it?
A. I said a small amount of cash. Their main focus was they wanted to find out who actually shot the gun.
Q. You did tell them that you turned over a small amount of cash?
A. A small amount of cash.

Q. And you told -- are you saying you told the same thing to Investigator Kelleher?
A. Was that the guy at the hospital?
Q. That was the guy at your house the next day.
A. Well, all I recall is him asking me is about identifying who was there.
Q. Okay. Isn't it true that you told Investigator Kelleher -- instead of telling him whether or not you gave any money to the two guys, that the next thing you told him about was pushing Marion Bonds against the door and getting off the porch?
A. Small amount of cash is what gave me the time to distract him to push him against the door.
Q. I know that's what you're saying now. The question is whether you ever told anybody else about that small amount of cash? Yes or no?
A. I don't know. It was seven months ago but if they asked, I'm pretty sure I did.
Q. But you don't specifically remember doing it?
A. I don't -- I don't specifically remember telling them about the small amount of cash but if I was telling them the story I don't see how I would leave that out because that was a crucial part.
Q. Exactly. So what you're telling the Jury now is that you got two guys armed inside your house?

A. Yes.
Q. Both of them pointing guns?
A. Yes.
Q. And that you pushed Marion Bonds against your wall inside your house?
A. Through him up against the wall, yes.
Q. Not against the door of your house or anything like that?
A. No. I through him up against the wall.
Q. And that this occurred inside the home not out on the porch?
A. Inside -- I'm grabbing him from inside. I threw him up against the wall.
Q. And you told -- do you remember telling Investigator Kelleher that it was against the door? If you don't remember, I mean, I'm not trying to trick you.
A. I mean it was pretty much eight months ago. What happened was I grabbed him and threw him up against the wall.
Q. It was eight months ago when you spoke to him, but when you spoke to him the event had just occurred the day before, right?
A. Yeah.
Q. And when you spoke to Investigators Fraser and

Chapman in the hospital, it had just occurred that day, correct?

A. But you're asking me present time, I don't recall what I said that day.

Q. Don't you think you would've had a better memory about what happened back then than you do now; about the events of that day?

A. I would have a better memory now?

Q. Then.

A. I think so.

Q. Because it had just happened, right?

A. Yes.

Q. Memories fade with time; would you agree with that?

A. Yes, that's why I can't recall exactly what all I said. I told them to the best of my knowledge.

Q. Now, when you get out of the house, you say that you trip on the top step?

A. Yeah.

Q. And then land at the bottom of the steps, correct?

A. On the ground.

Q. On the ground. The bottom of the steps looks like there is just a loose board laying there. Do you know what I'm talking about?

A. Can you show me?

MR. IAN DEYSACH: Can I approach the witness, Your Honor?

THE COURT: All right.

Q. Can you see the bottom of your staircase?

A. Yes.

Q. Do you see that board that's laying on the ground?

A. Yes.

Q. Is that the board that you tripped on?

A. No, I tripped at the top of steps.

Q. And you fell all the way down?

A. Yes.

Q. Was there ever like a bruise or a cut that resulted from that fall?

A. I hit my knee, twisted it a little.

Q. When you -- Okay -- when you landed on the ground, you flipped around?

A. I landed on the ground. I landed sort of like on my butt. Right on my hip or my butt.

Q. So you're running front-wards down the steps, correct?

A. Yeah.

Q. And you trip?

A. Yeah.

Q. And by the time you hit the ground, you have twisted around so that your butt lands first?

A. Yeah.
Q. And you're saying that the gunshot occurs from the top of the -- on the porch?
A. Yes.
Q. You're at the bottom, you're on the ground, and the person shooting you is on the porch?
A. Yes.
Q. And you said that the gun that was used was not a revolver.
A. No.
Q. You told that to the police, correct? You told that to these people, correct?
A. Yes, it was a handgun.
Q. So that means that in a revolver the shell casing stays in the chamber, correct?
A. Yes.
Q. But for the handgun you're describing the jacket bullet -- the bullet jacket would be ejected, correct?
A. Yes.
Q. Now you told the Jury that the gun looked like a nine millimeter, correct?
A. Yes.
Q. You told the police at the hospital that you thought it was like a .380 correct?

A. I think but they look pretty similar.
Q. Now you also said that the gun "ain't have much pop to it"?
A. The minute that things were going on all I heard was the pop and that was it.
Q. When you were describing the gun, you told police that the gun that shot you didn't have much pop to it?
A. I said that.
Q. And a nine millimeter has a lot of pop to it, doesn't it?
A. That would be your opinion.
Q. That is not your opinion? You don't know?
A. I'm not sure. A lot was going on. Some may, some don't.
Q. Now will you show the Jury what position your arm was in when it got hit by the bullet?
A. Like this (demonstrating).
Q. And will you, while holding onto that position, show me where the entry wound occurred?
A. (demonstrating).
Q. So your arm -- you're facing -- your feet are closer to your home and your head is away?
A. Yes.
Q. You have your arm up like this (demonstrating)?

A. As I'm swinging to get up.
Q. You're trying to get up?
A. Yes.
Q. And so you're saying that the shot comes from above and hits you right here.
A. I'm saying, yes. It hits me in the middle and down right here. It comes through here and it comes up, straight out. (demonstrating).
Q. And so that would have left a bullet somewhere in that area where it occurred?
A. I think so.
Q. Isn't it true that when you got shot, the gun that shot you, was right up against your skin?
A. What?
Q. Isn't it true that when you got shot, it didn't happen as you just described? It happened as your -- as the gun was up against your skin?
A. No.
Q. Isn't it true that along with the bullet holes that were left on your arm that there was a burn mark on the front of your arm?
A. I don't know what it was that was like I guess when the bullet coming in. It burned me going in.

MR. IAN DEYSACH: Let me mark this as -- I believe this one is exhibit ten. I'm just going

to approach the witness, Your Honor.

THE COURT: Go ahead.

Q. I'm going to show you this picture. Is that a picture of your injury?

A. Yes.

Q. Do you see a burn mark below the entrance wound?

A. Yes.

Q. Do you see burns around the entrance that look like powder burns?

A. Yes.

Q. So isn't it true that this gunshot occurred, not from somebody standing on the top of the stairs and you on the ground, but with the gun pressed up against your arm?

A. No.

Q. So while this is happening, where is the guy with the shotgun?

A. He never came outside. All I saw was when Marion came outside. I don't know where he was. He might have been inside. I don't know.

Q. And you ran to your cousin's house?

A. Yes.

Q. Where did -- who's your cousin, I guess, is the question? What's your cousin's name?

A. Michael Holmes.

Q. Michael Holmes?
A. Yes.
Q. How far away does he live?
A. 50 yards, maybe less. Less than 50 yards.
Q. Now, isn't it true that you told the police back on the 17th that Marion and Jason left on foot?
A. I would think. There wasn't a car there.
Q. So did you have a car?
A. Yes.
Q. But you didn't see a car that would be attributed to either Jason Thomas or Marion Bonds or anybody?
A. No.
Q. And you never heard a car start up and people drive away or anything like that?
A. I already ran -- after getting shot, I ran to my cousins house.
Q. So you're saying that if that would have occurred, you would not have been in a position to hear it?
A. There wasn't a car around.
Q. Now when this first happened, you were ambivalent about -- you weren't sure if you wanted the police to get involved in this, correct?
A. It wasn't a fact of me not being sure. I was angry at the time and didn't consider the fact ---
Q. You said something to the effect that I'll handle

it myself, correct?
A. Perhaps.
Q. That, instead of turning this over to the police, that you would hand out justice on your own?
A. I just said I would handle it by myself.
Q. And that's what that means, right?
A. If that's the way you want to interpret it.
Q. Well, you know this is the case that centers around you. I'm trying to find out what you meant when you told them that you would handle it yourself?
A. I would handle it myself.
Q. And so you're not going to give the Jury anymore?
A. I mean I was angry. What I'm meant at that time was I mean for me to be angry at that momen,t obviously. Do you mean for me to get back at him the way they hit me?
Q. Right.
A. Yeah.
Q. And when the police asked you if you wanted to -- we're at the hospital now -- when the police asked you whether or not you wanted them to go forward with this you told them I don't care?
A. I think at that point I mentioned what I said I was still unsure. I was still angry at the time.

Q. So you did tell them that?
A. I don't specifically remember that. It's a possibility I may have said it. I don't recall.
Q. And then when you didn't give them a firm answer they asked you if you want to sleep on it; is that right, give you some more time to think about it?
A. I -- they did ask me.
Q. They did?
A. They did ask me if I needed more time to think about it.
Q. Did you say did or didn't? I couldn't quite ---
A. They did.
Q. They did. Because you weren't sure if you wanted to get the police involved?
A. Once again, I was still angry.
Q. And it wasn't until after you talk to your parents that you decided that getting the police involved was the right thing, right?
A. Yes.
Q. So if it had been just left up you, you're not sure if you would have gotten the police involved?
A. That's a big if. After I cooled down I would have thought more rationally.
Q. So when you're talking to the police at the

hospital, you tell the police that the other guy with the shotgun is Jason something, correct?

A. Yes.

Q. And they asked you, "do you mean Jason Thomas?"

A. Yes.

Q. And you told them I don't know his name or not?

A. I don't know his last name.

Q. But he's your cousin?

A. So.

Q. So ---

A. I know the last name isn't Holmes.

Q. So you've got a cousin whose last name you don't know what it is?

A. I wasn't sure of his last name.

Q. Even when they said Jason Thomas, you said I'm not sure?

A. I'm not sure. I wasn't sure.

Q. And so what you're saying to the Jury today is -- I think, to this day, you're not sure who that second person was; is that what you're saying?

A. I already made that known. I wasn't sure who the second person was. I know who shot me.

Q. But you don't know who the second person is?

A. I'm not sure.

Q. And you never knew, did you?

A. I'm not sure.
Q. Didn't -- You remember when Investigator Kelleher came to your house, right?
A. Yes.
Q. Didn't he show you pictures of Jason Thomas?
A. I was going on a hunch. I don't know who the second person was.
Q. Didn't the investigator tell you that you weren't obligated to pick anybody out?
A. He may have said that.
Q. Didn't he tell you the fact that photographs are shown to you should not influence your judgment?
A. He may have said that also.
Q. You should not conclude or guess that the photographs contained the picture of the person who committed the crime?
A. He may have said that. I'm not sure.
Q. And then after he read you that, didn't he ask you to sign a document with those words on it?
A. With what words on it?
MR. IAN DEYSACH: I'm going to approach the witness, Your Honor. I guess, I'm going to identify this as number eleven.
Q. Is that your signature?
A. Yes.

Q. Is that the document that Investigator Kelleher asked you to sign?
A. Yes.
Q. And by signing it weren't you agreeing to follow what the rules were?
A. Yes.
Q. And now you're telling the Jury that the only reason that you picked this person out of the lineup was because it was a hunch?
A. It fit his description at the time.
Q. But they're showing you a picture of his face, aren't they?
A. Yes.
Q. And you circled that picture, correct?
A. Yes.
Q. And you didn't tell the police that you were doing it just because it was a hunch, were you?
A. No.
Q. In fact they told you not to circle somebody's face on that basis, correct?
A. Excuse me?
Q. They told you not to circle somebody's face on the basis of a guess, correct?
A. They asked -- they asked me who.
Q. So you circled Jason's face?

A. But I'm not sure if it was Jason.
Q. So isn't it true that you lead the investigator to believe, on that time, that you were sure it was Jason?
A. I don't know how to answer that. That's who I thought it was -- that's who I thought was so that's why I circled it.
Q. That's who you thought it was then?
A. Yeah.
Q. And that's who you had a hunch about now?

MS. ANGIE TANNER: Your Honor, I'm going to object. This has been asked and answered now, several times.

THE COURT: Okay. Keep going but let's get there.

MR. IAN DEYSACH: I think the Solicitor's probably correct that the point has been made.

BY MR. DEYSACH (Resuming)

Q. Just to be clear, you're saying that the only thing that was taken was the change in your pocket that you had from going to the store, correct?
A. That I handed over to him.
Q. Nothing else wass taken?
A. Not that I know of. After I grabbed him, got outside, I don't know what happened.

Q. And was there anything else missing?
A. Not that I know of.
Q. Didn't you tell -- when was the last time you had seen Marion Bonds before this occurred?
A. Maybe a day or two before. I'm not sure.
Q. Isn't it true that you had seen -- you told the police that you had seen Marion yesterday?
A. That would qualify as a day or two before.
Q. On the 16th, you had seen him?
A. Uh-huh.
Q. And this happened on the 17th?
A. Uh-huh.
Q. That's what you told the police and that's what you're telling the Jury now?
A. Yes.
Q. Your people -- umm, I'm gonna ask the question again. You told the police that Marion might be on Ball Park Road near the clinic, correct?
A. Yes.
Q. Because you knew he stayed there?
A. I didn't know he stayed there.
Q. Why did you tell the police to look there?
A. Because I know he's there from time to time.
Q. And you know he's there from time to time from observing him there?

A. I just hanging out seeing him outside when I was passing by.
Q. Have you ever visited him there?
A. No.
MR. IAN DEYSACH: Begging The Court's indulgence. Just a couple more things.
BY MR. DEYSACH (Resuming)
Q. Do you remember telling the police that Jason Thomas was at the bottom of your steps, not in your house?
A. When?
Q. When... Let me see...
MR. IAN DEYSACH: Begging The Court's indulgence.
BY MR. DEYSACH (Resuming)
Q. When you spoke with Investigator Kelleher the day after?
A. That what?
Q. That Holmes said he then saw Jason Thomas standing at the bottom of the front porch with a shotgun in his hand?
A. No.
Q. You never told Investigator Kelleher that?
A. I don't recall ever saying that.
Q. You don't remember saying it, correct?

A. I don't recall ever saying it.
Q. And you're telling the Jury that's not the way it was?
A. No.

MR. IAN DEYSACH: That's all I have, Your Honor.

THE COURT: Solicitor?

MS. ANGIE TANNER: Nothing further, Your Honor. May this witness be excused?

THE COURT: Any objection?

MR. IAN DEYSACH: No, Your Honor.

THE COURT: All right. You may be excused, sir.

MS. ANGIE TANNER: May we approach, Your Honor?

(Sidebar)

THE COURT: Yeah. Ladies and gentlemen of the Jury, we will be taking a very short break. Put up another witness and then break for lunch. I'm going to caution you, again, do not discuss this case. It would be inappropriate to do so at this time. Refresh yourselves, very quickly. Come on back out and we'll finish up and get you out to lunch. Thank you, ladies and gentlemen.

(Whereupon Jury exited courtroom 12:21 P.M.)

THE COURT: Y'all, we will be at ease for just a couple of minutes.

(Whereupon a break was taken at 12:21 P.M.)

(Whereupon Court resumed at 12:45 P.M.)

THE COURT: Welcome back, Ladies and Gentlemen. Solicitor, if you will call your next witness.

MS. ANGIE TANNER: Thank you, Your Honor. The State calls Dr. Thomas Duff.

First being duly sworn, **DR. THOMAS DUFF**, testified as follows:

THE CLERK: Can you please state your first and last name for the record.

THE WITNESS: Thomas Duff

THE CLERK: And spell your last name.

THE WITNESS: D-u-f-f.

BY MS. ANGIE TANNER:

Q. Good afternoon, Dr. Duff. If you could, pull the microphone right around to you so everybody in the courtroom can hear. Where are you employed?

A. Beaufort Memorial Hospital.

Q. And what is your position at Beaufort Memorial Hospital?

A. An ER physician.

Q. And what is your educational background?

A. Medical school (Inaudible)

COURT REPORTER: He needs to speak up. I can't hear him.

BY MS. TANNER (Resuming)

Q. I'm sorry. What is your educational background?

A. Medical school with West Virginia, intern year at Logan-West Virginia, and then residency at Medical College of Georgia Augusta.

Q. And how long have you been working at the Beaufort Memorial Hospital?

A. About three and a half years.

Q. What kind of shifts do you have in the emergency room?

A. Twelve hour day and night.

Q. And do you have any specialties in your field?

A. Board certified in family medicine and other training in addition to that.

Q. And do you have training in emergency medicine or I guess -- is there another name for what you call what you do in the emergency room?

A. I've had other training such as Ultrasound, advanced trauma, life support training.

MS. ANGIE TANNER: Your Honor, at this time, the State would move to have Dr. Duff qualified as an expert in his medical background, particularly

in family medicine, emergency medicine.

THE COURT: Mr. Deysach?

MR. IAN DEYSACH: Just briefly.

BY MR. IAN DEYSACH:

Q. The training for emergency medicine, could you let the Jury know a little bit about what you've done that makes you qualify specifically as an emergency room doctor?

A. I interned at a small community hospital in Logan, West Virginia that saw a lot of trauma. Most of my time in intern year was spent in the emergency room dealing with trauma and also cardiac patients and things like that. So I'm experienced in doing procedures such as chest tubes and central line placements, things like that.

Q. And briefly, just explain to the Jury what you mean by trauma?

A. Trauma is anything that could be falling down the stairs, gunshot wounds, car wrecks. In West Virginia, timber and coal accidents.

MR. IAN DEYSACH: I don't have any more questions. I do not have an objection to the qualified as an expert in the emergency room medicine. I'm not sure what the family medicine would have to do with this case. I guess I don't

have an objection to that either.

THE COURT: Ladies and Gentlemen, typically, a witness can only testify to something they've heard, seen specifically and are not permitted to their opinion. There is an exception to that for people who have been determined or qualified as expert witnesses. In this case, Dr. Duff is being qualified in the area of trauma medicine or emergency room medicine and family medicine. Again Ladies and Gentlemen, that for which he can giving an opinion. Again that opinion is for you to use as you see fit. Solicitor.

MS. ANGIE TANNER: Thank you, Your Honor.

BY MS. TANNER: (Resuming)

Q. Now Dr. Duff, you said that part of your training is treating gunshot wounds?

A. Yes. Yes, it is. Basically, you treat where the gun enters.

Q. And so you are familiar with, recognize, lot's of experience with gunshot wounds?

A. Yes.

Q. And on February 17, 2010, did you treat Reginal Holmes for a gunshot wound?

A. Yes.

Q. And with your experience, can you examine a

gunshot wound and determine anything about it such as what type of weapon it would have come from?

A. You can give an estimate of the weapon and often times front path entrance wounds and exit wounds. Not always but most often.

Q. And is there a difference for you in your examination in an entry wound and a exit wound?

A. An entry wound is usually smaller than the exit wound.

Q. Why is that?

A. The projectile as it enters the skin, the skin will sometimes flex inward as the bullet or projectile goes into the skin and often times that will leave a smaller entry wound than the exit wound because tissue is pushed ahead of the bullet when it exits.

Q. And in your treatment of Mr. Reginal Holmes, were you able to evaluate his wounds for entry or exit wounds?

A. Yes.

Q. And did you also -- were you able to determine some type of trajectory of the projectile?

A. Usually you can, yes. Based on his, it was pretty straight trajectory, yes.

MS. ANGIE TANNER: Your Honor, if I may

approach the witness?

THE COURT: You may.

BY MS. TANNER: (Resuming)

Q. First, I'm going to show you what has been marked as the State's exhibit two. If you can identify what is depicted in that photograph?

A. This appears to be an entrance wound.

Q. And I will show you what's marked State's Exhibit Three. Ask if you can identify what is depicted in this photograph?

A. In the lower right hand corner, is what appears to be smaller and the more round exit wound in the center of the photograph.

Q. And are these photographs a fair and accurate depiction of Reginal Holmes' wounds on February 17, 2010?

A. Yes.

MS. ANGIE TANNER: Your Honor, the State moves two and three into evidence.

THE COURT: Any objection, Mr. Deysach?

MR. IAN DEYSACH: No, Your Honor.

THE COURT: In evidence without objection.

MS. ANGIE TANNER: Your Honor, may I publish to the Jury?

THE COURT: You may.

MS. ANGIE TANNER: And, Your Honor, may I have the witness come down from the stand?

THE COURT: Dr. Duff, you may step down, sir.

BY MS. TANNER: (Resuming)

Q. Dr. Duff, if you will come and stand right here with me. I'm going to ask you to hold this.

A. Thank you.

Q. Speak into the microphone. First, the State's exhibit number two, can you point out to the Jury- - first I need to have a pointer for you?

A. This is appears to be an entrance wound.

COURT REPORTER: You still need to speak up.

A. The wound you see here, appears to be an entrance wound.

Q. And what can you tell us about the discoloration around the wound?

A. At this point, it looks like bruising at the trauma of the entrance wound.

Q. Now Doctor, in your experience with gunshot wounds, can you tell if a weapon is actually pressed to the skin when the gun is fired versus when it is shot from a distance? Are there any indicators on the skin, that you look for, in examination?

A. You look for burns or sometimes you see specks

that look like pepper basically.
Q. Now did you see that on Mr. Reginal Holmes?
A. No.
Q. He did not have any wounds that are burns on him?
A. No, he didn't.
Q. And no specks from the gun powder?
A. No.
Q. So this appears, in your opinion -- does this appear, in your opinion, to be shot from a distance?
A. Yes.
Q. So this dark color here, what would that be, in your opinion?
A. This could potentially be where a bullet path entered the skin. An indirect path basically that went into the bicep region.
Q. And Doctor, this is what is the State's exhibit number three, would you tell the jury what is depicted here?
A. Entrance wound much smaller and more round. An exit wound is larger usually and more irregular.
Q. I know that this is up close but can you show us, maybe on my arm, how this is oriented? And what are you showing the Jury there?
A. Basically a support path.

Q. And can you show us how his arm held? Where would the entry wound be?
A. Right about here.
Q. And exit?
A. It'd be an angle probably about 60 degrees to the arm.
Q. Thank you, Doctor. You may return to the stand.
MS. TANNER: Thank you, Doctor Duff. I have no further questions. Answer anything defense counsel may have.
BY MR. IAN DEYSACH:
Q. Good afternoon, Dr. Duff. My name is Ian Deysach and I represent Marion Bonds in this case. I'm going to step forward and grab these pictures. I think you told the Jury that you do have a pretty extensive history with treating gunshot wounds?
A. I've treated several gunshot wounds. I have no idea of the number.
Q. Does it make a difference in your treatment, how close the gunshot came from?
A. No. It depends, basically depends on organs or body structure, bullet speed, size of the caliber.
Q. From seeing gunshot wounds, you have seen the burns that accompany a close range gunshot wound; is that correct?

A. Yes, I have.
Q. And you describe what you would expect to see as -- - what does those burns look like?
A. The burns usually will cover a wider area. There's bruising at the initial impact point but the burns cover a wider area and they'll be, often times, look like pepper. Some people call it stippling around the wound edge. That's usually from unburned powder.
Q. Let me ask you this. You were doing it on the slide, I'm just going to use the picture this time. This is States Exhibit Two. And I'm going to refer to that burn -- that burn -- or I don't know -- that blemish, however you would want to call it, that's below the gunshot wound, itself?
A. Yes.
Q. And did you describe that -- did you describe that as a bruise?
A. Potentially bruise. It had no stippling around it. It didn't have any burns, blisters. It did not look like it had been burned.
Q. So what caused that bruise was the bullet?
A. I cannot say with certainty. It's very possible it could have because there was a track of darker skin.

Q. In fact, you ---
A. If the arm was flexed somewhat the bullet could come up the skin before it entered into the bicep region.
Q. Okay. What you're -- you -- you pointed out something that you thought was the track of the bullet, correct?
A. Potentially the track.
Q. In fact, from the -- the spot that I was referring to, there is a darkened line on his skin; is that correct?
A. Yes.
Q. And you don't see that line before the blemish, correct?
A. No, sir.
Q. So there's nothing on his arm to indicate the track of a bullet for you get to that blemish?
A. Correct.
Q. And so I think -- I want to try and characterize what you're describing as the bullet initially hits here, causes a big bruise, then a line towards the entry wound?
A. A bullet is also very hot when it comes out of the barrel. It's the explosion that projects -- that moves the projectile.

Q. Correct. And that explosion sometimes -- when it explodes -- that explosion extends out of the barrel, correct? And that's where the burning particles would come from, right?
A. Yes, sir.
Q. And if gun powder were to land on a person, those hot pieces of gunpowder would leave a mark?
A. The stippling. There was no stippling.
Q. And when you call it stippling that's what you're talking about isn't the ---
A. Yes, it looks like pepper.
Q. I'm going to show you what's been marked defendant's exhibit ten. Is that a picture of the same wound that's in State's Two and State's Three?
A. Appears to be.
Q. Do these marks on the skin appear to look like pepper?
A. That's dried blood.
Q. So what you are saying is that it is blood as in blood that came out of the entry wound?
A. He was bleeding somewhat from both wounds. When I unwrapped it there was blood on the gauze that they had on there.
Q. So blood on gauze that had been on there would

leave blood marks in that pattern, is what you're saying?

A. There's dry blood in an area, somewhat circular. The wound has not been -- obviously hasn't been cleaned well yet. That was when it was unwrapped.

Q. So you're saying that -- let me ask you this. There is a -- can you describe us -- to us what that piece is right there?

A. That's from the exit wound.

Q. And what is that?

A. That's a piece of gauze.

Q. So there's a piece of gauze on the exit wound?

A. There was gauze wrapped around his arm when he first presented to the emergency room.

Q. Let me ask you what -- this is State's number Two -- let me ask you what that is?

A. That's the gauze from the front, from the entry wound there.

Q. And so do you think that these are your hands?

A. I know those are my hands. I recognize my watch.

Q. So isn't it fairly clear that the dressing has been removed so that the pictures can be taken?

A. Yes.

Q. So are you saying that the wound isn't cleaned before you dress it?

A. That's the dressing he presented to the ER with then it gets cleaned, assessed further, and you call in a specialist if you need them.
Q All right.
A That's just to control the bleeding.
Q. So what you're saying is this ---
A. Those are the original dressings on his arm when he came into the ER.
Q. This piece, right here, with blood on it?
A. Yes.
Q. And that instead of cleaning the wound first, what you did was allow pictures to be taken?
A. No. When I unwrapped it the deputies were there to take pictures as I opened the wound, and we started cleaning right away.
Q. So the deputies got there at the same time the victim got there?
A. I'm not certain of the time-line. Often times the deputies arrive before the victim.
Q. You don't remember how it happened in this case?
A. I don't have a time-line. No, sir.
Q. And -- I don't need to know. All I want to know is first, second, and third. That you do not know whether or not -- whether Reggie Holmes arrived at the hospital before the police did?

A. I'm not certain if he did or not.
Q. And you don't know how long Reggie had to wait before he was treated, do you?
A. Less than two minutes when they come to the door, we drop everything and go.
Q. So it's not like ---
A. They don't wait for the people that take pictures and get statements.
Q. It's not like sometimes people think oh I go to the emergency room and I had to wait real long. Somebody comes in with an ambulance and a gunshot to the arm, that's not the way it is?
A. Gunshot wounds, heart attacks, any life-threatening injury takes first priority.
Q. So what you're telling the Jury is that -- is that the mark down here is a bruise by burning?
A. It does not appear to be a burn. No, sir.
Q. And it's not that it's dried blood or anything like that? It's a bruise?
A. It looks to be a bruise.
Q. And the tiny marks that you see above the wound are dried blood, not burning?
A. Yes, sir.
Q. Did you give Reggie any -- let me ask you one last question about the picture. You would agree that

on State's Exhibit Three, that's that picture, that the area that I was asking about on Defense Exhibit Ten is oriented so it's difficult to see on this picture what it is I was talking to you about, you saying its dried blood, I'm asking if it's a burn?

A. Yes. In this area you can see to the perimeter some of those specks of dried blood.

Q. On the exit wound?

A. Yeah, on the exit wound side. It's similar. Not seen by the picture that you present.

Q. And so how long did it take you to treat Reggie?

A. I'm not certain. It didn't take long. First thing was to establish that there was nothing life-threatening or limb threatening, and x-rays, IVs, and antibiotics, blood work, and I called the surgeon.

Q. There wasn't anything life-threatening or limb threatening, was there?

A. Initially, you're not certain but when he did have sensory and his fingers, he can move his wrist and hands, it appeared at that point to me that it didn't appear to be life-threatening or limb threatening. He had a pulse in the wrist.

Q. Did you discharge him from the hospital?

A. I called an orthopedic surgeon. I believe that's Doctor Stoddard who took over the case.
Q. Do you have any idea how much time Reggie spent in the hospital?
A. No, I don't.
Q. Do you know if he spent overnight?
A. Yeah, I don't think he did.
Q. Did you prescribe therapies?
A. That was left up to the specialist that I consulted with.
Q. Did you do the drug test?
A. Yes.
Q. And did you tell him that he was positive for cocaine and marijuana?
A. Yes, sir. And it was on discharge papers.
Q. Did you give him instructions on how to deal with that or anything like that?
A. I'm not certain. I think whenever we do put that on the discharge papers it would have instructions regarding that.
Q. Did you prescribe him narcotic medication to help deal with pain?
A. I believe a consultant took over the case and did disposition. He probably would prescribe narcotics and antibiotics.

Q. But you're not the one who did that?
A. I did not do the disposition. No, sir.
Q. Let me ask you this. You -- along with testing somebody for cocaine and marijuana, do you also ask them whether or not they use cocaine or marijuana, don't you?
A. I typically will ask do you use any drugs or alcohol or smoke.
Q. He did not tell you that he used those drugs, did he?
A. I do not recall. I don't recall.

MR. IAN DEYSACH: That's it, Your Honor.

MS. ANGIE TANNER: Just briefly, Your Honor.

BY MS. ANGIE TANNER:

Q. Dr. Duff, you said that by examining the injuries you could give an estimate about caliber of the projectile?
A. Often times, yes.
Q. Could you do that in this case?
A. It was a fairly large caliber. Could be a nine millimeter up to as large as a 45.
Q. But would it be your opinion that it was definitely not a shotgun?
A. No.
Q. And you can say that comfortably because why?

A. A shotgun has multiple projectiles and there was one wound.
Q. One wound. And isn't it right that shotgun's have pellets that scatter?
A. Yes.
Q. And the wound that you observed was more consistent with one projectile; is that correct?
A. Yes.
Q. And going back to Mr. Holmes toxicology; what was in his system. Actually what you found in there were metabolites for cocaine; isn't that correct?
A. Yes.
Q. What is the difference? What does that mean when you see a metabolite for cocaine?
A. Metabolites -- after drugs of any kind are ingested there are metabolites in the body in the liver or kidneys usually. And the metabolites come out through the urine.
Q. And does that give you some gauge on the time-line of the use of the drug?
A. Not necessarily. But it can. Cocaine does not stay in your system as long as marijuana for example. And marijuana is a fat soluble, cocaine is not.
Q. How long can marijuana stay in your system?

A. About 30 days or more depending on peoples body habits and how much they smoke.

Q. And what about cocaine if you are finding a metabolite?

A. Usually less than seven days.

Q. Thank you, sir. I have no further questions.

THE COURT: Anything further?

MR. IAN DEYSACH: No, Your Honor.

THE COURT: Any objection to Dr. Duff being excused?

MS. ANGIE TANNER: None from the State.

MR. IAN DEYSACH: No, Your Honor.

THE COURT: You're excused Dr. Duff. Ladies and gentlemen, I think it's a good time for a lunch break. It is, by the clock back there, about 1:12. I'm going to excuse you back to the jury room. You are going to be free to go about your business over the lunch hour. I'll just ask that you all be back in your jury room at 2:30 where we are going to continue the trial of this case.

Ladies and gentlemen, I'll also caution you, you are not to discuss this case with anyone you may come in contact with at lunch or anyone with whom you talk with on the phone. Again, that

would be inappropriate. You are also not permitted to do you own research. Go and have a nice lunch, ladies and gentlemen and we will see you back in your jury room at 2:30. Thank you.

(Whereupon Jury exited courtroom at 1:14 p.m.)

THE COURT: Anything we need to put on the record?

MS. TANNER: Nothing from the State.

THE COURT: Mr. Deysach?

MR. DEYSACH: No, Your Honor.

THE COURT: Okay.

MS. TANNER: Can I ask you for scheduling ---

THE COURT: Absolutely.

MS. TANNER: What time do you think we are going to stop tonight? I've got plenty to do for the rest of the day but I've got some I don't think we will even get to so I'm thinking about telling them to come back tomorrow ---

THE COURT: Okay ---

MS. TANNER: But I don't want to suddenly speed up and be stuck.

THE COURT: Well, actually I have an issue in the morning.

(Whereupon we went off the record and to lunch at 1:17 P.M.)

(Whereupon Court resumes after lunch at 2:35 P.M.)

THE BAILIFF: All rise.

THE COURT: Please be seated. All right is the State ready?

MS. TANNER: State's ready, Your Honor.

THE COURT: Is the Defense ready?

MR. DEYSACH: Yes, Your Honor.

THE COURT: All right. Let's bring the jury in.

(Whereupon the Jury enters at 2:37 P.M.)

THE COURT: Welcome back, ladies and gentlemen of the jury. I hope you had a good lunch. Solicitor, at this time if you will call your next witness.

MS. ANGIE TANNER: Thank you, Your Honor. The State calls Investigator John Kelleher to the stand.

First being duly sworn, **JOHN KELLEHER** testified as follows:

THE CLERK: Will you please state your name and spell your last name.

THE WITNESS: My first name is John. Kelleher is K-e-l-l-e-h-e-r.

DIRECT EXAMINATION

BY MS. ANGIE TANNER:

Q. Good afternoon, Investigator Kelleher?
A. Good afternoon.
Q. Where are you employed?
A. Beaufort County Sheriff's Office.
Q. And how long have you been with the Sheriff's office?
A. Almost seven years now.
Q. And prior to you coming to the Sheriff's office, what did you do?
A. I was in the Navy for 20 years.
Q. This is actually a second career.
A. This is my wifes' second career.
Q. And at the Sheriff's office, what is your duty or capacity?
A. I'm a investigator on the northern side of the County and anything that the road patrol reports to we evaluate and we decide which investigations to follow-up.
Q. And what areas are included in the northern side of Beaufort County?
A. Everything north of the Broad River up to the Yemassee, Point South area, and the ocean.
Q. Does that include St. Helena Island?
A. Yes, it does.
Q. I'm gonna ask you were you working on February 17,

2010?

A. Yes. I was the on-call duty investigator.

Q. And what does that mean, on-call duty ---

A. It just means that for a 24 hour period, you are on-call. Anything that needs to be taken care of.

Q. And during that time period are you called out?

A. Yes, ma'am. At about seven o'clock in the morning, I got a call that morning.

Q. And where do you respond to?

A. I respond to [redacted] Eddings White Road.

Q. And where is that?

A. That's in St. Helena in Beaufort County.

Q. That is within Beaufort County?

A. Yes, it is.

Q. And once you arrived, who do you first come in contact with?

A. When I first arrive there, I meet up with Corporal Green.

Q. And what do you do with him?

A. With him, I asked him what's going on. I had an idea already what was going on. He tells me what happened, what he knows and stuff once I arrive there.

Q. And once you are able to get a briefing of the situation, what do you then do?

A. At that time, then I started processing, investigating the scene that's there. I was notified that the victim was already taken to the hospital and I start looking around for evidence.
Q. Now based on information you received about this crime, what kind of things were you looking for?
A. On that morning, I was told there was a shooting. The victim was taken to the hospital. So when I arrive there, I'm looking at the scene, the front door area of the porch. I was told that's where the scrimmage took place. I'm checking the porch out. I'm checking grounds around there looking for any physical evidence, casings, anything on the ground, anything that would give me clues or give me evidence to go along.
Q. Now your crime scene investigation, what does -- what comes out of that? Did you find anything?
A. I went over there -- the only thing I can remember, we were -- recalling that I notice was there was on the ground at the bottom of the stairs of the porch, the ground was very hard because it was colder than today -- it was very cold outside. So the dirt is all scuffled up and marked up which is unusual because the rest of the ground was very hard. I could see where it was

all scuffed. It was all scuffed up.
Q. And do you document what you find?
A. Yes.
MS. ANGIE TANNER: May I approach the witness, Your Honor?
THE COURT: You may.
BY MS. TANNER:
Q. Investigator Kelleher, I'm going to show you what's been marked State's four and five. Starting with four, can you describe what's being depicted in that or can you identify what's being depicted?
A. In number four, it's the bottom of the stairs of the porch of the victim's house and on the ground, the dirt area is the scuff marks that I saw.
Q. And is that a fair and accurate depiction of how it appeared that day?
A. Yes.
MS. ANGIE TANNER: Your Honor, the State moves Four and Five into evidence.
THE COURT: Any objection, Mr. Deysach?
MR. IAN DEYSACH: No, Your Honor.
THE COURT: In evidence without objection.
MS. ANGIE TANNER: May I publish to the Jury?
THE COURT: You may.

BY MS. TANNER:

Q. Investigator, if I could, have you to come down briefly?

(Whereupon witness steps down)

Q. First we have State's Exhibit Four. Can you describe for the Jury what is depicted in this?

A. When I arrived, I saw -- this is the front porch because there are steps as you go into the victim's house and right here is the scuffed mark area. So all this ground was very hard. This ground was all turned over and stuff.

Q. It looks like I saved the same picture twice. I'm going to have to have you grab the small version. Could you grab State's Five, please?

A. This is the one on the wider screen that we just saw. Can you move it in a little closer? A closer photo of it.

Q. Thank you, sir. Now, Investigator, based on your examination of the scene and the items you found, is that consistent with the description you received where this occurred?

A. Yes.

Q. Now, what other further examination do you perform at the crime scene? What else are you looking for?

A. I'm looking for any blood droppings, any casings, projectile from a gun, possible weapon, anything that can be used as evidence.
Q. Did you find any of those things?
A. No, I did not.
Q. You didn't recover the gun?
A. No, I never located the gun.
Q. How about the projectile?
A. I did not. My metal detector canvassed what I thought was the area that everything took place. I never located anything.
Q. So you did use a metal detector?
A. Yes, I did.
Q. Is it unusual not to find the projectile?
A. Not at all.
Q. And how many investigations would you say you've handled over the years you've been here?
A. Investigations? We average 130-140 a year, times that by five, almost six years.
Q. And how often would you say you find a bullet outside that's been fired?
A. If you're lucky, not that often.
Q. So it's not unusual that you didn't find a projectile?
A. No. A lot of times the projectile will split in

two when it leaves the barrel. It's just the back end of the bullet. The metal part will split through sometimes. It's just a needle in the haystack.

Q. Let's move forward in the day. Are you present and participate in the arrest of Marion Bonds?

A. Yes, ma'am.

Q. And where does that occur?

A. I can refer to my notes. It's on Ball Park Road, Mr. Lewis' residence, [redacted] Ball Park Road in Beaufort County.

Q. In Beaufort County as well. And are you alone when he's arrested?

A. No, I'm not.

Q. What other officers are with you?

A. Investigator Fraser, Investigator Chapman, there were some civil deputies out there, and Officer Green may have been there too. I'm not sure.

Q. And are you inside -- are you the actual officer who first puts hands on Marion Bonds?

A. No, I don't. I'm outside in the perimeter area.

Q. And from outside the perimeter area, what do you observe?

A. When we arrived at [redacted] Ball Park Road, we walked up the driveway. It's a single wide, mobile home

trailer. It'd be on my left walking up the driveway. Investigator Fraser told us that the back door is the front door. So we're going around that way and we met Mr. Lewis somewhere between the front door and coming around the corner of the building. As we were near, maybe five yards from the trailer, you could hear a lot of ruckus inside the trailer.

Q. When you say ruckus, do you mean voices or movement?

A. Movement. People who were adults. Large sized running around or furniture being moved, I'm not sure. It was just a lot of ruckus in that corner.

Q. And it some point do the officers make entry into the home?

A. Yes, they did.

Q. Do you go in first?

A. No, I do not. I stay outside right by the area where the noise was heard.

Q. And what do you see from where you are?

A. A few moments later, there's a bedroom window where I'm standing, the suspect, later identified as Jason Thomas, opens the window. I advise him of who I am. He closes the window and disappears.

Q. And later on he is grabbed from inside the

residence?
A. Almost -- yes, right away.
Q. Did you have conversations with the victim, Reginal Holmes, about the suspects in this case?
A. We did. The day after which would be the 18th.
Q. And with your discussions about the suspect, did you take anything with you?
A. I took a prepared photo lineup from the Sheriff's office.
Q. What is a photo lineup?
A. A photo lineup is what we use in investigations. Sometimes known as a six pack. It's six individuals usually from the necks up similar race, skin color, hairstyle, clothing, background to make everyone look similar to each other.
Q. What do you do with that?
A. I present it to Reginal Holmes at his house and he identified the defendant.

MR. IAN DEYSACH: I do have a prior objection, I want to put on the record right now, Your Honor.

THE COURT: Noted for the record.

MR. IAN DEYSACH: Same grounds.

THE COURT: Thank you.

BY MS. TANNER:
Q. Going back. You've been here for all the

testimonies?
A. Uh-huh.
Q. During defense there was some confusion about the identity of Jason Thomas. Was Mr. Holmes able to identify a Jason Thomas?
A. Yes, he was.
Q. And your investigation revealed that is a person that hangs out with Marion Bonds?
MR. IAN DEYSACH: I object to the hearsay. I think when she says "your investigation revealed", she is referring to hearsay.
THE COURT: Overruled. Go ahead.
BY MS. TANNER:
A. Yes.
Q. So that person was identified as someone who hangs out with Marion Bonds?
A. That was my understanding.
Q. And is that the Jason Thomas you described opening and shutting the window?
A. Yes.
Q. Now back to this photo lineup.
MS. ANGIE TANNER: May I approach the witness, Your Honor?
THE COURT: You may.
BY MS. TANNER:

Q. I want to show you what's been marked as State's Exhibit Six. Can you identify that item?
A. This is the photo lineup that I showed Mr. Holmes.
Q. And how did you go about showing that to Mr. Holmes?
A. Usually what I do is, there's a statement on the back and I read that statement or I ask them to read it. And then that person, the victim, sign it. There's a place for him to sign it. Then I flip it over. Usually they view it and they take a look at and he immediately identified the person that's circled in number two.
Q. And this is the actual lineup that you used?
A. Yes, it is. It's the actual one.

MS. ANGIE TANNER: Your Honor, the State moves six into evidence.

MR. IAN DEYSACH: Subject to the prior objection.

THE COURT: It's in evidence. Subject to your prior objection.

BY MS. TANNER:

Q. Now Investigator Kelleher, at the time that you showed this lineup, didn't you already have information that Marion Bonds was the cousin of

your victim?
A. Yes, I did.
Q. So why would you then show the photo lineup?
A. Usually just for extra support, CYA.
Q. You want to make sure that's the right Marion Bonds?
A. Yes, ma'am.

MS. ANGIE TANNER: Your Honor, if I may publish this to the Jury?

MR. IAN DEYSACH: Your Honor, I object to the publishing to the Jury of the photo lineup.

MS. ANGIE TANNER: It's in evidence. They need to see it.

MR. IAN DEYSACH: No.

THE COURT: It's in evidence right now. Let's not do it. Do you have it on the board?

MS. ANGIE TANNER: No, ma'am. I was going to pass it.

THE COURT: I'm going to ask you to just hold it. We can do it later when the he stops and you can go ahead and do it, if you want, at the time.

MS. ANGIE TANNER: Can I just walk by with it?

MR. DEYSACH: I'm objecting to the publishing of it on grounds that it's prejudicial and I would appreciate it if you didn't keep showing it to the

Jury while the Judge has asked you not to.

MS. ANGIE TANNER: It's in evidence. They're going to see it.

THE COURT: Okay, y'all. I have moved it into evidence but I'm asking the Solicitor to move it along. So I don't want you to put in and walk across the Jury right now. They will get it back in the Jury room to take a look at it. So go ahead and ask him his next question.

BY MS. TANNER:

Q. Investigator Kelleher, the person that Reginal Holmes circled and identified as the shooter, who was that?

A. Marion Bonds Junior.

Q. And is that person in the courtroom?

A. Yes, he is.

Q. Could you please point to him?

A. He's sitting right over there in a white shirt and tie. (Pointing to Defendant)

MS. ANGIE TANNER: Please have the record reflect that he has indicated the defendant.

MS. TANNER:

Q. Now when Mr. Bonds is arrested, do you try to collect other evidence from him?

A. Yes.

Q. And what would that be?
A. He was wearing a -- the victim told us that he was wearing a camouflage jacket. There's a jacket located where Mr. Bonds was laying when he was located.

MR. IAN DEYSACH: I have a prior objection on the jacket also, Your Honor. I want to make sure I've noted it for the record.

THE COURT: Thank you.

BY MS. TANNER:
Q. What about any forensic evidence?
A. I did a gunshot residue kit on the suspects.
Q. What is a gunshot residue kit?
A. A gunshot residue kit is a -- where you take samples from the palm of each hand, the back of each hand and see if you can pick up any gunpowder. When you shoot a gun, it leaves gunpowder.
Q. And what can you tell us about this powder that comes out and what you are looking for?
A. The kit is -- when I collect stuff off the hand and I put it in the kit, it tells me if anyone has fired a gun.
Q. What is the consistency of gunpowder?
A. I'm not sure. It's analyzed at a lab.

Q. For a consistency, what does it look like?
A. It would be like -- my reference is it's like a fine powder on a charcoal or something.
Q. And is this something that will stay on the skin and indefinitely?
A. No. It's only a few hours.
Q. So you actually have guidelines on how long you should even attempt to get these tests?
A. We usually like to stay within the range of two to three hours.
Q. Two to three hours. Well, what happens after three hours?
A. It's going to wear off of the skin. Also there's other ways of losing any evidence that may be there, like in a shower or running water on their hands.
Q. And wouldn't even sweating take it off?
A. Certainly could, yes.
Q. In your investigation, did you receive information that he showered before you saw him?
A. Yes.

MR. IAN DEYSACH: I object to the hearsay.

THE COURT: Overruled. You can ask the question.

BY MS. TANNER:

Q. So prior to taking your gun residue test, Mr. Bonds has showered?
A. That was my understanding, yes.
Q. Would you expect to find powder after the shower?
A. I wouldn't be as hopeful.
Q. You wouldn't be as hopeful?
A. I wouldn't be as hopeful.
Q. And in fact do you get the test results back?
A. The test results come back from sled in Columbia. There is no gun powder residue.
Q. So you didn't get any off of it after the shower?
A. Correct.
Q. But you tried?
A. Yes.

MS. ANGIE TANNER: No further questions for this witness.

MR. IAN DEYSACH: May it Please the Court, Your Honor?

THE COURT: Yes, sir.

BY MR. IAN DEYSACH:

Q. Good afternoon.
A. Hey.

MS. ANGIE TANNER: Your Honor, can we approach? I'm sorry.

THE COURT: You may.

(Whereupon lawyers approached the Bench)

BY MR. DEYSACH:

Q. You are the lead investigator on this case?

A. Yes.

Q. So when this happens on 17th of February, you happen to be on call and if something happens you're the investigator that shows up?

A. Yes.

Q. And at what time in the morning did you get notified that your services would be needed at [redacted] Eddings White Road?

A. Approximately 7:30, 7:15. I believe I was in my driveway going out.

Q. Headed to work?

A. Yes.

Q. And instead of going to the office you go straight to ---

A. I go straight to---

Q. --straight to [redacted] Eddings White Road?

A. Yes.

Q. Do you know what time you arrive?

A. No, I do not.

Q. Do you think you got called at 7:15 or 7:30?

A. Possibly. I'm not sure. I'd have to look back at my records.

Q. How long would it take you to get from where you started to -- pulling out of your driveway to Eddings White Road, how long did that take you?
A. Once again, I'm not sure but I know I did not know where [redacted] Eddings White Road was. I had to call dispatch for clarification.
Q. So if you heard about it at 7:15 or 7:30, do you have at least an estimate for the Jury to tell them when you would have arrived?
A. Fifteen, twenty minutes, maybe.
Q. So that's like 7:30, 7:45?
A. Depending on the start time.
Q. How do you find out that you were needed at [redacted] Eddings White Road?
A. That morning on the Sheriff's radio, I heard some stuff going on. Also, I was notified by my supervisor by telephone.
Q. Cell phone?
A. I believe so.
Q. And was it -- it wasn't Corporal Green who called you, was it?
A. No.
Q. When you arrived at [redacted] Eddings White Road, who's there?
A. Corporal Green is there.

Q. Is he the only police officer there?
A. No. There was another officer there but I cannot recall who.
Q. Was it another investigator?
A. No. I was the only investigator.
Q. Was, umm -- was Reggie Holmes there?
A. No, he wasn't.
Q. Was EMS there? Was there an ambulance there.
A. No, they had already left.
Q. Do you know how long they had been gone by the time you arrived?
A. No, I don't.
Q. Was the yellow crime scene tape up already?
A. Yes.
Q. And as the investigator, you're the person who takes over the operations at that address, correct?
A. Correct.
Q. And you're, at that point, in charge of keeping integrity to the crime scene?
A. Yes.
Q. I guess that would mean keeping up with who is going in and out of it and making sure nothing gets messed up?
A. Yes.

Q. At that time did you have any indication that the crime scene might have included inside of the residence?
A. At that time, no, I did not.
Q. Now we -- you showed the scuff marks to the Jury while you were being asked questions by the Solicitor?
A. Yes.
Q. And you wrote in your report that those scuff marks which could have been caused from shoes; do you remember writing that?
A. Correct.
Q. So your initial impression was that the cause of this disturbance in the dirt was from feet?
A. When I wrote it? Yes, sir.
Q. I mean you -- when you're writing a report, you're not just throwing down words on a piece of paper. It's an important document that you're generating, right?
A. I would think so.
Q. You're the lead investigator on this case, correct?
A. Correct.
Q. At this time you really don't know, I what, the health status is of the victim in this case,

right?
A. Correct.
Q. So you know that this is quite possibly a report that's going to be relied on by other police in this investigation?
A. Yes.
Q. The Solicitor's office?
A. Yes.
Q. The Defense attorney might rely on it?
A. Yes.
Q. So it's really important to make sure that what you write in your report is accurate, complete, and not missing any details, correct?
A. At the time when I'm writing.
Q. Well do you -- at this point are you saying that you don't think that those scuff marks were caused by shoes?
A. I'm not -- scuff marks?
Q. Page one.
A. Which says, "appeared to be a few scuff marks which could've been caused by shoes". I guess I could write a paragraph of what it could be caused by.
Q. But you didn't, correct?
A. No.

Q. You wrote shoes?
A. Yes.
Q. Now I think you described, to the Jury, exactly what I think anybody would want -- would be looking for at this scene. You described looking for a shell casing, correct?
A. Yes.
Q. That's the metal piece that goes around the bullet, correct?
A. Correct.
Q. And that when a gun is fired the bullet leaves the shell casing, correct?
A. Correct.
Q. And that's called the projectile?
A. Correct.
Q. And depending on what type of gun is used, the shell casing is ejected from the gun?
A. Correct.
Q. If a gun is a revolver, the shell casing is not ejected, correct?
A. Correct.
Q. If it is an automatic or semi-automatic or non-revolver type gun, the shell casing is ejected?
A. Correct.
Q. And so at that time did you know whether or not

the gun alleged to have been used was a revolver or not?

A. I had no idea.

Q. Did you find out later?

A. I don't recall. The gun was never located. So I don't know.

Q. I hear you. Okay, you did talk to Reggie, correct?

A. Yes.

Q. And you asked him about the gun?

A. I talked to him the next day.

Q. I guess the point is you don't know right now whether or not there would be a shell casing or not when you're looking for it?

A. Correct. I didn't know.

Q. So it's not just you're walking around with your bare eyes looking for shell casing, right?

A. At first I was, yes.

Q. At first you were.

A. Yes.

Q. And then after you didn't find one that's when you go to the metal detector?

A. Yes, sir.

Q. In fact you keep the metal detector in your car just for cases such as these?

A. Yes.
Q. You also talked about the projectile?
A. Correct.
Q. You mentioned something about that when you're being asked questions by the Solicitor. And you said sometimes that projectile creates not just one but two pieces?
A. No, I said it could splinter.
Q. Okay.
A. It could just splinter...
Q. Just disappear into the --- into the...
A. I wouldn't go to that extreme.
Q. Right. But it could be multiple pieces?
A. It could be.
Q. And so there might be -- if the shooting had occurred out there, there might be more than one pieces of projectile that are findable, correct?
A. Or not.
Q. Because in this case you didn't find any projectiles, right?
A. Correct.
Q. And the Solicitor mentioned, "Well, you know, when you are outside it's tougher to find projectiles" and you agreed with her. Do you remember that?
A. Yes. Any locations sometimes it's hard to find a

projectile.
Q. And sometimes you can find them, correct?
A. Sometimes you do and sometimes you don't.
Q. In this case, did you know to look for the projectile near the scuff marks, correct?
A. Correct.
Q. Did you know when you were looking for the projectile that the victim said the gun had been pointed downwards towards the ground?
A. No, I didn't know that.
Q. At that time, you did not know whether the victim was alleging that the shooter was standing?
A. Right.
Q. And you did not know whether or not the scuff mark represented a place where the victim would have fallen?
A. No, I do not.
Q. But the crime scene that you taped off included that area, correct?
A. Corporal Green taped it off. My understanding when he explained to me, what he was told, that most of it happened on the front door area. That general -- that dirt area.
Q. You did not locate any possible signs of blood droppings, did you?

A. No.
Q. Did you contact other police to help you with the investigation?
A. Yes.
Q. Who did you contact?
A. Once I received the notification to go out to the incident scene, I received a call from my supervisor who sent Investigator Fraser and Chapman to the ER to meet with the victim who's coming in with the ambulance.
Q. Who's your supervisor?
A. Master Sargent Purdy.
Q. Brody?
A. Purdy.
Q. Purdy?
A. P-u-r-d-y.
Q. And so, you don't even get on the phone and talk to Sargent Fraser and Chapman?
A. Not right away, no.
Q. And so they just go -- even though you're the lead investigator, they go to the emergency room without being prompted by you?
A. They were prompted by their supervisor.
Q. And your supervisor?
A. Yes, sir. Which is nothing unusual.

Q. Do you know -- did he tell you when he told them to go?
A. He called me and said, "You're going out to the shooting scene. I have Fraser and Chapman headed to the hospital to talk to the victim."
Q. So he had already talked to them before he called you?
A. I don't know.
Q. But -- did he -- Okay. He must have if he said that I've already got Fraser and Chapman to go to the hospital, correct?
A. Before or after, immediately -- sometime before or after he talked to me.
Q. He might've had multiple phone calls with the supervisor, right?
A. No. I just talked to him once.
Q. You spoke to the next-door neighbor in the other half of the duplex?
A. Yes, sir.
Q. At some point, did Fraser and Chapman return to [redacted] Eddings White?
A. No. They didn't return. After they were done at the hospital, they came out.
Q. I understand. All right. You guys end up at [redacted] Ball Park Road, correct?

A. Yes.
Q. And that's at what time, about 10 o'clock?
A. Approximately 10 o'clock.
Q. And you were -- you went there because that was one of Marion Bonds' last known addresses?
A. Investigator Fraser and Chapman worked the St. Helena area. I did not. I worked the Burton area, regularly. They know the land -- the know the land better than I do and the clientele and they had an idea that he would be staying at locations in that area.
Q. The -- you took Marion Bonds and Jason Thomas into custody at [redacted] Ball Park Road, correct?
A. They were taken into custody there.
Q. And you performed the gun shot residue check on them, correct?
A. Yes, I did.
Q. They both said they had nothing to do with the shooting, correct?
A. Correct.
Q. You get the gun shot residue result sometime later from SLED?
A. Yes.
Q. The next day you meet with Reginal Holmes?
A. Yes.

Q. He never told you that anything was taken from him, did he?
A. No, he did not.
Q. Do you think that's something you would have wanted to get clear as the lead investigator? Is that an important fact whether or not something was taken?
A. Yes.
Q. I mean, as lead investigator you're looking for all the important facts right?
A. Well I know there was supposed to be a gun put in his face so I'm sure he was a little upset.
Q. This is a day later, isn't it?
A. If you ever had a gun in your face, it could be a couple of days later.
Q. So what you're saying is -- what he tells you at the time isn't reliable?
A. No. I can understand sometimes when you're focusing on one thing other things can be blurry.
Q. He told you that he saw Jason Thomas standing near the bottom of the front porch, didn't he?
A. Yes, sir.
Q. He did not tell you that he came in, did he?
A. No, he didn't.
Q. He never told you that?

A. He said he was outside at the bottom of the porch.
Q. He told you that Bonds and Thomas ran off, correct?
A. After he was shot -- he was shot -- let me just look at my notes here. Yes, sir.
Q. He did tell you that?
A. Yes.
Q. He said that soon after, his uncle came out to see what had happened, correct?
A. I don't remember him saying anything about his Uncle.
Q. You know you've reduced your interview to writing, correct, on page five of your report -- at the very end of the first paragraph? You wrote, 'Holmes said sometime soon after that his uncle came out to see what had happened', Okay.
A. Okay.
Q. And you brought the photo lineup, correct?
A. Correct.
Q. And you read the back of the photo lineups like you talked about before?
A. Right.
Q. "You'll be asked to look at a group of photographs. The fact that the photographs are shown to you should not influence your judgment."

That's part of it.

A. Correct. That's part of it.

Q. "You should not conclude or guess that the photographs contain a picture of the person that committed a crime." Correct?

A. Correct.

Q. "You're not obligated to identify anyone." Correct?

A. Right.

Q. And so you're not asking him to identify a Jason that he knows hangs out with Marion Bonds, are you?

A. No. I believe I asked him who the other person was -- he identified Marion first -- I asked who the other person was that was with him.

Q. I mean you're trying to find out who's the guy with the shotgun?

A. Yes.

Q. And he circles Jason Thomas?

A. He picked him out right away.

Q. He doesn't say that I have a hunch it's Jason Thomas, no?

A. No. He said that's him.

Q. He said that's him.

MR. IAN DEYSACH: Courts indulgence. That's

all I have, Your Honor.

THE COURT: Anything further, Solicitor?

MS. ANGIE TANNER: Nothing further for this witness.

THE COURT: You may step down.

MS. ANGIE TANNER: Our next witness is Investigator Fraser. I'm going to check to see if he's cleared from courtroom two.

THE COURT: If not, we can take a break.

MS. ANGIE TANNER: Can we take a couple minute break?

THE COURT: Sure. Let's go ahead and take a couple minute break. Ladies and gentlemen, I caution you to not begin discussing the case. It would be inappropriate to do so. You haven't heard all of the evidence. We'll be back with you shortly.

(Whereupon the Jury was excused for a break at 3:20 P.M)

(Whereupon at 3:35 P.M., Court resumed)

THE COURT: Are we ready, Solicitor?

MS. ANGIE TANNER: I talked to Mr. Deysach. It looks like Investigator Fraser -- they're still on the direct exam. So they still got to go through cross and any re-direct and re-cross. So

I'm going to go out of order. It might be a little bit confusing for the Jury but I'll do the best I can. Then I've got -- I've got to short chain witnesses that I can put up after him. So I'm hoping that can get us through until Investigator Fraser. I'm going to go ahead and call Investigator Rice.

THE COURT: All right. That's fine. Bring in the Jury.

(Whereupon the Jury re-enters at 3:37 P.M.)

THE COURT: Solicitor, if you want to go ahead and call your next witness.

MS. ANGIE TANNER: Thank you, Your Honor. My next intended witness is tied up in another trial right now. I'm going to go out of order a little bit but try to keep it making sense. The State will call Andrew Rice.

THE COURT: Come on forward, sir and be sworn.

Being first duly sworn, **Andrew Rice,** testified as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Andrew Rice. R-i-c-e.

DIRECT EXAMINATION

BY MS. ANGIE TANNER:

Q. Good afternoon, Investigator Rice. Where are you employed?
A. Beaufort County Sheriff's Ofice.
Q. And what capacity do you work for the Sheriff's office?
A. I'm an investigator with the drug task force.
Q. How long have you been working there?
A. Just over two years.
Q. Now were you working on February 17, 2010?
A. Yes.
Q. And on that day did you receive a call out from other members from the Sheriff's office?
A. Yes.
Q. What location do you respond to?
A. I actually was asked to respond to, I believe it was, the [redacted] Ball Park Road due to the length of time to get there I met with Investigator Chapman and Investigator Fraser at their office on Duke Street.
Q. About what time of day was that first call?
A. That was in the morning before lunch.
Q. And so with that first call you don't actually make it out to the Ball Park Road residence, do you?
A. No.

Q. When you meet with the investigators in the office, what transpires there?
A. I received from them suspected cracked cocaine.
MR. IAN DEYSACH: Your Honor, I do think that this is the appropriate time to renew for the record my previous motion. Also, I know they haven't completed the chain at this time and I guess before they introduce that into evidence, they're going to need to complete the chain or if they fail to by the end of the trial, I will have an objection.
MS. ANGIE TANNER: That's correct. As stated, we are going out of order a little bit. So were going to work backwards on the chain.
THE COURT: Thank you. Your previous objections are noted for the record and overruled.
BY MS. TANNER:
Q. Now Investigator Rice, you received something from Investigator Fraser; is that what you said?
A. Yes.
Q. Once you receive the items from Investigator Fraser, what did you do with them?
A. I tried to obtain the field weight of how much the illegal drugs weighed before submitting them into evidence. Also, Investigator Fraser conducted a

Field Test or a NIK Test on the site.

Q. What is that? What is a NIK Test?

A. All it does is it's a NIK -- It's a cocaine swipe, model 6500 that indicates whether or not there would be a cocaine-based substance presence. The substance we are looking at.

Q. How much of this substance do you use to test for this NIK?

A. As much as required, a very small amount. Enough to maybe put into a paper clip and rub on to the test strip.

Q. So a NIK?

A. A NIK.

Q. I'm going to show you what's been marked as State's 11, 13, and 14. And ask if you can identify these items?

A. They are the items that I received from Investigator Fraser on the 17th. It was later found to be crack cocaine.

Q. What did you do with these items after you received them from Investigator Fraser?

A. After conducting this field test, I tried to obtain the field weight of the substances. I submitted them inside a Best Bag to the evidence division which has a drop box.

Q. Are there other items you received from Investigator Fraser that day?
A. Yes.
Q. I'm going to show you what's been marked as State's Exhibit number Ten.
A. It's a red and black Nike Air Force One tennis shoe I received from Investigator Fraser that actually contained the suspected crack cocaine.
Q. The cocaine that's in States item number Eleven?
A. Yes.
Q. And what did you do with this item?
A. Just submitted it into evidence. I received it from Investigator Fraser and then submitted it inside this evidence bag to the evidence division.
Q. And in the time it goes from Investigator Fraser to you to evidence, do you do anything to tamper with or alter any of these items?
A. No.
Q. And how do you know by looking at these items, ten months later, that these are the actual items you got from Investigator Fraser?
A. Those are the items that I sealed inside of the Best Bags and signed it over with my signature to Eileen Rios and mark with the case number that corresponds with the case.

Q. Now once you've handled the evidence that morning, do you then draft any paper work for these items or based upon these items?
A. Eventually we can draft an incident report or something in our report to Investigator Fraser or Chapman, Kelleher, whose ever original report it was. Also, we were going to obtain arrest warrants to serve on Marion Bonds at the jail.
Q. And based on those items what charges were brought against Marion Bonds?
A. Based on these items, the trafficking crack cocaine was the charge. Based on the weight it was more than ten grams of crack cocaine.
Q. Now at the time you become involved, has Mr. Bonds been charged yet with these drugs?
A. No.
Q. Now on February 17th, is that the last thing you do with regards to Mr. Bonds?
A. No.
Q. You get another callback regarding him later that day?
A. I do. We received a phone call about a phone call being placed from the jail by Mr. Bonds to an individual known by Old School which is Richard Lewis indicating that there---

MR. IAN DEYSACH: I object to hearsay. Now he's talking about what another officer overheard on the jail phone.

MS. ANGIE TANNER: He's giving presence impression to what he responds to.

THE COURT: Come here for a second y'all.

(Whereupon Lawyers approach the Bench)

BY MS. TANNER:

Q. Around what time do you get the second call out on this case?

A. This was about a little after lunch time.

Q. And do you respond out to the Ball Park Road residence at that time?

A. I had other people that worked at that office respond. I went to the Magistrate Office to obtain a search warrant for the residence.

Q. So when you go back the second time you have a search warrant for the Ball Park Road residence?

A. Yes.

Q. And what are you looking for when you go back?

A. I'm looking for a quantity of the crack cocaine that is said to be hidden in the trash.

Q. And when you get there with your search warrant, who do you come in contact with?

A. At that time, I came in contact with Mr. Lewis,

Richard Lewis, who is the tenant or resident at that house. He had already been detained.

Q. And did you execute the search of the Ball Park residence at that time?

A. I do.

Q. And what do you locate inside the residence?

A. Underneath the bathroom sink, right as you walk into the door, underneath the bathroom sink there's a quantity of crack cocaine that has been broken up into pieces as if it was tossed or just thrown into the cabinet.

MS. ANGIE TANNER: If I may approach the witness, Your Honor?

THE COURT: You may.

BY MS. TANNER:

Q. Show you State's 17 asking if you can identify what is displayed in that?

A. That's the suspected crack cocaine underneath the kitchen sink area. Underneath, the crack cocaine is the white rock like substance that's inside.

Q. And State's Exhibit 15?

A. This is the sink. The crack cocaine is in the sink.

Q. Is that a closer up view?

A. Yes, it is. You can see where it's three

different parts of several pieces where it was broken and scattered.

Q. And State's Exhibit 16?

A. These are smaller pieces that came off the larger pieces that were on the actual bathroom floor.

Q. Thank you.

MS. ANGIE TANNER: Your Honor, State moves 15, 16, and 17 into evidence.

MR. IAN DEYSACH: Those pictures will still be subject to the objection -- prior pretrial objection.

THE COURT: Again, overruled but noted for the record.

MS. ANGIE TANNER: I would like to publish to the Jury with the witness so he can explain the photographs.

BY MS. TANNER:

Q. Investigator Rice, if I could have you come off the stand, briefly. Starting with State's 17, will you point out to the Jury what is depicted in this photograph?

A. This large area is the actual sink or the vanity, we call it, in bathroom from the main hallway. This is a large piece -- this is the large piece of suspected crack cocaine. Where the crack

cocaine was found.

Q. This will be State's 15. Can you point out to the Jury what is being depicted?

A. This is three pieces. A large piece here, a piece here, and a smaller piece here of crack cocaine. It was probably one piece originally referred to as a cookie of crack cocaine that broke when it was dropped.

Q. And State's 16?

A. You can see the various small pieces here, pieces that have come off of larger pieces inside the bathroom vanity or sink area.

Q. And did you collect all of these items?

A. Yes I did, along with another Investigator.

Q. Thank you, sir. You can take the stand. Once you collected those items, what did you do with them?

A. I submitted them to the evidence division through the temporary, it's called a drug drop box, for examination via the Best Bag?

MS. ANGIE TANNER: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. TANNER:

Q. Show you State's 18. State's 18, what is that?

A. That is the same pieces of crack that were located

underneath the sink or vanity.
Q. And in collecting and preserving, prior to you turning it into evidence, did you do anything to alter or change any of the contents of that bag?
A. No.
Q. And did you weigh that as well?
A. I did. I conducted a field weight to get the gross weight, estimated weight prior to submitting it. Prior to submitting it, I also conducted a NIK test.
Q. What was your NIK test on this?
A. This resulted in a positive result for the cocaine base being present.
Q. Now as a further part of your investigation, did you create any other items for your file?
A. I created another incident report with inventory of what was taken from the residence.
Q. And did you document the scene in any way; the home?
A. I did. I conducted a very rough sketch of the residence to give you an idea of where the rooms were located.
Q. Show you State's Exhibit 19.
A. That's the rough sketch.
Q. This is the sketch you drew?

A. Yes.
Q. Is that a fair and accurate picture of the home of Richard Lewis out on Ball Park Road?
A. It is. It's not to scale or exactly the same as if you were in it but it's a very rough sketch.
Q. Thank you. Can you tell us basically what's depicted in that?
A. Basically the lines coming out of the doors to enter the residence is the front door as you walk in. It's got bedroom number three to your right then bathroom number two straight ahead and bedroom number two, kitchen, and living room. And then onto the bedrooms to the far left side, actually the bathroom and one bedroom.
Q. Going back to the first items, the shoe and the 40 grams of crack that you collected, where on your sketch was that retrieved from?
A. Looking at the sketch now, it's bedroom number one. Actually, the search warrant for bathroom number one is where that suspected crack was located.
Q. Now that's round two or round one?
A. Round two.
Q. Round two. So we're talking about the crack under the sink, that's found near where?

A. It's found underneath the vanity in bathroom number one.
Q. Bathroom number one. Now the first time you collected crack that came from the shoe, do you know what bedroom on your sketch that was located in?
A. I was told bedroom number one. I wasn't actually there to see it.
Q. Based on the items collected under the sink, do you draft warrants for Mr. Bonds?
A. I do.
Q. And what is he charged with for those items?
A. It is -- he's charged with Conspiracy to Traffic Crack Cocaine.
Q. Anything else?
A. The charge of Possession with Intent to Distribute within a half a mile from a school or public park.
Q. In preparation for your testimony about that issue, do you have an exhibit that was prepared?
A. I did. It is a map indicating the location of that residence in the proximity to that school.

MS. ANGIE TANNER: May I approach, Your Honor?

THE COURT: You may.

Q. Show you State's Exhibit 20.
A. That's the map.

Q. And what is depicted in that map?
A. The middle part of the map is US Hwy 21 or Sea Island Parkway, the intersection of Ball Park Road, the residence is depicted with a red star, the school is depicted with a green flag and a half mile radius is circled around the two.
Q. And does -- from the point of the Ball Park Road residence to half a mile out, are there any schools or parks in that area?
A. There is.

MR. IAN DEYSACH: Your Honor, I object. If he's not the person who created the map I don't think he's competent to testify that it is in fact one half mile or what the different stars represent on the map. I think the person who created the map is the one who needs to testify to that.

MS. ANGIE TANNER: It's a demonstrative used to aid his testimony.

THE COURT: He can testify within his knowledge of what is within a certain distance. And you can cross-examine him on it.

BY MS. TANNER:
Q. Investigator Rice, within a half mile from the Ball Park residence, are there any schools or

parks?
A. Yes, St. Helena High and Elementary School.
Q. And is that depicted on the demonstrative aid?
A. It is.
MS. ANGIE TANNER: State moves 19 and 20 into evidence.
MR. IAN DEYSACH: Subject to that same objection that I just gave voice to, Your Honor.
THE COURT: The only thing I need to know is... I'm going to let it into evidence.
BY MS. TANNER:
Q. Investigator Rice, just to be clear. This aid was to be produced at your request?
A. Yes.
Q. You provided the information that should be in it?
A. Yes.
MS. ANGIE TANNER: If I may publish it to the Jury?
THE COURT: You may.
BY MS. TANNER:
Q. Investigator, I have nothing further. Please answer anything from Defense Counsel.
MR. IAN DEYSACH: If it pleases the Court, Your Honor?
THE COURT: Yes, sir.

BY MR. IAN DEYSACH:

Q. Good afternoon, Investigator Rice. You testified on direct about the meeting that you had with the investigators at the investigations office?

A. Yes.

Q. And that was around 10:30, 10:45 in the morning, something like that or do you know?

A. I don't know the exact time, it was before lunch. I want to say it was around 10:30.

Q. And when you took custody of what was given to you from the -- from Investigator Fraser. He's the one that physically gave it to you?

A. Yes.

Q. You swabbed the plastic baggy for DNA evidence, didn't you?

A. Yes.

Q. And you take that swab and did you submit it to SLED for testing?

A. I submitted it into evidence to be later submitted to SLED. But it did not make it to the SLED.

Q. It did not make it to SLED. Nobody sent it to SLED?

A. It wasn't sent to SLED.

Q. Would that have been your job to give that

request?
A. Yes.
Q. But you didn't do that?
A. No.
Q. Did you -- did you swab the shoe for DNA evidence?
A. I don't believe I ever swabbed the shoe.
Q. Was the shoe ever submitted to SLED for any testing?
A. No, sir.
Q. Was the shoe empty when Fraser gave it to you?
A. I believe that it was.
Q. And you're not sure?
A. I can't remember exactly how it was but I believe it was. I believe the drugs had already been taken out.
Q. And so once you do that, that's your understanding -- that's the extent of the contact you are going to have with Fraser and Chapman that afternoon or that morning?
A. As far as I know.
Q. But then you get another call for help from them, correct?
A. Yes, sir.
Q. And you actually swore, I guess, made an affidavit to the Magistrate in order to obtain a search

warrant of [redacted] Ball Park Road?
A. Yes.
Q. And you actually went to execute that search warrant?
A. Yes, I did.
Q. And you did it with a team of officers, Officer Sankowski, Ricker, you, Travis Mitchell, and Corporal Rodriguez?
A. Yes.
Q. And in fact, those photographs that you just were talking about were taken by, not you, but Officer Mitchell?
A. Yes.
Q. And part of what you do every time you execute a search warrant is take video of the place that's being searched; isn't that right?
A. Yes.
Q. I mean that's something that wouldn't be a special thing that you would want to do just for [redacted] Ball Park Road. Pretty much any time you were serving a search warrant, you would want that video camera, correct?
A. Yes.
Q. And it turns out that the video that was taken on that camera was lost?

A. Yes.
Q. Because Officer Mitchell obviously didn't preserve it like he was supposed to?
A. Yes.
Q. So it's not -- he didn't turn that video over to you, correct?
A. No, sir.
Q. Even though you were the one who was documenting and seizing the evidence at the service of that search warrant?
A. Yes.
Q. So essentially we have some lost evidence, correct?
A. Yes.
Q. The video is evidence, correct?
A. Yes.
Q. And you were the one who's in charge of maintaining that evidence?
A. Yes.
Q. Are you aware that Officer Mitchell has been fired from his job as a Bluffton Police Officer?
A. Yes.
Q. And so I guess one day -- I guess you have this team of police officers that are made up of people from different agencies. It's not just the

Sheriff's department, correct?
A. Yes. It's a multi-agency task force.
Q. And so Officer Mitchell was never a Sheriff's department. He would work with you on this task force?
A. Yes.
Q. And one day he was just off the task force?
A. Yes. He was replaced by another member from Bluffton.
Q. So did you know that one of the reasons he was fired was because of dishonesty?
A. Yes.
Q. And he's the one who actually, you alleged, points out the substance in the cabinet in the bathroom?
A. Ultimately, it was pointed out by Investigator Fraser but he was -- Travis Mitchell was the co-case agent, you could call it and he was there to help collect it.
Q. And he did collect it?
A. He did.
Q. Now on that rough sketch that you made, you represent the doors with little lines that are crooked?
A. Yes.
Q. And are you sure that you did the doors swinging

in the correct direction? Are you sure you got them hinged properly when you were making that drawing?

A. No, I'm not sure. They just -- s sthey all go out for the outside doors.

Q. You just wanted to make sure where the door was, was represented?

A. Yes.

Q. And whether the door existed?

A. Yes.

Q. You didn't never make representation of any closet in bedroom one?

A. No. Just a rough area where the rooms were located.

Q. And... Begging the Court's indulgence.

MR. IAN DEYSACH: Nothing further, Your Honor.

MS. ANGIE TANNER: Just briefly, Your Honor.

RE-DIRECT EXAMINATION

BY MS. TANNER:

Q. Investigator Rice, the swab that Mr. Deysach asked you about, are you now familiar with SLED's policy regarding no longer testing touch DNA swabs?

A. Yes, ma'am.

Q. So they wouldn't analyze that for you if you had asked?

A. No.
Q. At [redacted] Ball Park Road, do you arrive before or after Investigator Fraser?
A. After Investigator Fraser.
Q. So by the time you get there, is it already known where the cocaine is located?
A. Yes.

MR. IAN DEYSACH: I object to the hearsay.

THE COURT: Overruled.

BY MS. TANNER:
Q. When it is collected, is that something that this Mitchell guy does by himself or are you participating in it?
A. I'm participating in it.
Q. Describe exactly for the Jury what you're doing, where you are and what you observe?
A. Investigator Mitchell was taking photographs of the evidence. As you can see how there were several pieces all over. We actually had to use a card or a piece of paper to scrape it up. And I would hold the evidence bag open as Investigator Mitchell would pour into the evidence bag and I retained it.
Q. So you are with and participating the entire time this cocaine is collected?

A. Yes.
Q. This video that he asked you about. Prior to conducting a search warrant, why is that video taken?
A. The main reason for videotaping is to capture evidence on film. Primarily for liability reason to the Sheriff's office to show -- we've had defendant claim that we destroyed things during the search of their residence -- show that we did not destroy before and after we do the search that's why we do the video before and after.
Q. So outside of this video tape you also take still photographs?
A. Yes.
Q. And those were collected and were turned over?
A. Yes.
Q. We have those and we've actually seen some of those today?
A. Yes.

MS. ANGIE TANNER: No further questions.

MR. IAN DEYSACH: Just one, Your Honor.

BY MR. DEYSACH:

Q. So you're saying that before you even showed up with a search warrant, there's already a police officer that has gone into the house?

A. Yes.

MR. IAN DEYSACH: That's all I have, Your Honor.

THE COURT: Anything further?

MS. ANGIE TANNER: Nothing further. May this witness be excused?

THE COURT: Any objection?

MR. DEYSACH: No, Your Honor.

THE COURT: You may be excused.

MS. ANGIE TANNER: The State calls Eileen Rios.

Being first duly sworn, **Eileen Rios**, testified as follows:

THE CLERK: Would you state your name for the record and spell your last name?

THE WITNESS: Eileen Rios. R-i-o-s.

DIRECT EXAMINATION

BY MS. ANGIE TANNER:

Q. Good afternoon, Ms. Rios.

A. Good afternoon.

Q. Where are you employed?

A. I'm employed as an evidence technician for the Beaufort County Sheriff's Office.

Q. How long have you been doing that?

A. Sixteen years.

Q. And can you describe for us just a little bit what does your job entail? What are you responsible for?

A. Receiving and maintaining evidence for the Beaufort County Sheriff's Office.

Q. And once you receive evidence, do you do anything with it, you tamper with it, or what is your job with that evidence?

A. To log it into the computer, assign it a shelf in the evidence vault, and to maintain it until such time it needs to go to court or for further processing.

Q. And in your department, how many people would have access to that evidence once it comes in and is logged in?

A. Myself, Sargent Ramona Cooper, and Captain John Keough.

Q. And that's it?

A. That's it.

Q. I'm wanting to ask you about a couple of pieces of evidence. Starting with --- this is going to be States 11, 13, and 14, originally came out of one bag. I'm going to ask you if you can identify those items, and if you ever processed them?

A. I can identify this. What this is is a Beaufort

County Best Bag. The officer puts in his evidence bag into a Best Bag and it would be logged in as one item.

Q. And how is that Best Bag closed or sealed?

A. It's sealed by the officer, dropped into the drug drop box by the officer and we log it in under the container number which in this particular one was C004843.

Q. And you can tell us what items were contained within C004843?

A. No, it comes to me sealed.

Q. So when you got it, those items were sealed into that bag?

A. Correct.

Q. Do you do anything with it? Do you open that bag, you fiddle with the contents?

A. No.

Q. And where does that go?

A. In this particular case the officer himself dropped it into that drug drop box.

Q. Once it's in that drug drop box, can you mess with it?

A. No.

Q. Can anybody mess with it?

A. The only person that has a key is Lieutenant

Renita Berry from drug analysis. She will come in, unlock it, remove items that are in there and take them to her lab.

Q. Show you State's Exhibit Ten. Can you identify State's Ten?

A. Yes, I can.

Q. And how can you identify that?

A. It was submitted by Fraser on February 17th. I signed for it at 13:27 in the afternoon. I recognize my signature and date and time.

Q. And what did you do with it once you get it?

A. It came to us sealed. At that time, I logged it into the computer system, assigned it a shelf and there it stays.

MS. ANGIE TANNER: No further questions. Please answer anything the Defense Counsel has.

MR. IAN DEYSACH: I don't have any questions, Your Honor.

THE COURT: Any objections to Ms. Rios being excused?

MR. IAN DEYSACH: No, Your Honor.

THE COURT: You're excused, ma'am. Thank you.

MS. ANGIE TANNER: The State calls Ramona Cooper.

Being first duly sworn, **Ramona**

Cooper, testified as follows:

THE CLERK: Please state your name and spell your last name for the record.

THE WITNESS: Ramona Sue Kuhn-Cooper. K-u-h-n-C-o-o-p-e-r.

DIRECT EXAMINATION

BY MS. ANGIE TANNER:

Q. Good afternoon, Ms. Cooper.

A. Good afternoon.

Q. Where are you employed?

A. Beaufort County Sheriff's Office.

Q. And how long have you been working there?

A. Eleven years.

Q. And in your eleven years, what's your duty today?

A. Evidence Technician.

Q. Are you working with Ms. Rios who just left?

A. Yes.

Q. And what are your duties and responsibilities in the evidence department?

A. We check in and log all evidence that is collected by officers who are on scenes and we keep track of it, and we house it and we store it, and preserve it until court.

MS. ANGIE TANNER: Your Honor, may I approach the witness?

THE COURT: Yes, you may.

BY MS. TANNER:

Q. I want to show you State's Exhibit 18. I ask if you can identify that?

A. Yes, ma'am. This is a Best Bag which we use to submit drugs for analysis by our drug chemist.

Q. What's the procedure for submitting the drugs and sending them off for analysis?

A. The officers will submit the drugs into this plastic controlled bag, which is the blue bag on the inside, and he seals it and then signs it. And he completes some other documented paperwork and those items are submitted to the drug box, which we had at the time to store it, and it's in a locked compartment where we didn't even have access to. And it stayed there until the chemist retrieved it.

Q. And did that occur in this case? Were those items sealed in the Best Bag when you received them?

A. Yes, they were sealed in the Best Bag.

Q. And then, where did they go from there?

A. At that time in this particular instance, the evidence was submitted to the temporary storage lockers by the officer. The next day, everyday, an officer would go to the temporary storage unit,

pick up all the evidence from the lockers and then bring it back to evidence in order to log into our computer systems, which is what I did. Once it was logged in and everything was done then I dropped it into the drug drop box.

Q. And all that is documented?

A. Yes.

Q. Everyone that touched it is documented?

A. Yes.

Q. And you received that item from Andrew Rice of the drug task force?

A. Yes.

Q. Show you State's Exhibit number Eight. Can you identify that item?

A. Yes, ma'am.

Q. Is this the item that you took into evidence?

A. Yes, it is.

Q. And who did you receive that item from?

A. Deputy Fraser.

Q. And what did you do with it once you received it from Fraser?

A. I logged it into our computer systems and then I housed it and on the shelf somewhere until it was needed.

Q. Either of these items, did you change them anyway,

did you affect them anyway, did you even open these packages?

A. No, ma'am. This tape is used by the submitting officer to secure it so that it is sealed upon submission.

MS. ANGIE TANNER: I have no further questions. Please answer anything Defense Counsel has.

MR. IAN DEYSACH: Nothing from me, Your Honor.

THE COURT: Any objection to her being dismissed?

MR. IAN DEYSACH: No, Your Honor.

THE COURT: You may be excused, ma'am.

MS. ANGIE TANNER: I'd like to try Investigator Fraser again.

THE COURT: Okay.

MS. TANNER: May we approach?

THE COURT: Sure, c'mon. All right.

Ladies and gentlemen of the jury, the person they were going to put up is actually testifying in another case and can't be in two places at once. What I'm going to do, as opposed to having the Solicitor call some witnesses that have to travel from Bluffton, I think it's better we just go ahead and break for the day and bring

you back so you can be fresh tomorrow.

I do have to tell you ladies and gentlemen, that we won't be able to start tomorrow until 11:30 and that's just because I have a prior commitment that I cannot get out of.

So, with that said, ladies and gentlemen I'm going to ask that you be back in your jury room at 11:30. I will tell you that I anticipate that this case will probably go until Thursday. I'm just going to tell you that right now. I just don't think it's very likely that if we start at 11:30 tomorrow that we would finish tomorrow, however we are going to give it our very best effort.

So I'm going to go ahead and send you home for the evening and again I'm going to tell you, do not discuss this case. It would not be appropriate. You haven't heard all the evidence and I haven't given you my charge on the law. The only thing I ask, ladies and gentlemen, go home, get a good night's sleep and we will see you all back at 11:30 in the jury room tomorrow. All right.

Again, ladies and gentlemen, I don't think there will be anything in the newspaper, but

again I caution you, if there happens to be something about this case in the newspaper tomorrow, you are to close it and disregard it. If there is something I will ask you if you have read it. So again, I implore you if there is something to not read it. All right. Good night, y'all. We'll see you in the morning. Thank you.

(Whereupon the jury was dismissed at 4:26 P.M.)

THE COURT: All right. Solicitor, how many witnesses do you have tomorrow?

MS. TANNER: I have twelve witnesses total. I think we put up five now.

THE COURT REPORTER: Seven.

THE COURT: So everyone on your list you are putting up tomorrow?

MS. TANNER: I think there is two I'm not.

THE COURT: Okay, so who are you not putting up?

MS. TANNER: The two Roberts.

THE COURT: The two Roberts. Okay. That's fine. I just wanted to have an idea. And do you have any idea?

MR. DEYSACH: To the best of my estimation, not lengthy.

THE COURT: Okay. Ya'll can go ahead and

we'll be back tomorrow morning ---

MR. DEYSACH: There is one thing I wanted to mention, just briefly.

THE COURT: Sure.

MR. DEYSACH: And I certainly bear some of the responsibility, but when I aloud the photo lineup to be introduced into evidence, and then I objected when she tried to publish it, I -- the better thing would have been to object when she was introducing it as evidence ---

THE COURT: Right ---

MR. DEYSACH: And that was something that was a istake and I don't want -- the point is I don't want the jury to see Mr. Bonds in a jail outfit, which is how he appears, in that photo lineup so I'm asking that maybe we not end up publishing that to the jury. There is going to be -- the testimony is that he picked him out of a phot lineup. I don't think that they are going to be confused -- I'm not trying to tell them that he wasn't picked out of a photo lineup and so I recognize that I need to take my share of the responsibility for this ---

THE COURT: The problem is you challenged the photo lineup.

MR. DEYSACH: I challenged it ---

THE COURT: Had you challenged it ---

MR. DEYSACH: It wasn't as strong as the actual testimony that he was picked out of a photo lineup and then when he came to actually putting the photo lineup into evidence that's when my senior moment occurred.

MS. TANNER: The photo is basically a face shot. You can see a T-shirt but there's no way the Jury is going to know that is a jail outfit.

MR. DEYSACH: They are all wearing orange.

MS. TANNER: It's a head shot.

MR. DEYSACH: They are wearing orange and I think that people all know that they wear orange jumpsuit in jail. They do know that.

THE COURT: Actually I don't think they know that. Every jail has different colors jumpsuit.

MR. DEYSACH: But they are all wearing orange.

THE COURT: I understand that they are all wearing orange it just maybe goes to show that your officer, as far as the photo lineup is concerned they are all wearing the same clothes.

MS. TANNER: And from his testimony they had four similar ---

THE COURT: Right.

MS. TANNER: There's no handcuffs. There's no stripes. I think most people are looking for stripes on inmates. I think it's prejudicial and frankly, they are going to hear that he has been arrested before because he was a felon in possession of a firearm.

THE COURT: That and they've already heard testimony that he was making phone calls from the jail talking about more drugs, so anyway, I think it's in evidence. The reason why I didn't want it published at the time, Mr. Deysach, is when you start asking questions and of course, this is a choice by prosecuters, it's actually one of the things Ms. Tanner does the best which when I tell young lawyers, when you try cases, how you take your document and show them is actually, I think, very good. She's one of the few people that know how to do that where they can all see it and they know exactly what she is talking about at the time because I do think it gets lost after you are on to twenty-five next questions, they don't even know what they are looking for or looking at at the time. I think showing it to them and walking it to them is by far the best thing for a jury. I also noticed when you do publish it and let it go

around, you wait a little bit and I'm just trying to move us along. I understand why, but again I'm just trying to move us along. So that's why I said this time not to. I just think based on the testimony they all know he was in jail at some point in this case so I don't think it's prejudiced.

MR. DEYSACH: I would point out I think there is some case law on the subject and that's all I have.

THE COURT: All right, anything further for the record?

MS. TANNER: Not tonight.

THE COURT: I anticipate being here about 11:15. Good night.

(Whereupon Court was dismissed for the evening at 4:32 P.M.)

I the undersigned Deborah E. Everett, Official Court Reporter for the Fourteenth 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 Beaufort County, South Carolina, on the 14th day of December, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 11, 2011

Deborah E. Everett
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS
2010-GS-07-598, 599, 600,
602, 603, 634

STATE OF SOUTH CAROLINA,

Plaintiff

VS

MARION BONDS,

Defendant

TRANSCRIPT OF RECORD
VOLUME 111

DECEMBER 15, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

A P P E A R A N C E S

ANGIE TANNER, Attorney at Law
Solicitor for State of South Carolina

IAN DEYSACH, Attorney at Law
Attorney for Defendant

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(Whereupon Court resumed at 12:12 P.M. Dec. 15, 2010)

THE COURT: Is the State ready?

MS. ANGIE TANNER: State's ready, Your Honor.

THE COURT: Defense ready?

MR. IAN DEYSACH: Yes, Your Honor.

THE COURT: All right. Let's bring them in. Now my intention is to ---

(Jury enters)

MS. ANGIE TANNER: He's here.

THE COURT: He's here. And you said his testimony is exactly about an hour long, you told me yesterday?

MS. ANGIE TANNER: I think with cross examination that's what I would assume.

THE COURT: Okay.

MS. ANGIE TANNER: And before he starts, I'm going to put that stipulation we discussed on for the record and then start into his testimony.

THE COURT: Are we in agreement on the language of the stipulation?

MR. IAN DEYSACH: What you had written in your notes is what we both agreed to.

THE COURT: Defendant has beeen convicted of a crime of violence and therefore prohibited from possessing a gun at the time of this alleged

incident.

MR. IAN DEYSACH: Okay.

THE COURT: All right.

MS. ANGIE TANNER: Yes, ma'am.

THE COURT: I intend, as long as it doesn't keep going on, to get Fraser up and done with before we break for lunch just to let you know that. So if it goes too much past about 1:30 there might be a concern but right now it's 12:20 so just keep that in mind.

MS. ANGIE TANNER: Yes, ma'am. The witness after him is somewhat short so if for some reason we move quickly with him. She's here, she's short.

THE COURT: I will note that.

(Whereupon the Jury entered at 12:22 P.M.)

THE COURT: Good morning -- good afternoon, ladies and gentlemen. Welcome back. At this time I'm going to go ahead and continue the trial of this case. Solicitor, if you will call your first witness.

MS. TANNER: Thank you, Your Honor. The State calls Jeremiah Fraser.

Being first duly sworn, **JEREMIAH FRASER**, testified as follows:

THE CLERK: And can you state your full name and spell your last, please.

THE WITNESS: Jeremiah Fraser, F-r-a-s-e-r.

MS. ANGIE TANNER: And, Your Honor, prior to taking the witness' testimony there is one stipulation regarding evidence in this case that you are aware of that we would like to put on the record in the presence of the Jury before we move forward. That is there is a stipulation at the time these offenses occurred, the defendant had been convicted of a crime of violence and therefore was prohibited from possessing a firearm.

THE COURT: Ladies and gentlemen, a stipulation is just an agreement between the parties as to a certain issue or a fact. It precludes having to present evidence to that fact. That's why they've agreed to it. So that is for you to use in your deliberations. Go ahead.

MS. TANNER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. ANGIE TANNER:

Q. Investigator Fraser, where are you employed?

A. Beaufort County Sheriff's Office.

Q. And how long have you been working there?

A. I've worked at the Sheriff's Office for over eight years.
Q. And prior to coming to the Sheriff's Office, what did you do?
A. I was in the Marine Corp.
Q. So this is a second career for you as well?
A. Yes, ma'am.
Q. Investigator Fraser, what type of duties or responsibilities do you have with the Sheriff's Office?
A. My primary responsibility to the Sheriff's Office is criminal investigation division.
Q. I'm going to ask you about February 17, 2010. Did you perform duties as an investigator that day?
A. Yes, ma'am. I did.
Q. Let's start out -- how did you start? How did you get called to begin with?
A. I received a phone call that an assault had occurred involving a firearm and I was requested to respond to the hospital to meet with the victim.
Q. Can you turn the microphone a little bit towards you? So when you get to the hospital, who do you speak with?
A. I first met with the attending physician, Dr.

Duff. He gave me an idea of the extent of the injuries of the victim in the hospital. Then I met with the victim himself.

Q. What was his name?

A. His name was Reginal Holmes.

Q. And were you alone when you met with Mr. Holmes?

A. Investigator Chapman had arrived with me as well.

Q. Are you able to conduct an interview or ask Mr. Holmes questions about the incident?

A. Yes, ma'am. I am.

Q. Based on that interview are you able to develop a suspect in the shooting?

A. Yes, ma'am. I am.

Q. And what do you do with that information?

A. I immediately relay that information to Investigator Kelleher. I also patrol units.

Q. And do you -- who is the suspect at this point?

MR. IAN DEYSACH: I object to the hearsay.

THE COURT: Okay. Rephrase the question, Solicitor.

BY MS. TANNER:

Q. Based on your interview of the victim who did you go looking for?

MR. IAN DEYSACH: Same objection, Your Honor.

MS. ANGIE TANNER: I'm asking him about his

actions.

THE COURT: He can go ahead and answer the question.

BY MS. TANNER:

Q. Who did you go looking for?

A. Marion Bonds and Justin Thomas.

Q. And where did you go looking for him?

A. We went and met with Investigator Kelleher on Eddings White Road which is on St. Helena off of Seaside Road. We began searching for Marion and Justin on Edding White Road at Marion's grandmother -- grandmother's residence, his father's resident. We made contact with both of those parties and were able to search the house but we didn't find him there .

Q. What time did the shooting occur or what information were you given about the timing of the shooting ?

A. It was shortly before we were on our way to work I believe it was before 7 A.M.

Q. At some point on February 17th, do you locate Marion Bonds?

A. Yes, ma'am.

Q. Give me some description or give the Jury some description of how that comes about. Where do you

find him?

A. After searching Eddings White Road, we preceded to Justin's mother's house which is off Ball Park Road. We spoke to his mother. Search the house after she gives consent and we didn't find him there. During my interview with the victim, he indicated to me that he may be staying across the street from the clinic which is the Brown Medical Clinic off of St. Helena. There is a residence across the street from the Brown Medical Clinic. We went and searched that residence and that's where we found him.

Q. Now when you arrive at that residence, what's the location of that? Is that the [redacted] Ball Park Road residence?

A. Yes. That's sounds about right.

Q. Is that in Beaufort County?

A. It is.

Q. What area of Beaufort County?

A. That's on St. Helena. It's close to St. Helena Elementary School on Ball Park Road.

Q. Once you arrive, what's the first thing you see or hear?

A. As we pulled in, we pulled into the backside of the trailer. The driveway leads around behind the

trailer. It appears they use the back door as the main entrance. As we pulled up, we walked up to the house. We could hear heavy movement, if you will, in the back bedroom close to where we parked. By heavy movement, it was loud. There was obviously something going in that bedroom. I walk to the back door and I make contact with the person, Mr. Lewis, and started talking to Mr. Lewis.

Q. And what type of residence is this on Ball Park Road?

A. It's a single wide mobile home. It's an older mobile home, very thin walls.

Q. Is it something that's raised up, where you can see under it or is it propped up on something?

A. It's raised up off the ground.

Q. And once you -- describe your encounter with Richard Lewis.

A. My initial encounter, I met him at the back door. I told him why we're there and asked if Marion Bonds or Jason Thomas were in the residence. Initially, he kind of hem-hawed for a minute. He answered no. I asked him to step outside because of the movement we heard in the back. He stepped outside and was giving a head motion towards the

back bedroom. I asked him again if Marion Bonds or Jason Thomas was in the house and he said that they were.

Q. At that point, do you make entry into the home?

A. At that point I gain consent to search the home for Marion Bonds and Jason Thomas. Mr. Lewis gave me consent to go in and get them. And that's when Investigator Chapman and I went in the house.

Q. And who else was on scene with you at that time?

A. When we first arrived and heard all the commotion in the back bedroom, we sensed somebody was in there, possibly more than one somebody. So I called other patrol units to help surround the house in case they tried to flee, if in fact they were in there. So I had several patrol units surrounding the house in an attempt to apprehend them.

Q. And once Mr. Lewis gives you consent, do you enter the home?

A. Yes, ma'am. We did.

Q. And who is with you?

A. Investigator Chapman was with me as we entered the house.

Q. And what do you see first?

A. When we first enter the residence, we started

moving back towards the back bedroom where we heard all the commotion. Right before you get to that entrance, there's a bathroom on the left, right before that bedroom. A gentleman came out of the bedroom -- I'm sorry -- out of the bathroom. I put hands on him to detain him, passed him back to Investigator Chapman. While this is going on, I heard the window in the bedroom slam open. I assumed it was open. I heard the window slam. Then I heard deputies outside yelling "Sheriff's Office, show me your hands". After I heard that, I heard the window, I assume, slam shut and that's when I hit the door.

Q. And this person that come out of the bathroom, did you later identify him?

A. I did.

Q. What was his name?

A. Larry Holmes.

Q. And as part of your investigation, was he one of the individuals you were looking for that day?

A. No, he was not.

Q. And in your investigation, was he determined to be someone you were looking for?

A. No. He was not somebody we were looking for.

Q. He just happened to be there when you came in?

A. Yes, that's right.
Q. You said you hit the door in the bedroom, what do you see in there?
A. As soon as the door opens, I saw Jason Thomas running toward me, from the window. I was able to detain him and pass him back to Investigator Chapman for handcuffing and detention. I didn't see Marion -- where Marion Bonds was at. So I hollered for Marion to show me his hands. I saw his hands come out at the floor in the closet. I went in there to detain Marion.
Q. Now can you describe this area where you find Marion?
A. The closet, ma'am?
Q. Yes, sir.
A. It probably is close to the size of this box that I'm sitting in. It's very small.
Q. And how was he located in the closet?
A. He was on the floor. When I -- when I gave him a command to show me his hands, his hands came out of the closet door at the floor.
Q. Now once you have custody of Marion, do you subdue anything else with that closet?
A. Yeah. We searched the room -- we photographed and then searched the room.

Q. And what did you locate, if anything?
A. I located a -- in the closet, ma'am?
Q. Yes, sir?
A. A---

MR. IAN DEYSACH: Your Honor, I think this would be the appropriate time to renew the pretrial objection on the same grounds as I did in the pretrial.

THE COURT: Noted for the record, sir. Please continue.

BY MS. TANNER:
A. A camouflage jacket which was identified by the victim through my interview Marion -- during my interview with victim he said that Marion was wearing a camouflage jacket. And I found what appeared to be crack cocaine in a red and black Nike shoe underneath the jacket. Once I lifted up the jacket it was right there in the front of the shoe, plain view.
Q. And further search of the room, did you find any other items of relevance?
A. Yes, ma'am. We looked up underneath the bed, we found a amber Walgreen's pill bottle, which also contained a large quantity of crack cocaine. We found a white equate naproxin pill bottle. Also

under the mattress in between the two mattresses, it also contained a large amount of what appeared to be crack cocaine.

Q. Once you find all of these items, are you the one that takes them into custody?

A. Yes, ma'am.

Q. How do you take these into custody? What do you do to preserve them?

A. We put them into evidence bags -- photograph them, put them in evidence bags, submit to evidence for storage.

MS. ANGIE TANNER: Your Honor, may I approach the witness?

THE COURT: You may.

BY MS. TANNER:

Q. I'm going to show you what's been marked as State's Exhibit number seven first. Can you identify the item that's in that photograph?

A. Yes, ma'am. That's the camouflage jacket that I found in the closet.

Q. And is this the closet you found Marion Bonds in?

A. Yes, it is.

Q. And is this a fair and accurate depiction of how you found it that day?

A. Yes, it is.

MS. ANGIE TANNER: At this time, State moves seven into evidence.

MR. IAN DEYSACH: Subject to the objection that I already made.

THE COURT: Noted for the record, sir.

Q. I'm going to show you State's Exhibit Nine. Can you identify the items in that?

A. Yes, ma'am. This is a photograph of a large quantity of crack cocaine that was vivid -- plain, visibly in the shoe after I removed the jacket.

Q. And is this a fair and accurate depiction of how you found it?

A. Yes, ma'am.

MS. ANGIE TANNER: Your Honor, State moves nine into evidence.

MR. IAN DEYSACH: Same objection, Your Honor.

THE COURT: Noted for the record, sir.

Q. State's Exhibit Twelve?

A. This is a photograph of the amber pill bottle and the white naproxen pill bottle also containing crack cocaine that was found between the mattress.

Q. Same bedroom?

A. Yes, ma'am.

Q. And that's a fair and accurate depiction of how you located it?

A. Yes, ma'am. It is.

MS. ANGIE TANNER: State moves twelve into evidence.

MR. IAN DEYSACH: Same objection, Your Honor.

THE COURT: Noted for the record.

MS. ANGIE TANNER: Your Honor, may I publish this to the Jury and have the Officer come down.

THE COURT: You may. Investigator Fraser, I'm just going to ask you to speak louder for my Court Reporter.

THE WITNESS: Yes, ma'am.

MS. ANGIE TANNER: My apologies. Just a minute. My apologies.

Q. States Exhibit number Seven. Investigator Fraser, could you please describe for the Jury what is depicted in State's Exhibit number Seven?

A. This is a photograph of the closet. As we made entry into the room, the closet is directly in front of the door. The closet opens on the side. And this is the photograph of the camouflage jacket lying on the floor and one of the black and red Nike shoes.

Q. Where on this was Marion Bonds located?

A. Marion Bonds was laying on the floor on top of all these items when I took him into custody.

Q. This is State's Exhibit number Nine, can you tell the Jury what that would be?
A. Yes. After I removed the jacket from the floor, this was the rim of the shoe, right here, and this was the large quantity of crack cocaine that was in the shoe.
Q. Now State's Exhibit Twelve, what is this?
A. This is a photograph of the box spring mattress. This officer here with me was lifting up a portion of the mattress. There's an amber bottle of what appeared to be crack cocaine and this is the white naproxen bottle also full of crack cocaine.
Q. And this is the same bedroom of the closet with Marion Bonds?
A. Yes, that's correct.
Q. Thank you, sir. You can return to the stand. Investigator Fraser, what did you do with the jacket that was in that photograph?
A. I collected the jacket for evidence.
Q. I'm going to show you what's been marked as State's Exhibit Eight. Can you look inside there and tell me if you can identify what's in that item?
A. Yes, ma'am. This is the camouflage jacket I collected from the closet.

Q. And once you've collected it, who did you give that too?

A. I submitted this into evidence to Sargent Cooper.

MS. ANGIE TANNER: Your Honor, at this time State moves Eight into evidence.

MR. IAN DEYSACH: I have the same objection, Your Honor, with the grounds that I stated in pretrial.

THE COURT: Noted for the record.

BY MS. TANNER:

Q. And the red shoe that was in the photograph, the black and red shoe, what did you do with that item?

A. I turned that along with the crack cocaine over to Investigator Rice.

Q. And if you could look inside State's Exhibit Ten and if you could identify that item?

A. Yes, ma'am. This is the shoe that was collected from the closet.

MS. ANGIE TANNER: Your Honor, State moves Ten into evidence.

MR. IAN DEYSACH: Same objection, Your Honor, as stated in pretrial.

THE COURT: Preserved for the record.

BY MS. TANNER:

Q. Detective, State's Exhibit Ten, is that the same shoe that is depicted in State's Nine?
A. Yes, it is.
Q. Show you State's Exhibit Eleven, can you identify that item?
A. Yes, ma'am. I can.
Q. How can you identify that?
A. Because I bagged this and I turned it over to Investigator Rice.
Q. And what is that?
A. This is the quantity of crack cocaine that was recovered from the Air Force One shoe.
Q. State's Ten?
A. Yes, ma'am.

MS. ANGIE TANNER: Your Honor, State moves Eleven into evidence.

MR. IAN DEYSACH: Um ---

THE COURT: Subject to your prior objection?

MR. IAN DEYSACH: It is, Your Honor.

THE COURT: Noted for the record.

BY MS. TANNER:

Q. Showing you State's Thirteen and Fourteen. Can you identify those items?
A. Yes, ma'am. This is the amber pill bottle containing the crack cocaine thaw was recovered

from underneath the mattress and this is the white pill bottle also recovered from under the mattress containing cocaine -- crack cocaine.

Q. And what did you do with those items once you collected them?

A. I turned these over to Investigator Rice as well.

MS. ANGIE TANNER: Your Honor, State moves Thirteen and Fourteen into evidence.

MR. IAN DEYSACH: Renew under the same pretrial objection, Your Honor.

THE COURT: Noted for the record.

BY MS. TANNER:

Q. Investigator, these two items are the same as depicted in State's Twelve?

A. Yes, they are.

Q. So, Investigator Fraser, you were the one who turned the drugs over to Andrew Rice from the drug task force; is that correct?

A. That's correct, I did.

Q. And what did you do with Marion Bonds in the meantime?

A. Marion Bonds was transferred to a patrol car to be taken to, I believe, the Investigator's office.

Q. And at that time is he charged with anything?

A. Yes, he is.

Q. And what is he charged with?
A. I believe it was attempted armed robbery, assault and battery with intent to kill, and unlawful possession of a firearm.
Q. And about what time is this contact with Marion Bonds occurring from the closet?
A. It would have been around ten o'clock that morning.
Q. And at that time he has not been charged yet by Investigator Rice for the crack cocaine; is that correct?
A. No, ma'am. He hadn't.
Q. That's not the last time you deal with this case that day; is that correct?
A. No, it's not.
Q. Once you move off of this scene, how do you become involved again?
A. Once we finished processing the residence on Ball Park Road, we return to the investigations office. Once at the investigations office, Mr. Bonds has already been booked into the jail, we began listening to phone calls that he was making and found that we had to return to the residence after listening to his phone calls.
Q. And are you one of the officers that returns to

Ball Park Road residence?
A. Yes.
Q. And do you recall around what time that would've been?
A. About noon or one, something like that.
Q. Are you the first one who gets back there?
A. No. While Marion Bonds is talking to Richard Lewis, I sent Paul Green, a patrol officer, back to the house to secure the house.
Q. And once you do arrive, do you have contact with anyone?
A. I do. I immediately have response with Mr. Lewis.
Q. And as the first time, does Mr. Lewis cooperate with you?
A. Yes, ma'am.
Q. And do you return to the residence?
A. Yes, I did.
Q. And at that time has he given you consent?
A. Yes, he has.
Q. And what do you do inside the residence this time?
A. He takes me into the residence into a bathroom where he shows me a quantity of crack cocaine that he had just hidden.
Q. And where was that?
A. It was under a sink in the bathroom.

Q. And what do you do with that crack?
A. I leave it.
Q. You don't touch it?
A. No.
Q. You're not a part of collecting evidence?
A. No.
Q. Who do you turn that over to?
A. Investigator Rice was already doing the search warrant.
Q. Thank you, Investigator. Please answer anything Defense counsel has?
A. Yes, ma'am.

CROSS EXAMINATION

BY MR. DEYSACH:

Q. Good afternoon, Investigator Fraser
A. Afternoon, sir.
Q. I think -- I think you may have said Justin Thomas as one of the names. Did you mean Jason Thomas?
A. Jason. Yes, sir. I'm sorry.
Q. It's actually Jason, correct, or do you know?
A. I'm not real sure.
Q. Do you have it in your report?
A. I have written down Justin Thomas and then again Jason. So I believe it's Jason.
Q. You get the phone call from a supervisor that

you're requested, needed at the Beaufort Memorial Hospital, correct?

A. Yes, sir. That's correct.

Q. So the -- and you're there with Investigator Chapman the whole time? Did you guys ride together?

A. No. I believe we arrive in separate cars within minutes of each other at the ER.

Q. So the first person that you talked to, I think you said that was the emergency room doctor, Dr. Duff, correct?

A. Yes, sir.

Q. And when you talk to him, he was telling you the extent of the injuries to the victim, correct?

A. He described the injury as to the arm. It appeared to be a gunshot wound to the arm.

Q. Did you tell the Jury that, just a few minutes ago, that he told you what the extent of the injuries were?

A. I may have. That he had been shot in the arm.

Q. So when you go into -- when you meet with Mr. Holmes, where is he?

A. He is in an emergency room bed.

Q. So is he in a separate room?

A. I met with Dr. Duff as soon as I entered into the

emergency room. He's not in a room with him. The victim was in room 16 at the ER.

Q. So when you go to room 16, are you saying Dr. Duff's not in there then?

A. I don't recall if he went in there with me or not.

Q. The -- was Mr. Holmes' arm bandaged when you first saw him?

A. I believe it was.

Q. And he had already been treated by the Doctor?

A. I don't know to what extent. I don't know if he just bandaged him and then treated him for the injuries.

Q. But you saw the hospital bandage on his arm?

A. I did, sir.

Q. And in fact you're the one who took pictures?

A. Yes, sir.

Q. And those pictures that you took actually capture some of that hospital bandage on the arm; don't they?

A. I don't -- you'd have to show me.

Q. All right. I'll show you. This is State's number Two?

A. Yes, sir. That's the bandage beside his arm.

Q. Correct?

A. Yes, sir.

Q. Because in order to take the picture you have to lift the bandage in order for the wound to be revealed?
A. I didn't. The medical staff did.
Q. You were able to tell from looking at the arm, you already knew that the entrance wound was the one on the front and the exit wound was the wound on the back; you're able to tell that?
A. No, sir.
Q. Did you find that out from Dr. Duff?
A. I believe so, yes.
Q. And do you take the pictures before or after you have your conversation with Mr. Holmes?
A. I don't recall if I took photos first or after.
Q. But you did interview him?
A. Yes.
Q. And -- have you spent the eight years at the sheriff's department as an investigator?
A. No.
Q. How long have you been an investigator?
A. About four years.
Q. And in that time I'm sure you've investigated a number of different cases?
A. Yes, sir.
Q. And so -- if you are an inexperienced

investigator, I would like for you to tell that to the Jury. If you consider yourself an experienced investigator?

A. With four years of experience, yes, sir.

Q. And so I guess the only point I'm trying to make and it maybe a pretty obvious one and is that when you're doing these actions, you need to make sure that you're documenting everything you do, correct?

A. Yes.

Q. And documenting what you find out?

A. Yes, sir.

Q. And making sure that you're not putting things that are wrong in your report?

A. Yes, sir.

Q. Correct? And not leaving things out of your report that are important, correct?

A. Yes, sir.

Q. In fact, do you have anybody who reads over your report to make sure that there's no errors, somebody who proofreads it for you?

A. Yes, sir. Our supervisor over investigations reads over the report and signs off on it.

Q. And that's why if they think that there's something missing or there's something you should

take out or something you should add or what have you , correct?

A. Yes, sir.

Q. And there's no reason that this was any different than any other case like that?

A. Correct.

Q. So when you -- when you spoke with Mr. Holmes, he told you that when there was a knock at his door that he observed both Marion Bonds and his cousin at the door, correct?

A. No, sir. He observed Marion Bonds, his cousin, and Jason at the door. Marion Bonds being his cousin.

Q. All right. I guess the commas are different. But Marion Bonds is the cousin and he also says he sees Jason at the door?

A. Yes, sir.

Q. Not that he just sees Marion Bonds?

A. Yes, sir.

Q. He tells you that he allows both Marion Bonds and Jason into the house?

A. Yes, sir.

Q. And in fact, you actually made a recording of this interview, didn't you?

A. Yes, sir.

Q. And when you asked him about letting both of them in, you asked him did you give them a little back and say what's up or did you greet them; you asked him about that?
A. Yes, sir. I did.
Q. And he says, "Yeah, I was just waking up or whatever. Open the door. I went to sit down. Next, I mean, I turn around and they had guns up"?
A. That sounds about right.
Q. So he's -- so both Jason and Marion are supposed to be in the house, according to what he's saying?
A. Yes, sir.
Q. You wrote in your report that the gun was a small caliber pistol?
A. He described it to me as a small caliber pistol.
Q. Is a nine millimeter a small caliber pistol or is that a big caliber?
A. In my opinion, it would be a mid-range.
Q. A mid-caliber?
A. Yes, sir.
Q. What is a small caliber?
A. It's a number of calibers.
Q. I don't think we need, probably, to get into all of that. Is .380 a small caliber? That's going to be my last question on the calibers.

A. I'm not a firearm expert, sorry.
Q. Fair enough. He never told you that Jason or Marion took anything, did he?
A. I don't believe he did.
Q. I mean, you said you're the one who charged Marion after all of this was done, correct?
A. No.
Q. Oh, you didn't? I guess the question was what was he charged with?
A. Yes, sir.
Q. And what he was charged with was attempted armed robbery, correct?
A. That's right.
Q. If something had of been taken, it would have been an armed robbery, correct?
A. Yes, sir.
Q. And you said that both Marion and Jason were charged with this or was that question -- was Jason also charged with attempted armed robbery?
A. I believe so. I don't know.
Q. Reggie told you, not that he went to his cousin's house, but that he went next door to his uncle's house, correct?
A. Yes, sir.
Q. And he had also told you that he'd seen Marion the

day before?
A. Yes, sir. He did.
Q. So when you leave the hospital, you go back to the Eddings White address, [redacted] Eddings White?
A. We met with Investigator Kelleher on Eddings White Road. We were at the end of the road on Seaside Road when we met with him.
Q. And I think you told the Solicitor that you were looking for Marion Bonds at this time, correct?
A. Yes, sir.
Q. And you were looking at family members houses, correct?
A. Yes, sir.
Q. And you were also keeping an eye out just in the neighborhood, correct?
A. Yes, sir.
Q. Definitely keeping an eye out for a camouflage jacket, right?
A. Yes, sir.
Q. And you never saw Marion Bonds after that? Nobody from the police department ever observed Marion Bonds until you were at [redacted] Ball Park Road?
A. No, sir. I don't believe so.
Q. Would you agree that [redacted] Ball Park Road is about two and a half miles from the Eddings White Road

address?
A. Yes. That does sound right.
Q. So when you arrive at [redacted] Ball Park Road, you make contact with Richard Lewis, correct?
A. Yes, sir.
Q. And you enter the house not with a warrant but with consent from Mr. Lewis?
A. Yes, sir.
Q. Did you personally see Mr. Holmes coming out of the bathroom?
A. Yes, I did.
Q. And that's the same bathroom where the other crack was supposed to have been found?
A. Yes, sir. It had been searched in between the two of us.
Q. Did you search it?
A. I looked through it. Yes, sir.
Q. Did you ever make a note in your report about searching the bathroom?
A. I don't believe I did.
Q. You only made a note about searching the bedroom?
A. Yes, sir.
Q. And searching the persons?
A. Yes, sir.
Q. So if you were the one who searched the bathroom,

you would have left it out of your report?
A. Not intentionally. I may have overlooked it.
Q. It would have been a mistake?
A. Yes, sir.
Q. Because that is the type of thing you would've wanted to have in your report, right?
A. Yes, sir.
Q. And in fact, when do you actually write this report?
A. That day. After I looked in the bathroom, nothing was found after the initial incident which is why I probably didn't document it.
Q. And in fact, you don't have a report generated from that second visit to [redacted] Ball Park Road, do you?
A. No, sir. I went out there and helped secure it for the drug task force.
Q. So back to your first visit. Everybody in the house is secured before you start searching the bedroom, correct?
A. Yes, sir. That's correct.
Q. And the first thing that you did is take photographs before you start moving things around; is that correct?
A. Yes, sir.

Q. And the -- you said I guess that -- that you see -- you have to force open the door; isn't that correct?
A. Yes, sir. Well, I didn't have to force it open. I hit the door and it opened. There was a reaction to hearing the slamming, some what.
Q. Got ya'. And you see Jason in the main part of the bedroom?
A. Yes, sir.
Q. And at that time, you do not see Marion Bonds?
A. That's correct.
Q. What you see are his hands coming out from the closet area?
A. On the floor. Yes, sir.
Q. So you don't see his body but his hands which would presumably be connected to his body letting you know that that's where he is?
A. His arms are on the floor. Yes, sir.
Q. Because his hands are down low?
A. His whole arm is down low, not just his hands.
Q. Were you yelling "get down, get down", something like that?
A. No, sir. I just hollered, "Let me see your hands."
Q. Now I guess then you take pictures of the closet?

A. Yes.
Q. And you take those pictures before anything is searched, correct?
A. Yes.
Q. And I think State's Exhibit Seven represents a picture of the floor of the closet, correct?
A. Yes, sir.
Q. And it also shows the jacket and the shoe, correct?
A. A shoe. Yes, sir.
Q. A shoe. Now the shoe that you collected is the shoe that's in this picture, correct?
A. I don't recall if it is or not.
Q. Can I let you look at the picture and let you look at the shoe and see if it's the same one? I mean there's obviously a left shoe and a right shoe.
A. Yes, sir. I can't tell, sir.
Q. Can't tell? Can you tell?
A. No.
Q. Can you see what side of the shoe the tan scratch is on?
A. Yes, sir. It would appear that it was this side. I really can't tell if that's a left or right shoe in the picture there.
Q. So are you trying to say -- so was the shoe in the

picture the shoe that had the stuff that you found in it?

A. Yes, sir. When I pulled -- I pulled the jacket out of the closet to look at the shoes. And the shoe that I collected is the shoe with the crack cocaine in it.

Q. Is the shoe with the crack cocaine in it, the shoe you found underneath the jacket?

A. I believe they both were. You can see that one was also slightly under the jacket.

Q. Was the shoe that you recovered the crack cocaine from more hidden by the jacket than the shoe that's in this picture?

A. I don't recall.

Q. Did you testify in pretrial that the shoe with the crack in it was the shoe -- a shoe that was hidden under the jacket?

A. I believe I said under the jacket and that one is too, slightly.

Q. Do you agree that you see no drugs in plain view in this picture?

A. I don't see them there, no, sir.

Q. So what you're saying is that there is plain view drugs here and you've got a camera and yet you don't take a picture of them?

A. Sir, I was photographing the camouflage jacket. I had no idea that there was drugs anywhere around. I was looking at the jacket from the armed robbery and the attempted -- the assault and battery with a highly aggravated nature, not looking for drugs.

Q. Well isn't it true that the reason you had no idea there were any drugs around is because there's not drugs in plain view?

A. Once you remove the jacket there is.

Q. So do you think that by removing the jacket from this shoe you would expose the drugs that you were talking about?

A. I would assume.

Q. You would assume? Weren't you the one who did it?

A. Sir, I didn't look at the shoes before I removed the jacket. I removed the jacket because of the crime that I knew had been committed. And when I looked inside the closet further, looking for guns, I looked down at the shoes and there was crack cocaine.

Q. So I guess what you're trying to say is that there is possibly plain view crack in this shoe?

A. Yes, sir.

Q. That that's a possibility?

A. Yes, sir.

Q. Even though that it is not reflected in the picture?
A. Yes, sir. That's a picture taken at a different angle. Once you remove the jacket and you look down, there it is.
Q. Or is it that the drugs were hidden further into the shoe than would be exposed from a picture?
A. No, sir.
Q. And in order to find them, you'd have to actually reach in there and look in the shoe?
A. No, sir.
Q. And you took pictures of the pill bottle underneath the mattress?
A. Yes, sir. I did.
Q. You told us Jason Thomas was in the main part of the room, correct?
A. Yes, sir.
Q. You know that Jason Thomas had an empty pill bottle in his pocket when he was searched?
A. I believe I recall that. Yes, sir.
Q. Did you search him?
A. I don't think I did. No, sir.
Q. Did you write was found down in your report? Did you write down that the pill bottle was found on his person?

A. May I look at my report?
Q. You certainly. Do you need a copy?
A. I have one. Do you have a specific number paragraph?
Q. I think page three of four, it's in bold, number one.
A. Number one?
Q. On page three of four.
A. Yes, sir. I'm looking at three of four, in bold.
Q. Do you see it in bold?
A. Yes, sir. I do. Yes, sir. A cell phone, pill bottle, empty in Jason Thomas' pocket.
Q. Jason Thomas was never charged with any drugs, was he?
A. I -- I don't know, sir.
Q. Larry Holmes, the guy that was leaving, he was never charged with any drugs, was he?
A. No, he was not.
Q. In fact, he was able to leave while you were there?
A. That's correct.
Q. And out of this amount that was found in the morning, Richard Lewis was never charged with any drugs, right?
A. Not in the morning. No, sir.

MR. IAN DEYSACH: I'm begging the Court's indulgence.

Q. All right. Just briefly on the shoes. There were two pairs of shoes?

A. Two pairs of shoes?

Q. I mean one pair of shoes, two shoes. Sorry.

A. Yes, sir.

Q. So one of the shoes, you left behind?

A. Yes, sir.

MR. IAN DEYSACH: That's all I have, Your Honor.

THE COURT: Solicitor?

MS. ANGIE TANNER: Your Honor, I just need to move State's Eighteen into evidence. That is the crack found under the sink. Because we went backwards in chain, I had Sargent Rice enter it.

THE COURT: Any objection other than the subject to the previous objection in pretrial motions?

MR. IAN DEYSACH: The same objections as in my pretrial motions. Yes, Your Honor.

MS. ANGIE TANNER: Nothing further.

THE COURT: Anything further, Mr. Deysach?

MR. IAN DEYSACH: Nothing further, Your Honor.

THE COURT: You may step down.

MS. TANNER: Your Honor, the State calls Renita Berry.

Being first duly sworn, **RENITA BERRY**, testified as follows:

THE CLERK: Please state your name and spell your last name.

THE WITNESS: Renata Berry. B-e-r-r-y.

DIRECT EXAMINATION

BY MS. ANGIE TANNER:

Q. Good afternoon, Ms. Berry.

A. Good afternoon.

Q. And where are you employed?

A. Beaufort County Sheriff's Office.

Q. And in what capacity?

A. I'm a forensic chemist.

Q. What is a forensic chemist?

A. Forensic chemist is someone who applies science to the law when it comes to areas of chemistry.

Q. What is your training and background to be a forensic chemist?

A. I have a Bachelors of Science Degree in Chemistry from the University of South Carolina. Plus, I have a Masters Degree in Management from Western University. Right after college, I was employed by South Carolina Department of Health and

Environmental Control, commonly known as DHEC. I was an analytical chemist there for about four years. Once leaving DHEC, I was then employed by South Carolina Law Enforcement Division, commonly known as SLED. And I was with SLED for a little -- almost four years. And it was there that I received a majority of my training as a forensic chemist. While there, I completed their training program. I also was certified by the Drug Enforcement Administration as a drug chemist. Throughout the years, I have attended various training seminars and training courses related to controlling dangerous substances along with instrumentation and methodology that goes along with that.

Q. And now you have a new responsibility. You're the head of the new County's lab; is that correct?

A. Yes, I am.

Q. And that includes not only Chemistry but also DNA?

A. Yes. I'm the new lab director so all the supervisory responsibilities fall on me.

Q. And when did that lab open?

A. That lab opened in May of this year, May of this year.

Q. And how long has the drug lab been open in

Beaufort County?

A. We started the drug lab in March of -- March of 2002. I was hired in November of 2001 but we actually open the doors up to the lab in 2002.

Q. And have you ever testified in court as a forensic chemist?

A. Yes, I have.

Q. And have you been qualified as an expert in that field?

A. Yes, I have.

MS. ANGIE TANNER: Your Honor, at this time the State moves to have Ms. Berry qualified as an expert in forensic chemistry.

MR. IAN DEYSACH: No voir dire, Your Honor. I don't have an objection.

THE COURT: Ladies and gentlemen, as I told you before, we allow people who are deemed to experts either by education or their experience to testify as to opinions. Ms. Berry is going to be allowed to testify in the area of forensic chemistry. Again, her opinion is to be used as you see appropriate. Of course as you compare it to other facts that's found in the case.

BY MS. TANNER:

Q. Ms. Berry, can you kind of describe for the Jury

when you receive an item of evidence, what do you do with it?

A. When evidence comes in, we inventory and make sure everything's okay with it, that it's properly sealed. Sometimes it's placed into a safe or our evidence room that we have at the lab. And I think with this case, we were still at USCB. It was in a safe. It was placed in a safe. Once I'm ready to work it, I then take it out. Again, inventory it and make sure that everything is still in tact.

Q. When you receive that packaged, is it completely sealed?

A. Yes, it is.

Q. Do you have the ability when you receive it to tell if it's been tampered with?

A. Yes.

Q. And if something has been tampered with, would you go forward with your analysis?

A. No. We don't work anything that has been tampered with or is not properly sealed.

Q. I'm going to ask you about some particular pieces of evidence that you had analyzed. Starting with what has been marked as State's Exhibit Eleven. Actually, I'm going to put Eleven, Thirteen, and

Fourteen together. I believe that's how you received it.

A. Okay.

Q. I'm going to show you these items starting with State's Exhibit Eleven.

A. Okay.

Q. Can you tell me if you performed analysis on that item which has previously been introduced to the Jury as potential crack removed from a shoe?

A. Yes, I did.

Q. And how can you tell that you actually touched this item?

A. After receiving the evidence and analyzing it, it was placed in this plastic bag, this outer bag. And it was heat sealed along this line. And if you look at that line, you will see my initials along with the date it was sealed. If you look at the inner bag, it is what we call a control bag. And that control bag has my initials, the word ok, along with the date, and something else that it has is a control number. On the opposite side it has a label and it has a case number, control number, and some other information.

Q. And when you receive items for analysis, do you give it another number?

A. Yes. We also give it a lab number, a laboratory number.
Q. And in this case for these three items, what is the lab number?
A. Laboratory number is L10-0049 and it's items one, two, and three.
Q. And the State's Exhibit Eleven is going to be your item number one; is that correct?
A. Yes, it is.
Q. Can you tell us if you performed an analysis on that?
A. If you look at that bag, you will see that lab number along with my initials and the bag that's in the inside also has my initials along with the lab number and I did perform the analysis on that.
Q. And what were the results of your analysis --
MS. ANGIE TANNER: May I approach, Your Honor?
Q. --on State's Exhibit Eleven?
A. Cocaine base found and it was a combination weight of 43.04 grams.
Q. And you say cocaine base. What does that mean?
A. Cocaine base is commonly referred to as cocaine crack or crack cocaine.
Q. And what is the difference in cocaine, cocaine crack, and cocaine base?

A. Cocaine crack and cocaine base are the same. Cocaine base is made from or derived from cocaine hydrochloride. Cocaine hydrochloride is the soft form. After adding, in most cases, baking soda and after going through a heating process, it's then turned into to cocaine crack or cocaine base. Cocaine hydrochloride usually in powdered form is smoked or it can be dissolved in -- not smoked, I'm sorry. It can be snorted, dissolved in water and then injected. Whereas cocaine base or cocaine crack, you can actually heat it up and inhale the vapors from it. That's inhaling the drug itself.

Q. So crack is smoked; is that correct?

A. Crack is smoked.

Q. But the original form of powder is ingested some other way?

A. Yes. Either through snorting it or dissolving it in water and injecting it.

Q. And the item in Eleven, this is what?

A. Cocaine based ---

Q. Crack?

A. -- commonly called. Yes, cocaine crack.

Q. I'll ask you to look at your item number two under this lab number and State's Thirteen which is a

pill bottle collected from the bedroom?
A. Yes.
Q. And did you perform an analysis on that item?
A. Yes, I did.
Q. What would that be? What were the results?
A. It was determined to be cocaine based, 5.80 grams.
Q. And that again is crack?
A. Yes, it is, crack cocaine.
Q. And I'll ask you to look at State's number Fourteen, your item number three under this and ask if you performed analysis on that item?
A. Yes, I did.
Q. And what were your results?
A. Cocaine base, crack cocaine found 16.30 grams.
Q. Did you prepare a report with your results?
A. Yes, I did.
Q. And what did you do with that report?
A. A copy of that report was sent to General Sessions and then submitted to court, I'm assuming.
MS. ANGIE TANNER: I'm going to approach the witness.
Q. Show you State's Exhibit Twenty-one. Can you identify that item?
A. Yes, I can.
Q. What is State's Twenty-one?

A. It's a copy of the report generated by me.
Q. And does that list the results that we went just through on these three items?
A. Yes, it does.
Q. And that is 43 grams, 5.8, and 16; is that correct?
A. Yes.

MS. ANGIE TANNER: Your Honor, State moves Twenty-one into evidence.

MR. IAN DEYSACH: I don't object to the report other than just as it follows the previous objection that I made.

THE COURT: Twenty-one is in evidence.

BY MS. TANNER:

Q. Now, Ms. Berry, did you also analyze other items? I'm going to show you what has been identified or marked as State's Exhibit Eighteen. Jury has been informed State's Eighteen was collected under a sink. Did you perform analysis on that item?
A. Yes, I did.
Q. Again, how do you know that?
A. Again, it's in the outer bag I mentioned earlier that has my initials and the date it's been sealed. You'll also find that control number here along with my initials and the same with all of

the other bags.

Q. And what was the result of your analysis on that item?

A. Cocaine base, crack cocaine found, 20.40 grams.

Q. So just over 20 grams of crack; is that correct?

A. Yes.

Q. And did you prepare a report with these results?

A. Yes, I did.

Q. And does this have a different lab number than the first group?

A. Yes, it does.

Q. What's the lab number for these items--for this item?

A. L10-0045.

MR. IAN DEYSACH: No objection, Your Honor.

MS. ANGIE TANNER: State moves Twenty-two.

THE COURT: In without objection.

BY MS. TANNER:

Q. And we have --

MR. IAN DEYSACH: (inaudible)

THE COURT: Excuse me, sir?

MR. IAN DEYSACH: As it relates to the previous motions for objections, Your Honor.

THE COURT: Thank you.

BY MS. TANNER:

Q. State's Twenty-Two, is that the report that you prepared?
A. Yes, it is.
Q. Thank you, ma'am.

MS. ANGIE TANNER: Move Twenty-two into evidence.

Q. Thank you, Ms. Berry. I have no further questions. Please answer anything Defense Counsel has.

THE COURT: Mr. Deysach?

MR. IAN DEYSACH: Just very quickly.

CROSS EXAMINATION

BY MR. IAN DEYSACH:

Q. You say that what you find in the substances is -- you find that cocaine is present in the substances; is that correct?
A. I identified the substance as cocaine.
Q. Did you say that there was also baking powder in there or baking soda?
A. No. I mentioned that sometimes that's how it's made.
Q. Okay. And so if you make it with the baking -- what did you say baking soda or baking powder? Baking soda?
A. Baking soda.

Q. That there is some baking soda in the finished product, correct?
A. It usually dissolves.
Q. Were you able to get a concentration of how much cocaine was found?
A. No. I did not analyze for the quantity of it -- for the quality of it, excuse me.
Q. So basically you weigh the whole amount that you get, correct?
A. Yes.
Q. But you don't know what the concentration of cocaine is, correct?
A. We don't do that.
Q. Thank you.

MR. IAN DEYSACH: That's all I have.

THE COURT: Anything further?

MS. ANGIE TANNER: Nothing further. May this witness be excused?

THE COURT: Any objection?

MR. IAN DEYSACH: No, Your Honor.

THE COURT: You may be excused. Mr. Deysach, will you please come up here.

(Whereupon lawyers approach the Bench)

THE COURT: Solicitor, if you call your next witness.

MS. ANGIE TANNER: Thank you, Your Honor. State recalls Andrew Rice. Your Honor, if I can unplug my computer. They need to StarBoard in the other court room.

THE COURT: Yes, ma'am. Let's go ahead and bring Investigator Rice back.

Being first duly sworn, **ANDREW RICE**, testified as follows:

DIRECT EXAMINATION

BY MS. ANGIE TANNER:

Q. Good afternoon, Investigator.

A. Good afternoon.

Q. Welcome back. Just briefly. You said yesterday that you are employed with the Beaufort County Drug Task Force?

A. Yes, I am.

Q. And what is the purpose of the drug task force?

A. The purpose of the drug task force is to combine agencies from all around Beaufort and Jasper Counties as far as NCIS, CID on the bases, DEA, Beaufort Police Department, Bluffton Police Department, Ridgeland, Jasper to combat the drugs that are coming into Beaufort County as a focused effort.

Q. And is part of that -- being part of that task

force and working those kind of cases on the street, do you -- is it part of your job to stay up-to-date on the trade, on what these street drugs are worth?

A. Yes.

Q. And can you give the Jury an idea what one gram of crack cocaine would be worth on the street?

MR. IAN DEYSACH: Your Honor, I don't think he can give that opinion without being qualified as an expert.

BY MS. TANNER:

Q. How long have you been working with the drug task force?

A. Just over two years now.

Q. How many cases or investigations have you been involved in that involve street drugs?

A. I couldn't count. It's several.

Q. And is this something you deal with daily?

A. Yes.

Q. And are you familiar with the business of crack cocaine?

A. Yes.

Q. And that's something you have to stay on top of as part of your job?

A. Yes.

MS. ANGIE TANNER: Your Honor, I would move as an expert in drug investigations.

THE COURT: I'm not going to qualify him as an expert in that specific area. But I am going to allow you to ask the question that you proposed. You've laid the foundation.

BY MS. TANNER:

Q. Investigator, are you familiar right now with the going rate for one gram of cocaine?

A. Yes. Depending on the area.

Q. And what would be the range for one gram?

A. Anywhere from 60 to 100, maybe just over a 100 depending on where the area you might buy from -- the dealers might buy from.

Q. So $60 to $100 for one gram?

A. Yes.

Q. Are you also familiar with how much crack a user would use at one time to get high?

A. The most common that we see would be a $40 amount, a 40 pack, or a $20 amount, 20 pack of crack cocaine.

Q. A dove?

A. A dove.

Q. Now math wise, how big is a dove or a single use or a single hit of crack cocaine?

A. Typically, goes by tenths of a gram. A dove would be two-tenths of a gram, .02 grams.
Q. So just two-tenths, not even a full gram?
A. Yes.
Q. So the State's Exhibit Eleven has been determined to be 43 grams, what do you think the street value would be of this item?
A. It would probably be about thirteen, fourteen hundred dollars if you bought like this.
Q. If you bought like this. If I broke it down and sold it to individual users at .02 grams for a dove, how much are we talking about then?
A. Quite a bit. It'd take me a while to do the math in my head but quite a bit.
Q. So .02 divide into 43--I'm not going to do the math either but the same with this, 20 grams of crack cocaine. That's not one hit?
A. No, that's several.
Q. So .02 divided into 20, that's how many times this can be used?
A. Yes.

MR. IAN DEYSACH: Your Honor, I move to object to this line, I guess for the relevance. I don't think that the value of the crack is anything that's an element that needs to be proven.

MS. ANGIE TANNER: Your Honor, the charge is trafficking not possession. It's trafficking.

THE COURT: All right. On to the last question.

MS. ANGIE TANNER: No further questions.

THE COURT: Mr. Deysach, anything further?

MR. IAN DEYSACH: No, Your Honor.

THE COURT: Ladies and gentlemen of the jury, I know we got somewhat of a late start this morning, but I do think we need to go ahead and break for lunch. Despite that you've only been here since 11:30, the employees have been here all day, of course. I am going to ask that you all be back in the jury room at 2:30 where we are going to continue trying the case. This gives you a little less than an hour and hopefully you will have time to go get something, a bite to eat, get back here at 2:30 and we will begin immediately.

Again ladies and gentlemen, I caution you are not to discuss this case among yourselves or with anyone else. So go get a bite and we look forward to seeing you all back in the jury room at 2:30.

(Whereupon the Jury was dismissed for lunch at 1:34 P.M.)

THE COURT: Is there anything we need to take

up outside the presence of the Jury?

MS. TANNER: Nothing from the State.

MR. DEYSACH: No, Your Honor.

THE COURT: Okay. Y'all have a nice lunch. We will see you back at 2:30.

(Whereupon Court was dismissed for lunch at 1:36 P.M.)

(Whereupon Court resumed at 2:40 P.M.)

THE COURT: State ready to go?

MS. TANNER: State's ready, Your Honor.

THE COURT: Defense?

MR. DEYSACH: Yes, Your Honor.

THE COURT: Let's bring in the Jury.

(Whereupon the Jury enters the courtroom at 2:51 P.M.)

THE COURT: Welcome back, ladies and gentlemen. All right. Solicitor, if you would call your next witness.

MS. TANNER: Yes, ma'am. The State calls Richard Lewis.

Being first duly sworn, **RICHARD LEWIS**, testified as follows:

THE CLERK: Please, state your full name and spell your last name for the record.

THE WITNESS: Richard Lewis. L-e-w-i-s.

DIRECT EXAMINATION

BY MS. TANNER:

Q. Good afternoon, Mr. Lewis.
A. Good afternoon.
Q. I need you to talk into your microphone so we all can hear you back here.
A. Good afternoon.
Q. Were you born and raised here?
A. No, I wasn't.
Q. Where were you raised?
A. New York City.
Q. When did you get here in Beaufort County?
A. Two-thousand one.
Q. Do you have family here?
A. Yes, I do.
Q. Who lives here?
A. My mother.
Q. And where do you live?
A. Ball Park Road.
Q. What's your address?
A. [redacted] Ball Park Road.
Q. And how long have you been living there?
A. About four or five years.
Q. So you were living there February 17, 2010?
A. That's correct.
Q. Is that on St. Helena?
A. Yes, it is.

Q. Now, do you own that property?
A. No. My mother owns the property.
Q. Do you live in the property?
A. Yes, I do.
Q. So you have any room mates?
A. No.
Q. Okay. On February 17 of this year was anyone living with you?
A. No. No one was living with me.
Q. Now, do you have a nickname?
A. Yes.
Q. What's your nickname?
A. Old School.
Q. Old School?
A. Yes.
Q. All right. Now, prior to February of this year had you had someone living with you before that?
A. Yes, I did.
Q. And who was that?
A. Marion and his girlfriend.
Q. And when did they move out?
A. I'm exactly -- I'm not exactly sure it was a couple months before.
Q. A couple of months before the February date?
A. Yes.

Q. All right. Now, I'm going to ask you about February 17.
A. No problem.
Q. Okay. Tell me how that day kind of started for you?
A. I was home. I had company. I got a call from Marion and said he wanted to come and freshen up. And he came over with Jason and Larry and sure I let him in as usual he's a friend. I had no problem letting so he came in. He went on about his business to freshen up or whatever, and I stayed in the back with my company.
Q. Now, my company, who was that?
A. A female.
Q. Female company. So, let me get this right. About what time does Marion call you?
A. It must have been about 8:30 or nine o'clock, somewhere around in there. Early morning.
Q. Early morning?
A. Yes.
Q. And when he calls you what does he ask you?
A. Nothing, he just wanted to come freshen up and change clothes that sort of stuff.
Q. And when he -- when he gets there does he walk on in, does he have a key to your place?

A. No.
Q. Did you have to let him in?
A. Yes, I did.
Q. And once he gets in the house where does he go?
A. I have a bedroom in the front and he has a change of clothes, there's a bathroom that's where he went. I let him go on about his business he and his friends I had no problem with it. He knows what to do if I let him in my house he has free rein in that bedroom and bathroom.
Q. He can use it when he's there?
A. Yes.
Q. But he wasn't living there at the time?
A. No.
Q. So where do you go once he comes inside?
A. Back in my bedroom in the back with my company.
Q. And do you know -- did you hear somebody taking a shower?
A. No. I know somebody's in the bathroom. I really wasn't paying attention I was occupied.
Q. I got ya'. Now, not too long after that you get some more company?
A. Yeah.
Q. Let's talk about the next people that show up at your house?

A. That was Detective Fraser and about six or seven police officers.
Q. Six or seven police officers?
A. Yes, ma'am.
Q. All right. Tell me how you found out they're there?
A. They knock on the door.
Q. Okay.
A. They knock on the door. I came out and Detective Fraser was there. I had talked to him before so I knew who he was he knew I was and, yeah, so that's what happened. That's basically what happened.
Q. And when you see him what does Detective Fraser want?
A. Marion and Jason.
Q. Okay. And do you tell Investigator Fraser where they are?
A. Not a first.
Q. Okay.
A. Not at first. But they called me outside and they said this is what happened they allegedly shot his cousin and we're looking for them, so I told them that--

MR. DEYSACH: Your Honor, I object to this.

It's hearsay, I mean, somebody told him about what he was about to say and I want to stop him from doing that.

MS. TANNER: We talked about hearsay.

THE COURT: Okay. Sustained.

BY MS. TANNER:

Q. So you said you eventually told them where they were?

A. Yeah.

Q. How did you do that?

A. They heard something inside wrestling so...

Q. At that point you had to tell them?

A. Yes.

Q. And once you do that do you let them in go in your house?

A. Yeah. They kind of check out what they are gonna do. I would say go to Marion and them and tell them what's going on so it's no incident that he was worried about him being armed and dangerous so I said it was no problem. He's a friend of mine.

Q. When Marion came into your house did you see him with a gun?

A. No.

Q. And that was about 9:30 you said?

A. Yeah.

Q. Okay. So the police are there and you let them know that Marion is there, do you let the police into your house?
A. Yes. They came in with me. They were supposed to wait at the door but as we were coming in someone knocked the screen out my window in front and they all rushed the house the same time.
Q. And you had talked to the police about giving consent to come in; is that correct?
A. Yes.
Q. Did you sign a piece of paper about that?
A. Yes.

MS. TANNER: State's Exhibit 24. May I approach the witness?

THE COURT: You may.

BY MS. TANNER:

Q. I'm going to ask you if you can recognize this, if you've seen it before?
A. Yes. I signed it.
Q. You signed that?
A. Yes.
Q. Is that about consent for them to come into your house?
A. Yes.
Q. And that was on February 17?

A. Yes.

MS. TANNER: Your Honor, the State moves 24 into evidence.

THE COURT: Any objections?

MR. DEYSACH: No, Your Honor.

THE COURT: Is in evidence without objection.

BY MS. TANNER:

Q. All right. Once all that breaks lose and they get in your house, did you see what comes out of there?

A. No, after all of that I removed myself from the area and let them handle their business. I had to come in the back I stayed in the back that was it.

Q. And once they were done with their business do you talk to the police?

A. Yeah. They talk to me after.

Q. Did you cooperate and tell them what you knew?

A. Yeah, sure.

Q. Okay. Now, after they leave--

A. Uh-huh.

Q. --What do you do?

A. Gather myself basically and basically I just went and cleaned up and had my company and wound down and just relaxed after that.

Q. How long do you think the police were at your

house that time?
A. No more than an hour.
Q. All right. Now, let's talk about you for just a little bit.
A. All right.
Q. You've had some troubles over the years?
A. Yes, I have.
Q. What's -- what's your biggest problem?
A. Drugs. Addiction.
Q. Okay. How long -- how long have you been a user?
A. About 35 years.
Q. Thirty-five years. How old are you?
A. Fifty -- Fifty-one.
Q. Would you say that that's something you struggle with even today?
A. Yes. At times. Yes.
Q. And because of that, had you gotten into trouble with the police before?
A. Yes, I have.
Q. And what kind of trouble have you had with the police?
A. Possession, criminal sales in the past.
Q. Drugs?
A. Yes.
Q. And the most recent trouble you got into, what was

that about?
A. Forgery.
Q. What did you forge?
A. Checks.
Q. Whose checks?
A. My mother's.
Q. And did you get into a little trouble for that?
A. A lot.
Q. Besides with the police?
A. More trouble with my mother than the police.
Q. All right. So let's go back to February 17?
A. Uh-huh.
Q. You are at your house, the police are gone; do you talk to anybody that afternoon?
A. I got several calls from Larry the one individual that came in with Marion.
Q. Who else did you get phone calls from?
A. I got one phone call from Marion.
Q. So you get phone calls that afternoon from Larry and Marion; is that correct?
A. Yes.
Q. Now, when you talk to Marion, what does he want?
MR. DEYSACH: I think this is subject to the objection I made in pretrial, Your Honor. I object for the record.

THE COURT: You are protected for the record. Thank you.

BY MS. TANNER:

Q. What does Marion want when he calls you in the afternoon?

A. Basically to retrieve something out of the garbage can.

Q. And what is he asking you to retrieve?

A. A cookie.

Q. A cookie?

A. Yes.

Q. Now, are we talking about a chocolate chip cookie?

A. No.

Q. What kind of cookie are we talking about, Mr. Lewis?

A. Drugs.

Q. What kind of drugs?

A. Crack cocaine.

Q. And when he makes that phone call to you, do you know that's what you're looking for?

A. Not until he told me.

Q. What did he tell you?

A. That he left something in the garbage. That he left something in the garbage can.

Q. Okay. And while you were on the phone with him

what happens?

A. I was on the phone with him and Corporal Green, one of the Sheriff's, was there as well. I was outside when I got the call from Marion and I went inside and the police, of course, followed me to the door. So between the police officer and Marion, I've got him on the phone and me trying to hold the police at the door, basically, after I retrieved it the Corporal came to the door told me to come out of the house and that's basically, what happened.

Q. Are you telling me that at some point you were in between a rock and a hard place?

A. Pretty much.

Q. So you're on the phone with Marion--

A. Yeah.

Q. --and Marion is telling you to do what?

A. To get what he left in the garbage can out.

Q. And did you go do that?

A. Yes.

Q. Did you find anything in the garbage can?

A. Yes.

Q. What did you find?

A. I found cocaine.

Q. And once you found it what did you do with it?

A. I panicked at first so I didn't know what to do so the police at the door tried to come in then I've got him on the phone, I got company over here, basically, at that point I just tried to put it somewhere and get it out of my hands.
Q. Where did you put it?
A. In the bathroom.
Q. Where in the bathroom?
A. I just threw it. I just reached and I threw it in the bathroom. My cabinet is right there so I just threw it inside.
Q. When you threw it, was it inside a bag or was it just in your hand?
A. It was in my hands.
Q. So you just throwed the crack ---
A. In the sink.
Q. Bathroom sink?
A. Bathroom sink.

MS. TANNER: If I may approach the witness, Your Honor.

THE COURT: You may.

BY MS. TANNER:

Q. All right. I'm going to show you what's in evidence State's Exhibit 15. Does that look familiar?

A. Yeah. That's my bathroom.
Q. And what is that?
A. That's what I found in the garbage can.
Q. You found that in the garbage can and that's after you through it?
A. Yes.
Q. Okay. And once you do that, do you go outside and talk to Deputy Green?
A. No. He took me outside. He said I had no choice-
-
Q. He said come on outside?
A. I was simultaneously going out and I was in cuffs in the car for the next four hours.
Q. And during that time period, do you cooperate with the police?
A. Yes.
Q. Did you tell them what you just told us about what you did?
A. Yes.
Q. And did you show them where it's at?
A. I did.
Q. And did you consent to doing that?
A. Yeah.
Q. You went willingly?
A. Yeah.

Q. Now, Mr. Lewis, I'm going to have to ask you because you said you had a problem with crack, is that your crack cocaine that was in the house that day?
A. I didn't know it was there.
Q. You didn't know it was in there?
A. No. If I had of known it was there I probably would have been hiding it. I didn't know it was in there. I would've been high. I didn't know it was there.
Q. And did you know that that phone call between you and Marion was being recorded?
A. No. Not until Detective Fraser told me it was recorded and asked me where it was. He say they heard it over the phone and told me the details of the conversation.
Q. And since then have you had an opportunity to listen to that phone call again?
A. Yes. I have.
Q. Did you recognize your voice on that?
A. Yes, I did.
Q. Did you recognize Marion's voice on it?
A. Yes, I did.
Q. Now, this Marion that we've been talking about, do you see him in the courtroom?

A. Oh, yeah.
Q. Could you point to him for me please?
A. (Pointing at the Defendant)
Q. Could you tell me what color shirt he is wearing?
A. Blue

MS. TANNER: Please have the record reflect he has indicated the Defendant. Thank you, Mr. Lewis. Please answer anything that Mr. Deysach asks you. Okay?

CROSS-EXAMINATION

BY MR. DEYSACH:
Q. Good afternoon, Mr. Lewis?
A. Good afternoon.
Q. All right. I guess the first thing I wanted to talk to you a little bit about is your past and what you spoke to Solicitor Tanner about. It was what you got in trouble for in the past. I think you were saying that it was -- the whole problem is that you got a crack -- a drug addiction; correct?
A. I've had problems with drug addictions. I have.
Q. And the charges like forgery wouldn't have occurred if you didn't have the drug addiction?
A. More than likely not.
Q. Okay. But didn't -- you were convicted in 2003

for breach of trust?
A. Yes.
Q. Okay. In 2005 there was two forgeries that you were convicted of; correct?
A. Yes.
Q. And then in 2009 you were convicted of -- of three forgeries?
A. Yes.
Q. And those were the ones where you were stealing from your own mom?
A. Yes.
Q. And so -- are you still on probation?
A. No. I'm not.
Q. And then with all this stuff that happened on February 17th, you picked up a charge for that also; correct?
A. Yes, I did.
Q. You got charged for the drugs that the police found that afternoon?
A. Yes.
Q. And you got charged with trafficking, was it ten to twenty-eight grams?
A. That was the charge.
Q. Okay. And you've actually -- You've also gotten charged with possession with intent to distribute

within a school zone, crack cocaine; correct?
A. Yes.
Q. And you have cut a deal with Ms. Tanner?
A. No, I haven't.
Q. Well have you -- have you plead guilty?
A. I plead guilty.
Q. Did you plead guilty to trafficking crack?
A. Guilty to possession.
Q. Okay. You pled guilty to possession of cocaine?
A. Correct.
Q. So there was a reduction in your charge from trafficking in crack to possession of cocaine; correct?
A. Correct.
Q. And it wasn't just possession of cocaine first offense, it was possession of cocaine third offense that you pled to; correct?
A. Correct.
Q. And you know that being charged with trafficking in crack, ten to twenty-eight grams ,third offense carries from --
MS. TANNER: Objection, Your Honor.
THE COURT: Y'all need to approach.
(Whereupon the lawyers approached the Bench)
BY MR. DEYSACH:

Q. Okay. You know that the charge you were initially charged with, trafficking crack from ten to twenty-eight grams, carries a mandatory minimum penalty of 25 years and a possible maximum of 30 years; correct?
A. I know now.
Q. Your lawyer didn't tell you?
A. No.
Q. Okay. The possession with intent to distribute in a school zone carries a minimum of ten years and a maximum of 15 years; correct?
A. Yes.
Q. And that was dismissed as a part of your deal with the Solicitor's office, wasn't it? Wasn't it?
A. I did plead to a lesser sentence.
Q. And you -- You pled to something lesser than the trafficking; correct?
A. Correct.
Q. And the school zone element was completely dismissed; correct?
A. I believe so.
Q. And like you said, you pled guilty; correct?
A. Yes.
Q. You came before this court and you swore on the Bible just like you did today?

A. Yes.
Q. And you promised to tell the truth to the Judge that day; correct?
A. Yes.
Q. And you told that Judge that you did indeed possess crack cocaine; correct?
A. Yes.
Q. But you just told the jury that you didn't know that any of that was there.
A. I didn't.
Q. You haven't been sentenced yet for your possession of -- of cocaine third charge; correct?
A. No. I haven't.
Q. Do you know that the maximum you can get is ten years on that; correct?
A. Yes.
Q. When you plead guilty -- Okay. You're not going to get sentenced until this trial is over; correct?
A. Correct.
Q. And so what happens at that sentencing hearing -- how you do today or what you say from the stand today is going to have an impact on that, isn't it?
A. I couldn't say that.

correct?
A. Correct.
Q. And so what happens at that sentencing hearing -- how you do today or what you say from the stand today is going to have an impact on that, isn't it?
A. I couldn't say that.
Q. You're not sure?
A. I don't know.
Q. And in fact, after you plead guilty to this possession charge, you agreed to a modification of your bond with the Solicitor's office; correct?
A. Yes.
Q. Right. And that was by agreement, right? That was something you agreed to at the Solicitor's office, wasn't it?
A. (Inaudible)
THE COURT REPORTER: I can't hear what he is saying.
BY MR. DEYSACH:
Q. Okay. My question is whether that was something that you agreed upon with the Solicitor or was that something the Judge did for you?
A. I guess both.
Q. Okay. So what you're saying is that after you

pled guilty the Solicitor didn't have a problem with you getting out of jail?

A. He gave me a bond reduction.

Q. Reduced to something where you didn't have to post any kind of money to get out of jail; correct?

A. No. Incorrect.

Q. You did have to post some money?

A. Yes, I did.

THE COURT: Mr. Lewis, please talk into the microphone so my Court Reporter can hear you.

BY MR. DEYSACH:

Q. Okay. So let's talk about, I guess, what we're here about today. You told the jury that you got a call from Marion asking if he could come over that morning?

A. Correct.

Q. Make sure you're speaking up and everything?

A. Right. Right. Right.

Q. And you said that call came about nine o'clock?

A. Somewhere around there. Yes.

Q. Okay. That when Mr. Bonds asked to come over you said, "no problem"?

A. Yes.

Q. You told the jury that he wanted to freshen up; correct?

A. Correct.
Q. And you said that that meant -- that included changing clothes?
A. Sure.
Q. So he had the change of clothes at your house?
A. Yes.
Q. When he showed up did he have anything with him?
A. Not that I know of. Other than Larry and Jason. I didn't even pay any attention.
Q. Would you have let Larry and Jason in without Marion?
A. No.
Q. So they were Marion's guests?
A. Yes.
Q. They all arrived together?
A. Yes.
Q. Nobody was carrying a shot gun or anything, were they?
A. No.
Q. Do you -- Had Marion stayed there within the last couple of days?
A. I'm not sure. From time to time he would stay over.
Q. Does anybody else stay in that room?
A. No.

Q. So the only person who stays there is Marion?
A. I let him use the room.
Q. Pardon?
A. I let him use the room from time to time. I don't have a problem with that.
Q. He -- He used to rent the room from you?
A. Yes. They rented the room. Yes.
Q. Now, are you saying that when he stays at your house he doesn't have to pay anymore?
A. No. If he's going to stay overnight he gives me a couple of dollars to stay overnight.
Q. Does he give you that money before or after he stays over?
A. Before.
Q. How much money did he give you that day?
A. (Inaudible)
Q. Pardon?
A. I didn't get money that day. I didn't get a chance to.
Q. But you would have?
A. He wasn't staying. He was just going to freshen up and leave.
Q. All right. Okay. You never saw Marion Bonds take a shower, did you?
A. No. Not that I would want to but...

Q. That was a silly question. But whether it was-- Okay. You heard something in the bathroom but you don't know who it might have been?
A. I heard movement up there. It's not something that I ever paid attention to cause I trusted him.
Q. All right. And then it's shortly after that that you get the knock on the door?
A. Yes.
Q. So when you're outside the house and the police are talking to you, you tell them, well, I'll go inside and tell Marion and Jason that you want them and tell them to come on out and everything will be, you know, that way we can handle this with the least amount of problems; correct?
A. Correct.
Q. And that's what -- that's what you tried to do?
A. Correct.
Q. And so you said you walked into your house--
A. Uh-huh.
Q. --going to do what you say--what you're saying,--
A. Correct.
Q. --get the people out of your house?
A. Correct.
Q. And instead you hear some sort of a crash on your screen?

A. Everybody heard it. I heard it. The screen was knocked out of my window and I heard it. The police were outside of my window.
Q. What -- What window are you talking about?
A. The back bedroom.
Q. Okay. So the bedroom window is where the screen is?
A. The back bedroom. Screens all across there.
Q. Okay. And you don't know who knocked that out?
A. No. Cause I was coming back in the house.
Q. All right. Who was with you when you were coming back in the house?
A. Detective Fraser and two officers were at my door.
Q. Right.
A. My back door.
Q. Cause your plan was just to let them stay outside so you could come on in?
A. Exactly.
Q. All right. But that's not what they do?
A. No. But after the window was knocked out--
Q. After that noise occurs then that's when they come in?
A. Yes.
Q. All right. So the Solicitor had you look at this

kind of voluntary consent to search form that you signed?

A. Sure.

Q. Can you tell me -- I'm going to hand it to you, it's State's Exhibit 24. I'm going to hand it to you and ask you what time it has marked on it?

A. Ten thirty-seven.

Q. Ten what?

A. Ten thirty-seven.

Q. Ten thirty-seven?

A. Yes.

Q. Okay. Okay. Yeah. I see it. 10:37. That's after they've already entered your house; correct?

A. Yes.

Q. So what you're saying is that when they entered your house they didn't -- you hadn't given them that consent yet?

A. To search the house, no.

Q. Okay. And so after it happens, the police handle their business, you get out of the way?

A. Yeah.

Q. When they come back, you are outside on the phone?

A. Yes. Checking my mailbox.

Q. And you are approached by a police officer?

A. Yes.

Q. After you have contact with that police officer you walk back into your house?
A. Yeah. I'm still on the phone and the police officer's with me.
Q. So does the police officer follow you into your house?
A. They follow me to my front steps.
Q. Does he come through your -- your front door?
A. No, he didn't come in the front door at that time.
Q. He did or did not?
A. He did not. He came to my door.
Q. Do you use your front door or your back door?
A. Both.
Q. When you're talking about when this happened, what door was it?
A. Front door.
Q. Okay. So you're inside your house and Corporal Green is outside your house?
A. He's outside the door. I tried not to let him in.
Q. Okay. Did you shut the door?
A. I did shut it.
Q. Okay. And that's when you're describing this activity with the crack in the bathroom?
A. This was all being done from the mailbox to the house that's when I went back inside.

Q. I hear you. And when it comes to getting rid of-- of -- of -- You said you put the crack in the bathroom?
A. Yes.
Q. You said you threw it in the bathroom?
A. Yes, I did.
Q. So I guess what you're saying is that you've got an open cabinet underneath your sink?
A. It is right there.
Q. Okay. And it has doors on it, right?
A. Yes.
Q. And the doors were open?
A. They must have been.
Q. They must have been? Is that how you keep them?
A. No. I was --It was probably still open from all that searching my house. My house was torn apart.
Q. Got you. So even though you said you cleaned up after the police officers left, you still might have left that cabinet open?
A. Sure.
Q. So while this is happening, do you invite Corporal Green inside your house?
A. No. Corporal Green is at the door. The screen door was closed.
Q. Uh-huh.

A. So to get to the bathroom I still had Corporal Green there and he could still see me.
Q. Uh-huh.
A. Corporal Green is right there and he could still see me because the solid door was not closed and I had the screen door and he could still see me. And he told me I had to come outside I reached around and threw it in the bathroom.
Q. Does he grab you out of your house?
A. No.
Q. He never came in your house, at that time at least?
A. Oh, he did come in. Yes, he did.
Q. After that?
A. He came in prior to me throwing when I was still on the phone.
Q. Okay. And you made him leave?
A. No. He basically said, "you have to go outside". I said, "I'm coming outside".
Q. He said that from inside your house?
A. Yeah, from inside the house.
Q. Okay. All right.

MR. DEYSACH: Courts indulgence. I don't have any more questions, Your Honor. I think in light of what he has testified to I would want to renew

my pretrial objections.

MS. TANNER: I would like to redirect.

REDIRECT EXAMINATION

BY MS. TANNER:

Q. Mr. Lewis?

A. Yes.

Q. Corporal Green that came back the second time?

A. Yes.

Q. Did he touch that crack you threw?

A. No, he didn't.

Q. And when Corporal Fraser went back or Sergeant Fraser went back in with you later, was that with you?

A. Yes.

Q. With your permission?

A. Yes.

Q. All right. Now the first time when the police come, showed you that piece paper that was signed,

A. Uh-huh.

Q. That was signed after everything calmed down; is that correct?

A. Yeah, because there was commotion. I signed it cause they said they wanted to look for a weapon. They were looking for a weapon that was the sole purpose of me signing that paper. They were

looking for a weapon.
Q. So you agreed to let them search your house?
A. Yes, I did.
Q. With your permission?
A. Yes, I did.
Q. Before that--
A. Uh-huh.
Q. --When they went in and crashed, did you talk to them about them coming in your house? I know you said you wanted to talk to Marion first, but did you talk to them about coming in?
A. Honestly speaking, I'm really not sure.
Q. You're not sure?
A. But I do know that I was going to try to be in between the two party's.
Q. You wanted to try it your way first?
A. Right.
Q. But do you disagree that they had your permission to come in your house?
A. I think I implied permission I would say. I would say that.
Q. All right. Let's talk about the agreement that you and I have.
A. Yeah.
Q. Mr. Deysach has mentioned that you were looking at

a lot of time because this is your third drug offense?

A. Correct.

Q. And every time you get one of those it goes up; is that correct?

A. Yes.

Q. And you are aware of that?

A. Yes.

Q. And the agreement you and I had, you pled guilty to possession third offense?

A. Yes, I did.

Q. But you know that you're looking at a lot of time?

A. Yes, I do.

Q. Has that had any effect on your testimony today?

A. None what so ever.

Q. What you told me and what you told the jury today is that any different than what you told the police on February 17, 2010?

A. No, it's not.

Q. And at that time you and I had never met?

A. No.

Q. So is what you said today the truth?

A. Yes, it is.

MS. TANNER: Thank you.

MR. DEYSACH: No re-cross, Your Honor. But I

think -- I want to -- I think it's appropriate to revisit the pre-trial ruling in light of the new-- the testimony that Mr. Lewis has just offered -- the State has offered through Mr. Lewis.

THE COURT: Okay. Anything further from this witness with the State?

MS. TANNER: No, ma'am. May this witness be excused?

THE COURT: Any objection?

MR. DEYSACH: I don't think he should be excused quite yet but we'll see how we'll proceed on any revisiting of the pre-trial motion. I ask that he still be kept under the subpoena.

THE COURT: Okay. Mr. Lewis, I'm going to go ahead and excuse you from the stand but I want you to stay around for us and I'll let you know shortly if I need you. All right, sir. Ladies and gentlemen of the jury, there's a matter of law that I need to take up with attorney's so I need to go ahead and send you back to your jury room. Get a cup of coffee or some water and I will be back with you shortly. Again, you're not to discuss this case. It would not be appropriate to do so at this time. Thank you.

(Whereupon the Jury is dismissed from the Courtroom at

3:26 P.M.)

THE COURT: I guess my question is is implied consent enough? Do you have any case law?

MR. DEYSACH: I believe I do. There are a couple of things I wanted to -- it's a motion in liming, obviously that can be revisited during the trial. I think now that we've got this new information -- whether something such as implied consent exists, I do not know of any cases that stand for that proposition where you can say can I have consent to -- to enter and then somebody stands silent and you therefore have consent to enter. I do want to point out that I think that Mr. Lewis was clear that when -- when Marion stays there he does pay rent and so that he has made him more of a tenant or more like a hotel operator that we talked about at the pre-trial. And so certainly even if he could imply the consent -- and I think Ms. Tanner did a nice job of trying to rehabilitate him, but what he said was, "I tried to go in and keep them from coming into my house and then they came in anyway". And so I don't even think their -- He said, "yeah, I'm implying", but I think we should take what he's saying with a little bit of a grain of salt because we know the

type of deal that he has with the Solicitor and if he upsets her it could effect, in his mind at least, his deal even if that weren't the case. But at any rate, the implied consent other than in the DUI realm,I've never heard of that term really used legally as a way to enter somebody's home. And anyway, given the stronger relationship that Mr. Lewis described that he could not -- he could not consent to a search of a tenant's room in that situation that's Lofton -- State v. Lofton and State v. Moultrie, and I think there's U.S. v. Chapman. So...

THE COURT: I think we need to go ahead and take about a ten minute break and do a little bit of research---

MS. TANNER: But before we do that the ruling was Marion Bonds has no expectation of privacy. That didn't change. If he has no expectation of privacy in that room, he can't challenge an entry into someone else's home. He has no standing to challenge how they enter into his home. Now, I'm not saying anything -- I'm saying they had consent to go in. I'm not arguing that. Worse case scenario, if officers didn't have consent to go in, Marion Bonds doesn't have the standing to

challenge it. He had no expectation of privacy. That was the ruling. The fact that he came and went, he did not pay rent that day, he was not staying in that room that day. Mr. Lewis said he stopped by to freshen up, he wasn't staying, he's not living there, he moved out two months prior was the testimony. That hasn't changed the ruling. It hasn't changed the basis for the ruling. The ruling was no expectation of privacy. You can't challenge now Mr. Lewis' rights whether or not to give consent.

MR. DEYSACH: That's not -- I think that's not entirely what the framework is but I think that she's right that there is still a threshold question about the expectation of privacy. And what has happened, that we learned from Mr. Lewis, is that he -- he -- he really probably -- I mean he does have an expectation of privacy -- that he pays rent when he stays there. He -- he brings guests there. He -- he brings Larry and Jason who couldn't have come by themselves only with Marion are they allowed in. That -- if he were to stay overnight he would pay, that he didn't get any money that day but I think he said something -- he may have said something like, "not yet I didn't

get a chance to" And so we do have this expectation of privacy that exists that--

THE COURT: Well, I think what y'all need to do, other than argue the facts, which we all know what the facts are. Why don't y'all go see if there is any case law that you can -- if there's any kind of scenario just someone borrowing a room. I don't think we are quite to the level of a hotel. But that's probably the closest.

MS. TANNER: He's there 30 minutes and he uses the bathroom and that's it. That's his only use of this house.

THE COURT: Solicitor, he has changes of clothes there from the testimony. I don't think it's just that. I think there is a bit more.

MR. DEYSACH: And nobody else ---

THE COURT: I'm going to go ahead and give -- Y'all don't need to argue what we've just heard. I heard the same testimony you did.

MR. DEYSACH: Yes, Your Honor.

THE COURT: I heard that same testimony at the pre-trial and I just heard from Mr. Lewis, so why don't y'all see what you could find and see if there's anything. I'll just give you about ten minutes to do that. Okay?

MR. DEYSACH: Thank you.

(Whereupon the Court took a short break at 3:32 P.M.)

(Whereupon Court resumed at 3:54 P.M.)

THE COURT: Other than State v. Missouri, did any one find a case before we bring in the jury?

MS. TANNER: Yes, ma'am. Yes, ma'am. I found one directly on point. State versus Flowers. It was about a guest. Now, in that case it was a boyfriend and they were looking for him at his girlfriend's house. Testimony was he stayed there four or five nights a week, Officer's came there, he refused to give consent and came back and talked to the girlfriend, who was the homeowner, she gave consent. Obviously, drugs and guns were found. His conviction was upheld. The holding is that a guest refusing to consent does not the deprive the homeowner the right to grant consent. The guest does not have standing to challenge an owners' consent. So at best -- at best Mr. Bonds was a guest using the bathroom. He had not paid rent, he was not staying there, he was a guest at best. He had been there 30 minutes using the bathroom. That would like -- be like me saying I have and expectation of privacy over the

bathroom in this courthouse because I had used it. But they go on to say that even if he had some expectation of privacy as a guest, you can not override a homeowners right to consent.

MR. DEYSACH: All right.

MS. TANNER: That's 2004, it was upheld this year in 2010 by State v. King.

MR. DEYSACH: Okay. That case seems to indicate that there is an expectation of privacy by the defendant and it's a case about whether or not a third party may consent. Now, that is really the U.S. v. Matlock and it's prodigy. I think you have to first figure out is there the expectation of privacy -- is -- and if there is only then do you start talking about if a third party may consent and under what circumstances that may -- may happen. So Flowers actually indicates they did pass the expectation of privacy and now you've got somebody who has consented. Whereas, in this case we had Richard Lewis who gave consent, it sounded like, after they had already come in when he was trying to handle it himself. And we talked about this implied consent and we're not talking about implied consent in that case. And so now we're talking about whether

or not a person may consent -- whether or not a person may consent -- a third-party consent case. That's what it is. It's a third-party consent case. And so I said you don't get to there unless after a reasonable expectation of privacy. Now, I think it's the Georgia v. Randolph case which is the U.S. Supreme Court case that I think is the -- probably the most illustrative in a third party, you know, a humane consent case. You know, we're talking about -- we're not talking a boyfriend girlfriend relationship here, so it's certainly distinguishable on those grounds. We're talking about somebody who when they stay pays rent but probably according to him --

THE COURT: Tell me about the Georgia case, because I already know the facts in this case.

MR. DEYSACH: Georgia v. Randolph, a co-tenant may not consent to search when another present co-tenant objects.

THE COURT: Okay. And certainly we know that rule. But I need to know the facts--

MR. DEYSACH: Okay.

THE COURT: --of the case on Georgia v. Randolph to figure out if they're anywhere close.

MR. DEYSACH: (looking thru papers)

THE COURT: Okay. And certainly we know that rule. But I need to know the facts--

MR. DEYSACH: Okay.

THE COURT: --of the case on Georgia v. Randolph to figure out if they're anywhere close.

MR. DEYSACH: (looking thru papers)

THE COURT: And in most cases that's what we're talking about, you have co-tenants, you have separate bedrooms and this is one bedroom belonging to one person and this is one bedroom belonging to another person.

MR. DEYSACH: This is a -- this is a wife and a husband in this case and so, although an estranged wife, gave police permission to search the marital residence for items of drug use after the respondent, who was also present, had refused to give consent. And so in this case -- in our case we've got the forced opening of the door, and the slamming of the window, certainly no consent from the present co-tenant. It is a little bit different from a -- a -- what we have at home. Because of the roommate relationship as opposed to the marital relationship.

THE COURT: The Georgia v. Randolph case says a warrantless search of a shared dwelling for

evidence over express refusal of consent by the physically present resident can not be justified as reasonable.

MS. TANNER: And I would point out that's a co-tenant ---

THE COURT: Right ---

MS. TANNER: Again, that is someone sharing. There has been no testimony that these guys are co-tenants. He stops by even in Mr. Deysach's -- he stops by willy-nilly. He is a guest. He is not a co-tenant. There are four other residences that are searched for him before they get to this residence. So it's not even -- it's not a primary resident, he is not a co-tenant, he has no property rights to it.

THE COURT: They are not co-occupants.

MR. DEYSACH: He's much more of a co-occupant, I think, than the Missouri guy. Their person in Missouri, I think, falls on the other side of Marion Bonds in this case. And so really we are looking for -- for -- and the thing is you don't have to be a tenant to enjoy that reasonable expectation of privacy.

THE COURT: You can be a guest. We agree with that, but I still don't think that that doesn't

trump if the homeowner or the owner gives permission.

MR. DEYSACH: We probably could agree that if money had been paid that that would mean that the homeowner could not give permission; correct?

THE COURT: No. I wouldn't say -- I wouldn't say necessarily correct.

MR. DEYSACH: That's U.S. v. Chapman and State v. Lawson where the -- where the -- the landlord came and ---

THE COURT: I'm going to go through Minnesota versus Olson. It all talks about that an overnight house guest has an expectation of privacy in temporary quarters. And again in this case we've got someone that showed up at 9:30 in the morning to shower and change clothes. Arguably he had clothes there. I just don't think it rises to that level and I can tell you I am still comfortable with my earlier ruling on my motion in limine, regardless of the testimony given by Mr. Lewis.

MS. TANNER: Your Honor, may I just add just for the record.

THE COURT: Yes.

MS. TANNER: There is a case, the Brannon

case and it's talks about consent. And I know there are some questions from Mr. Deysach that at what point Mr. Lewis consented to their entry. But they -- they discussed looking at the length of time between entering from our intervening circumstances. And I would just say that he clearly gave consent even on the stand he said it was implied. I was gonna let them in even if I hadn't said go yet. He signs the paperwork within minutes, he never objects, he never withdraws consent, so at all times they are consensually within Mr. Lewis' home, the homeowner.

THE COURT: And there is no out right refusal at the time by the person that is being charged with the drugs which is Mr. Bonds, as well.

MS. TANNER: Yes, Your Honor.

THE COURT: That seems to be the difference in all this case law I'm -- looking at Illinois-- Illinois versus Rodriguez, which is cited in Georgia versus Randolph, it basically says that when you have one occupant giving permission and the second one saying no and the one saying no is the one who the evidence is seized is trying to be used against them. I think that his -- his denial would be paramount, but that's not what we have

here.

MR. DEYSACH: Rodriguez was asleep in that case.

MS. TANNER: And those are cases where they are further along than this when as far as being co-tenants or marital property where they both have an interest in it. It's not this situation when you're having guests who stop by.

MR. DEYSACH: Obviously, we're going to have to put more than one case together in order to opine a ruling--

THE COURT: They're all factored in which is why we're looking at it. No facts are ever going to be exactly the same. I'm going to tell you, Mr. Deysach, just in reading this right now I still feel comfortable with my own ruling. And I'm going to go ahead and again, respectfully deny your motion.

MR. DEYSACH: There is one last case I wanted to put on the record was -- stands for the proposition of a guest may not -- does not need to be an overnight guest in order to have standing-- now, that's a -- that's a ninth circuit case that is U.S. v. Davis of the Ninth Circuit three thirty-two Federal third eleven sixty-three. I

recognize that that wouldn't be necessary mandatory on, Your Honor, but there is certainly a requirement overnight. I think that the question is -- I think as far as the ruling goes are we saying that he doesn't have expectation of privacy or that we -- the third party gives valid consent. I'm not sure what the ruling is.

THE COURT: I don't think he has an expectation of privacy, I can tell you that. I don't, not based on the facts. All right. Are we ready to go, Solicitor, with your next witness?

MS. TANNER: I am ready. Before they go I just want to put on the record for appellant purposes cause it might be where this goes. There were arguments earlier about other exigent circumstances about protective sweeps and things of that nature. You overruled on the expectation of privacy that did not need to go further on the ruling for that. I did want those topics on the record for appellant purposes.

MR. DEYSACH: I mean I would -- we -- we don't argue about those because of what the ruling is and so...

THE COURT: All right. Let's bring them in.

(Whereupon the Jury enters the courtroom at 4:06 P.M.)

THE COURT: Welcome back. Solicitor, will you call your next witness.

MS. TANNER: Thank you. Okay. The State calls Jeff Vortisch.

Being first duly sworn, **JEFF VORTISCH**, testified as follows:

THE CLERK: Please state your name and spell your last name.

THE WITNESS: Jeff Vortisch. V-o-r-t-i-s-c-h.

DIRECT EXAMINATION

BY MS. TANNER:

Q. Good afternoon, Mr. Vortisch.

A. Good afternoon.

Q. Where are you employed?

A. Beaufort County Detention Center.

Q. And what do you do at the detention center?

A. Internal Affairs Officer.

Q. And as part of that is one of your duties monitoring the phone system at the jail?

A. Yes.

Q. Can you describe, for the jury, exactly what that setup is and what you do with it?

A. Okay. Basically, the inmates have the ability to use the phone in the housing units. The phones are recorded. They are notified at the beginning

of each call that the phone call has the ability to be monitored and recorded, and that they are monitored and recorded. They're recorded electronically in Dallas, Texas where they are retained for about thirteen months give or take. I'm the only one at the retention center. I manage and supervise the program. That's one of my responsibilities.

Q. So anytime an inmate makes a phone call from inside the jail you can monitor that?

A. Yes, ma'am.

Q. And you can record that?

A. Yes, ma'am.

Q. And what notice is the -- is the inmate given that that phone call is being recorded?

A. If they call a house phone it's given to them at the very beginning. It's an advisement. When a person answers the phone the person answering the phone is given the advisement, as well. If they call a cell phone, they are given the advisement every fifteen seconds. This is subject until the call is answered.

Q. And is that at the very beginning of the phone call?

A. Yes, ma'am.

Q. And is that something you said both parties can hear it?
A. Well, initially the inmate hears it and when the other person answers the advisement is given to them, as well.
Q. So the advisement is given twice?
A. Yes.
Q. What about in writing?
A. Yes, ma'am. It's in the inmate handbook and it's posted inside each pod, inside a bulletin showcase, we have to have certain documents.
Q. And what does it say?
A. It says that all phone calls are monitored and are subject to be monitored and recorded.
Q. What is the language on the phone when you make the phone call?
A. It advises that the phone call is subject to being monitored and is being recorded.
Q. Now, how will you know as the person who monitors this thing which inmate is making the phone call?
A. Back in June of 2002, 2009 we initiated a system called PIN System. Every inmate has a new five digit number assigned to them that they have to put into the phone. The phone system is web based. When they put the five digit number into

the phone my computer program tells me to advise that number to an inmate. Then the inmate by our rules and policies must also say their name, first and last name. And then we have an approved calling list. That if the number that they are calling is not on their list the phone system doesn't let it go through. As soon as the phone is picked up I see it on my computer, I see the PIN number, the ID number being entered then the computer tells me who's on the phone. I'm listening to it and in this case I hear Jeff Vortisch and the computer identifies that as being me.

Q. What happens if another inmate uses another guys PIN number?

A. Before we initiated the system that could happen. Now, he would have to call the same numbers as the other inmate. Because if you were in jail and I was in jail and I took your number I would have to call somebody on your list, I couldn't call my numbers.

Q. Is that phone call terminated or is it just not allowed to go through?

A. It doesn't go through.

Q. And do you have the ability while monitoring these

phone calls to shut them down?
A. Yes, ma'am.
Q. Is the same PIN number ever given to two inmates?
A. No, ma'am, that's a unique number. Once a person actually walks out of jail, the phone account is closed, should he come back that number is given back to him and that number never changes.
Q. So if I went to jail last week and then I come back, I'm going to have the same PIN number assigned to me?
A. Yes, ma'am.
Q. Now, in your position were you given a subpoena from investigators for the phone calls made by Marion Bonds on February 17th, 2010?
A. Yes, ma'am.
Q. And did you record those phone conversations and provide them to law enforcement?
A. I did.
Q. In what format?
A. CDR.

MS. TANNER: May I approach the witness?

THE COURT: You may.

BY MS. TANNER:

Q. Mr. Vortisch, I'm going to show you what has been marked as State's Exhibit 23. Tell me if you can

identify this item?
A. Yes, ma'am. This is the disc that I provided to the law enforcement of the phone calls requested.
Q. And this is a disc that you prepared?
A. I did prepare this disc.
Q. And the information on that disc includes phone calls made by Marion Bonds?
A. Yes. It has certain writing on it. It has the disc, zero three zero one, which indicates it's been marked. This was the recording for subpoena number zero three zero one. It's for the subpoena I received in March. At the bottom I wrote the inmates name Marion Bonds and I initialed the disc myself, those are my initials.

MS. TANNER: Your Honor, the State moves 23 into evidence.

MR. DEYSACH: Your Honor, I have the -- sthe prior objection in pre-trial. And also I do not believe that the requirements of rule 901 of the rules of evidence for the voice identification or telephone conversations have been complied with by the Solicitor, so I object on those counts also. That's rule 901, five and six.

BY MS. TANNER:
Q. Mr. Vortisch, before turning this over to law

enforcement did you review that CD that you created?

A. I did.

Q. And you have confirmed information on that CD are the voice recordings of Marion Bonds?

A. I have.

MS. TANNER: Your Honor, the State's position, we have met rule 901.

THE COURT: All right. I do find that you have met the requirements under the rule of evidence.

MR. DEYSACH: Okay. Just for the record, I'm going to give voice to the requirements. I think there is no testimony that Mr. Vortisch can recognize the voice from hearing it at any other time under the circumstances connecting it with the alleged speaker and it doesn't fit under number six cause what number six refers to is calling the person whose recorded phone number and by authenticating it by matching it up to their phone number and that's not what the situation is here.

THE COURT: Respectfully, I overrule the motion. Go ahead.

MS. TANNER: I have no further questions.

Please answer anything defense counsel has.

CROSS EXAMINATION

BY MR. DEYSACH:

Q. When -- just very briefly, Mr. Vortisch, Sergeant Vortisch?

A. Mr. Vortisch.

Q. Mr. Vortisch, when people are making phone calls from these phones you can't see them can you?

A. I don't understand that question.

Q. When--

A. Oh, see the person?

Q. Yeah.

A. No. No, sir.

Q. Okay.

MR. DEYSACH: I don't have any other questions.

THE COURT: Anything further?

MS. TANNER: Nothing further. May this witness be excused?

THE COURT: Any objection?

MR. DEYSACH: No, Your Honor.

THE COURT: Call your next witness, please.

MS. TANNER: The State calls Brian Chapman.

Being first duly sworn, **BRIAN CHAPMAN**, testified as follows:

THE CLERK: Please state your name and spell it for the record.

THE WITNESS: Sergeant Brian, B-r-i-a-n Chapman, C-h-a-p-m-a-n.

DIRECT EXAMINATION

BY MS. TANNER:

Q. Good afternoon, Mr. Chapman.

A. Good afternoon.

Q. Where are you employed?

A. The Beaufort County Sheriff's Office.

Q. And how long have you been working there?

A. Since 2003.

Q. In what capacity are you employed with the Sheriff's Office?

A. I'm a sergeant with the criminal investigation division.

Q. Now, as part of your job as an investigator, were you working on February 17th, 2010 on the case involving Marion Bonds?

A. Yes, ma'am.

Q. And as part of that investigation did you have the opportunity to review phone calls being made by Marion from the detention center?

A. Yes.

Q. Explain to the jury how that was working?

A. I logged on to the system and began viewing phone calls that Mr. Bonds was making outside -- from the inside outside on the phone.
Q. And were you listening to this live?
A. Yes, ma'am, I was.
Q. So as he's making the phone call, you're listening to it?
A. Yes, ma'am.
Q. Based on what you hear, do you take any action?
A. Yes, ma'am. I hear conversations about narcotics and then based on that information I relayed that information to the drug task force.
Q. And you have had an opportunity now to review those phone calls again?
A. Yes, ma'am.

MS. TANNER: If I may begin publishing the relevant parts of these phone calls?

THE COURT: You may.

BY MS. TANNER:

Q. Investigator Chapman, start first, there is a phone call -- Did you listen to a phone call place by Marion Bonds and his girlfriend?
A. Yes, ma'am.
Q. And in listening to that phone call what do you hear Marion Bonds discussing?

A. During that phone call I heard Mr. Bonds discussing something about that he was there -- I didn't know what he was referencing at the time but he was there and he shouldn't have done it. And I also heard conversations about narcotics, specific things about narcotics during the conversation.

(Recorded phone call being played in the courtroom.)

BY MS. TANNER:

Q. Now, Investigator Chapman, did you also hear a phone call placed by Marion Bonds to Larry Holmes?

A. Yes, ma'am.

Q. Have you had an opportunity to review that again?

A. Yes, ma'am.

Q. What was the conversation by Marion during that phone call with Larry?

A. During that conversation Mr. Bonds tells Little Larry, Larry Holmes about specific weight of narcotics inside the house and he also --he also references the shoes, the red and black shoes again.

(Recorded phone call being played in the courtroom.)

BY MS. TANNER:

Q. And, Investigator Chapman, did you review a phone conversation placed by Marion Bonds to Mr. Richard

Lewis also known as Old School?

A. Yes, ma'am.

Q. And what was the content of that conversation?

A. Again, this phone call from Mr. Bonds to Old School or Richard Lewis basically referenced narcotics in the trash can, a location he directs Old School to go the trash can and remove the narcotics. Language is used specific to the narcotics about what the cookie is referenced. He also then directs Old School, Richard Lewis to hold the -- hold the items for him.

Q. Can you also tell from the conversation what's going on in the background at Richard Lewis' home?

A. Yes, ma'am. You can also hear Officer Paul Green from the Beaufort County Sheriff's Office, you can hear him in the background directing Mr. Lewis to come out of the house and stay outside.

(Recorded phone call being played in the courtroom.)

BY MS. TANNER:

MS. TANNER: Thank you. I have no further questions.

THE WITNESS: Yes, ma'am.

CROSS-EXAMINATION

BY MR. DEYSACH:

Q. Okay. Good afternoon, Investigator Chapman.

A. Good day, sir.
Q. This wasn't -- your only part in the case wasn't just listening in on the phone calls, was it?
A. No, sir, it wasn't.
Q. You went to the hospital with Investigator Fraser?
A. Yes, I did.
Q. You observed Reggie's wound, correct?
A. Yes.
Q. Did you speak with the doctor before you went and viewed the wound?
A. I don't remember speaking to the doctor.
Q. When you saw Reggie had his wound been dressed?
A. I believe it had. I couldn't say for sure.
Q. Show you State's Exhibit number two. Does that reflect the hospital's dressing on the wound?
A. Yes, sir, it does.
Q. You were -- you were present -- actually took part in interviewing Reggie?
A. Yes, sir. I was there.
Q. The -- he told you that both Jason -- he told you that Jason had come into the house, didn't he?
A. I don't remember exactly what he said, he made reference to Jason.
Q. Did you make any notes on this interview in your report?

A. I did. He told me -- he told us Marion Bonds and he also made reference to Jason.
Q. Okay. Is it true that you left most of the note taking from that interview to Investigator Fraser?
A. Yes, sir. He took most of the notes.
Q. Okay. Were you, at least at the beginning part of the day were you connected with -- with Investigator Fraser, were you guys working together?
A. I believe I was already at the office, the investigations' office, when the incident occurred and then I was asked to go to the hospital.
Q. And you met at the hospital?
A. Yes, sir.
Q. Okay. And after you went to the hospital you eventually ended up at [redacted] Ball Park Road?
A. I think so, yes.
Q. And you were the one who actually took Larry Holmes into custody; correct?
A. Yes, sir.
Q. You took a statement from Larry Holmes?
A. Yes, sir, I did.
Q. You -- and you listened in on the phone calls that Marion made to Larry Holmes?
A. Yes, sir.

Q. Isn't it true that on one of those phone calls that Larry admitted to not getting all of his stuff out of [redacted] Ball Park Road?

A. I don't remember that. There may have been a conversation with Larry representing his stuff, I don't remember exactly what the conversation said.

Q. Did it ever say, "you ever went and got your stuff or what" and his answer was, "no I ain't got it"?

A. If -- if that's on the recording then that's what he said.

Q. Larry Holmes was never arrested for anything was he?

A. Not to my knowledge.

Q. You ever heard Reginal tell you that anything was taken from him?

A. As in--

Q. I guess I'm -- I kind of did jump. Going back to what happened -- the incident at Eddings White, you're interviewing Reginal Holmes, he tells you that he never turns anything over to the robbers?

A. I don't recall exactly. I remember him making reference to the suspects but I don't recall exactly what he said took place.

Q. Well, there's a difference between an attempted armed robbery and armed robbery, isn't it?

MR. DEYSACH: I don't have anything further, Your Honor.

MS. TANNER: Nothing further, Your Honor. May this witness be excused?

THE COURT: Yes you may.

MS. TANNER: Your Honor, with that the State rests.

THE COURT: Ladies and gentlemen of the jury, I'm going to send you back to your jury room and at this point the State has rested their case. Please, do not, again discuss this case. We will be back with you shortly.

(Whereupon the Jury breaks at 4:37 P.M.)

THE COURT: Are there any motions?

MR. DEYSACH: There are, Your Honor. When you're ready.

THE COURT: I am ready.

MR. DEYSACH: I certainly want to renew all of my objections. I also want to -- I think we have given full -- full discussion to the constitutional issue of the search and the arrest. There was also a motion to sever that was denied, I want to renew that motion at this time. All the other objections that I've have made to the evidence that have come in. Pursuant to

objections from the pre-trial motion as well the other objections I want to renew and preserve for the record.

I guess one -- one motion I want to make right now is the merging of the two trafficking charges. What we have is, in the first search, three separate amounts all combined to create the sixty-six grams that they charged him with, in the first place and then when they don't find everything that's in the house they come back.

Obviously, Marion Bonds has been removed from the house and so that -- that -- if he's the one who in fact possessed those drugs to get them there, as I believe is the State's theory, nothing could have changed once he was taken into custody in order to bring those drugs there. So they had to be there based on what the State has presented when they did the initial search. And I don't think that just because they have -- they didn't find everything the first time that they can split up the amounts to make separate traffickings, just like they didn't charg him for trafficking for the forty-four grams, PWID for the five grams of one pill bottle, another trafficking for the sixteen grams in the other pill bottle, anymore than they

did that, they can't split up those charges. Looking up case law, Your Honor, it's hard to find the four-legged cow, the case that fits exactly. The one case that we have from South Carolina is -- is State v. Brown is one case, there may be more, but one that I located, one where a deal was set up by police to buy four ounces of drugs, I can't exactly remember whether it was crack or cocaine, the police decide to only buy two. They charge the defendant for the sale and then for the possession with intent to distribute for two ounces that they didn't buy at the time. And while there's obviously factual differences because that's a sale and those types of things. I think that there is an analogy here where simply leaving behind a certain amount of drugs and then coming back and finding it later shouldn't be the basis of a whole new charge. When you add up, even if you include the amount of drugs under the mattress, things which you didn't hear are referenced to on the tape, things that were probably closer in proximity to somebody else even if you don't -- even if you included that amount of drugs with what was found the twenty grams in the bathroom you are still in the twenty-

eight to a hundred slot it doesn't raise up to a -- - to a over a hundred slot that our drug laws have carved out. And so I don't think that it's appropriate as I said for the Solicitor's office -- - anymore appropriate for them to come back and charge Mr. Bonds with more crack that they found later as a different charge than it would be for them to leave what was underneath the mattress and come back and get that. Which they didn't do and so they can't just break up each individual, I mean, they could have I guess technically taken separate pieces of the crack that were there and then charged based on each one of those separate pieces but when they find all the drugs in one place, that are left there at one time, it needs to be part of one charge and so I think that merger is what I'm looking for. I think there -- I think that there is probably -- I'm trying to figure out how to constitutionalize it. It's kind of like them giving themselves multiple bites of the apple if you're able to try to convict him of trafficking for this amount or for that amount, like, to give the Solicitor's office the chance at the forty-four grams in the shoe and if that doesn't work take another chance at the twenty

grams underneath the -- underneath the-the bathroom sink would not be fair. I think we've violated a due process right that my client has.

So that's what I would like for you to consider, really merging those two into one trafficking, twenty-eight to a hundred.

THE COURT: Okay.

MS. TANNER: Your Honor, these are two separate charges. The initial forty- four grams plus the two pill bottles, those are found in one instance. It is the defendant's further criminal behavior after that. He was charged with conspiracy to traffic not following the same statue, it's got the same sentence guidelines, but the State had to present more evidence to prove that batch of drugs, I mean, would have. There was no way we could have stopped with the first batch of drugs and included to second batch. There is further evidence that goes to this conspiracy and that one, Mr. Lewis was charged, these two are charged with conspired -- conspiring to traffic, based on his phone conversations of "I need you to go get it, I need you to hold it. I'm going to need it when I get out. I've got a lot of work in that shoe". So the intention is he was

conspiring with Mr. Lewis to traffic that cocaine when he gets out of jail. That is above an beyond the crack that is found in the closet where he is hiding which is based on inference weight, which was over twenty-eight grams.

So these are separate charges. I think, absolutely, at the time of sentencing, Your Honor, can take into consideration that it would be concurrent versus consecutive. No -- no problem with that, absolutely you could take that into consideration but to consolidate the two charges they are proved with different evidence, they are for different acts and I just don't see how they can be merged into one offense.

MR. DEYSACH: I think the one point that I want to make is you've got to -- she's looking at it from how the drugs were found as opposed to the conduct of the defendant and so when they see separate charges it took separate trips to the house to find them but when you talk about being separate charges there are separate things to prove it it's all in the same section, it's all in both indictments. The word conspire is in both indictments and I'm not sure that -- either they can prove conspiracy to possess that amount, I

suppose, or they could prove, and actually, they could prove a constructive possession, that he had possessed the drugs before and, I mean, it's not necessarily just that he conspired to possess them in the future. I think the argument is that he possessed them before he put them in the garbage can. And so it's not really necessarily conspiracy as you stated.

THE COURT: Now, that's not what I just heard. I heard that -- and correct me if I'm wrong -- what I heard you say is -- as to the first drugs it's a constructive possession case, the drugs in the shoe and then the second set is the conspiracy portion of him calling Mr. Lewis and saying the drugs were there and that portion was conspiracy. That's pretty smart.

MS. TANNER: That's -- that's why we -- we had to present more evidence. Had I not put up the phone call -- I could -- I could have used the phone call because he talks about the red and black shoe. I can use that to prove that he was in constructive possession while he was in the -- in the closet with it, absolutely. An -- and--and -- and, yeah it was used for that. But there is further activity, he is talking to Old School, he

is talking to Larry, he is talking to his girlfriend about, "you guys need to get this, you got to hold it for me, it's in the trash can, they didn't find it". It's not -- If it were just based on the weight amount---

THE COURT: It's -- It's a separate incident and I akin this to when you talk about, you know, someone doing a number of sales to -- each distribution would be charged separate distribution, even if it's the same CI, even if they are all done on the same day. But the new action which you argued, Mr. Deysach, that there is new action because you're was incarcerated. There was new action. The new action was he called Mr. Lewis and said, "the drugs are there, hide them, move them, get rid of them". That's the new action.

MR. DEYSACH: He did the same thing on the other amount though.

MS. TANNER: If --If that crack that was under the sink had been found in the patrol car that he was transported to the jail in, no further conversation, no phone calls to his friends, I could agree with Mr. Deysach. He's in possession of it, nothing new happened, he didn't try and

commit a new crime. But the thing is he did. He tried to commit a new crime. He tried to get these people together to conspire to hide this crack cocaine, "hold it for me because I'm going to need it when I get out" and he calls it work. So that is a separate crime. It is not about the simple possession of it. It is a separate crime to conspire to traffic cocaine.

MR. DEYSACH: The crime is to conspire to sell, manufacture, deliver, purchase, or bring into the state. There is not an allegation that he was conspiring with Richard Lewis to sell. He was not conspiring to manufacture it, he was not conspiring to deliver it, or purchase it, or bring it into the state as it already was in the state. So really it doesn't fall under conspiracy -- the thing that somebody has to conspire to in order to be falling under that statute in the first place. At least as far as their indictment alleges, if that what -- if that's what I'm looking at.

MS. TANNER: I believe that is an issue for the jury. They have heard information that this amount of crack cocaine is not a personal use. It is multiple, multiple personal uses. They hear him on the tape saying, "I'm going to need that

when I get out, I've got a lot of work in there". That is for them to decide what his intention was that -- that goes beyond just the fact that this is a separate charge and that's getting outside of, I guess what we're arguing right now.

MR. DEYSACH: But there --there is no co-conspirator if he was going to be selling or distributing.

THE COURT: What about delivering?

MS. TANNER: He was definitely planning to deliver it to Mr. Bonds when he got out. At least that what he said. "Okay. Okay. I got it. I'll hold it for you".

MR. DEYSACH: How do you--

THE COURT: Are y'all now talking to me about the drugs that were in the trash can and he took them out and he dumped them over. That's what I heard on the tape.

MR. DEYSACH: That's what Richard Lewis did. That --that was what he was -- he was going to deliver. This is an indictment for Marion Bonds.

THE COURT: That's what conspirer's do.

MR. DEYSACH: Right. So--

THE COURT: Conspiring to.

MR. DEYSACH: Conspiring to deliver to

himself?

THE COURT: Conspiring to deliver.

MR. DEYSACH: To himself?

THE COURT: It doesn't have to be to himself it just has to be conspire to deliver.

MR. DEYSACH: To whom?

THE COURT: To put them out.

MR. DEYSACH: I think for any deliveries to occur somebody has to be delivered to. And maybe Richard Lewis was going to deliver, I think that could be a theory, but I don't even know how you deliver crack -- how can Marion Bonds conspire to deliver it to himself? That's -- that's really what possession is; I guess.

THE COURT: All right. Respectfully, I'm denying your motion. It's definitely and interesting argument, I think if the facts were different I would understand your point. But actually again I think he's charged very interesting and smartly. So I -- I -- I think it's a fair -- I think it's a fair and separate offense.

MR. DEYSACH: Okay. Directed verdict motion, Your Honor. I've attempted to read you all of my objections already. And -- and -- and the pre-

trial motions, both are the constitution and the severance nature. Now, I want to make my directed verdict motion. I think there is to each charge -- I think that there has not been -- there has not been testimony that -- that an assault and battery with malice of forethought has occurred. There hasn't been any testimony that an intent to kill that -- that it would be appropriate. See I don't think that there is enough evidence to send to the jury when it's based just on Reggie's testimony which has changed as to who was involved as the identity of Marion Bonds was the person who caused the harm as far the assault and battery with intent to kill was concerned. The weapon owned by Bonds -- the weapon--

THE COURT: Well, just in looking obviously, again this would need to be proved. You know, the only issue obviously there was an assault and battery, there was a gun shot. The question is whether or not there was malice towards another person requiring just is the intention to do any wrongful act without just cause or excuse and with an intent to inflict an injury. I think there is more than enough evidence in this case from which the jury can determine that malice existed in this

case.

MR. DEYSACH: The malice that must be proven is a malice of forethought which has the four elements of an intent to kill, a disregard, I guess, during the commission of another felony and---

THE COURT: I think it clearly, clearly meets the definition of the further requirements. I'm going to deny your motion as to that charge.

MR. DEYSACH: Thank you, Your Honor.

THE COURT: What about the attempted armed robbery?

MR. DEYSACH: Attempted robbery. We're kind of in the same boat with that. The only person who gives us any evidence that there is an attempt to commit any type of an armed robbery certainly, it is attempted armed robbery. So there is not an allegation of that anything was actually taken. It was Reggie himself -- Reggie has changed his story about what has happened. At first he said nothing was taken now he says that something was taken. Even when you listen to those phone calls they may have referenced the Eddings White area, there is nothing that they alleged Mr. Bonds to say about an attempt to commit a robbery. And so

I don't think whether it was him or Jason that has been proven enough to where you can send it to the jury. And I don't think the intent to rob there -- has also been proven enough to send it to the jury.

THE COURT: Well, respectfully, I do think there is evidence taken in light most favorable to the State that there was an attempted armed robbery, so I'm going to deny your motion as to that. What about the unlawful possession of a weapon by a felon?

MR. DEYSACH: Obviously, no gun found, no gun put into evidence, GSR kits are negative, and those are the facts -- those are the facts, I think, that the jury would need in order to convict on that charge.

THE COURT: Now, the eyewitness from the defendant who was shot by Mr. Bonds, additionally he has a gunshot wound and it's purely circumstantial evidence. Solicitor, you can pipe in at any time.

MS. TANNER: I just think in the light most favorable to the State there has been testimony that Mr. Bonds pointed a pistol at Mr. Holmes and pulled the trigger. We saw photographs and we saw

scars where the bullet hit him. And I think that that is sufficient evidence in light most favorable to the State for them to consider that Mr. Bonds was in possession of a firearm and we have stipulated to the fact that he was a felon in possession at the time. He was a felon who admitted to possess at the time.

THE COURT: All right. Let's go on to.

MR. DEYSACH: The trafficking I've already made one -- one motion on. I would also say that just generally I think that the jury doesn't have enough information to send these charges both trafficking the twenty grams and the forty-four grams of the sixty-six gram amount that is being alleged. I certainly would ask you to reconsider the rulings that you've already made. I think that the suppression of the drugs would be appropriate in this matter. I know that it's been explored by us and so I just would bring that back up.

THE COURT: All right.

MR. DEYSACH: The possession with intent to distribute one half mile of the school. The -- the charge is possession with intent to distribute crack within one half mile of the school, not

possession within one half mile of the school with intent to distribute. And so my point is that they have to have some evidence that the distribution was going to take place within one half mile of the school and I don't argue that they have the same -- they have to prove an intent to distribute but they don't have to in the trafficking charges, they just really need to prove those are more weight based. This actually includes an intent to distribute that they -- that they need to have some evidence of and of distribution would have occurred within one half mile of the school.

THE COURT: Well, I can tell you the elements of this charge, they have to -- the State has to prove that the defendant did, in fact, unlawfully possess with an intent to distribute a controlled substance and the intent to distribute portion being referred on is on the weight. And it actual offense was done within a one half mile radius of the grounds of a school.

MR. DEYSACH: Okay.

THE COURT: I understand what your argument is but those are the two elements that I think, based on the testimony that was given, I do think that

the State has produced evidence for which the jury could determine that Mr. Bonds did, in fact, possess with the intent to distribute a controlled substance.

MR. DEYSACH: I -- I just want to clarify, what you're saying is you disagree with me that they have to prove that the distribution point that was intended was in -- was within one half mile of the school. They don't have any evidence that any distribution was going to take place that close but that that's not required?

THE COURT: I understand what you're saying. Do you have any case law that says it's the actual distribution portion has to -- distribution has to occur within that half a mile? Part of the statute says we don't want just crack cocaine laying around where kids can pick it up, like at a playground, I mean, I think that was the other intention of the legislature although. You got some case law on that cause that would be really interesting, Mr. Deysach? I've never heard that argument but it's pretty good.

MR. DEYSACH: Well, it's--it's--it's not--I--I haven't found any case law. It really is simple sentence and reading grammar sentences as you read

it. You know, if they want -- if they meant possession, you know, within one half mile of the school with intent to distribute that's how you would say it, I mean, that's what my -- you know, ninth grade English teacher taught me. But I think with the new law they've attempted to clarify some of that but whether or not that's been actually clarified or not to that extent; I'm not sure.

THE COURT: I like your argument, I just -- I just don't buy it. Respectfully, I'm going to deny your motion, as to that charge as well. Anything further?

MR. DEYSACH: I do not have anymore motions.

THE COURT: All right. Is this an appropriate time for me to discuss with your client his amendment rights?

MR. DEYSACH: I think it is.

THE COURT: Okay. If you would, Mr. Bonds, I'm going to go ahead and just swear you under oath, sir, if you would just raise your right hand.

Being first duly sworn, **MARION BONDS**, testified as follows:

THE COURT: All right. Mr. Bonds, I'm going

to ask that you speak up so my court reporter can hear you cause I'm having a hard time. Okay? Sir, right now what I'm going to do is explain to you your fifth amendment rights, to testify or not testify in the trial of this case. I want you to understand and know that you have the right to present your defense at this time. It's now your opportunity to present whatever you want to. And I want you to also understand that you have the right to claim the protections that are given to you under the fifth amendment, which means you don't have to testify and no one can make you testify against yourself. And I want you to also understand that if you choose not to testify in this case that I'm going to charge the jury in my jury charge that the fact that you didn't testify cannot even be discussed back in the jury room, because it's not--it's--it's not required and it's not appropriate. The simple fact is you don't have any duty here to prove your innocense. The burden is on the State to prove your guilt beyond a reasonable doubt, but what I want you to understand, sir, is if you do decided to testify you're going to be subject to the same rules that govern the other witnesses. In other words, you

could be examined and cross-examined on anything that is relevant to this case or that I rule is relevant to this case. In additionally, sir, if you have any convictions involving dishonesty or false statements or if you have convictions of crimes that are punishable by imprisonment for more than one year, and I've determined the probative value outweighs any prejudice, the State would be allowed to ask you those questions in cross-examining you. Do you understand that, sir?

THE WITNESS: Yes, ma'am.

THE COURT: And again, they do that to attack your credibility and we certainly understand that. So I just want to make sure you understand that this decision to testify or not testify, while you, absolutely, should counsel with your attorney for his advice, you need to understand that these are personal rights to you and only you can make the final decision. Do you understand that, Mr. Bonds?

THE WITNESS: Yes, ma'am.

THE COURT: And have you had an opportunity to discuss with your lawyer whether or not you should testify in this case?

MR. DEYSACH: I want to jump in. We have

discussed it, I think he might after the pro -- since he's just heard this whole case.

THE COURT: Okay.

MR. DEYSACH: Probably, does want--

THE COURT: A few more minutes to decide?

MR. DEYSACH: Yeah.

THE COURT: Okay. All right, sir. So what I'm going to do, I'm going to go ahead and give you an opportunity right now to speak with your lawyer. Mr. Deysach, other than if Mr. Bonds testifies, do you have any other witnesses?

MR. DEYSACH: I do not, Your Honor.

THE COURT: Okay. Well, then let's do this, gentlemen, I'm going to give you about ten minutes or so to determine whether or not Mr. Bonds wishes to testify. Mr. Bonds, I'm going to come back and ask you whether or not you want to testify, whether or not you understand your rights, whether or not you've counseled with your attorney, Mr. Deysach, and what you wish to do. All right, sir?

THE WITNESS: Okay.

THE COURT: All right, sir. Okay. We'll go ahead and take about ten minutes. It is, by the clock back there, we're going to go by that clock and it's exactly 5:00 and we'll be back at 5:10.

Okay?

(Whereupon the Court takes a break at 5:00 P.M.)

(Whereupon Court resumes at 5:12 P.M.)

THE COURT: Mr. Bonds, if you'll stand again, sir. Thank you. Sir, have you had an opportunity to discuss with your attorney, Mr. Deysach, whether or not you wish to testify in this case?

THE WITNESS: Yes, ma'am.

THE COURT: All right. Have you had enough time to talk with him about it?

THE WITNESS: Yes, ma'am.

THE COURT: All right, sir. Are you going to testify?

THE WITNESS: No, ma'am.

THE COURT: All right, sir. And that is you're decision; is that correct, sir?

THE WITNESS: Yes, ma'am.

THE COURT: Thank you, Mr. Bonds, you may be seated, sir. All right. What I'm proposed to do -- do you have any other witnesses, Mr. Deysach?

MR. DEYSACH: No, Your Honor.

THE COURT: What I am proposed to do is bring the jury back in. Why don't you just go ahead and rest your case in front of the jury and I'm going to go ahead and excuse them. For scheduling

purposes tomorrow morning, it's my understanding that Judge Brown's jury is out right now, with any luck there will be a verdict tonight. You can do -- Is he planning on doing probation?

PROBATION OFFICER: I haven't spoken with him, yet.

THE COURT: Okay. Well, whoever is free. He doesn't get to it then I can certainly can do it while our jury is deliberating. All right. Why don't I do this, tell them to be back at 9:30 where we can argue and charge in this case, okay? All right. Then you need to stay tight in reference to my jury charge certainly after we send the jury out.

(Whereupon the Jury enters the courtroom at 5:18 P.M.)

THE COURT: Welcome back, ladies and gentlemen.

MR. IAN DEYSACH: Your Honor, the Defense rests.

THE COURT: Ladies and Gentlemen, at this time the Defense has also rested their case. What we have left to do in this trial is hear the arguments from the attorneys and my charge on the law. I can tell you based on the hour, it is about 5:15, it is much too late to do that

tonight. I could tell you that my Jury charge in this case is probably a good 30 to 40 minutes long and I'm sure the closings will take some time as well.

So Ladies and Gentlemen, what I am going to do is send you all home. I'm going to ask that you be back at 9:30 tomorrow morning where we're going to conclude the trial of this case and you can expect stay with me until you all have reached a verdict.

Ladies and Gentlemen, again although you have heard all the evidence in this case, you have not heard the arguments from lawyers, you haven't heard my charge on the law, and again it will be inappropriate for you to do any independent research or anything along those lines.

Third thing I ask, Ladies and Gentlemen, is that you go home and get a good night's rest. Come back at 9:30 and we will conclude this case. Again, I want to thank you all for your attention today. You all have been a wonderful jury, and I look forward to seeing you again at 9:30 tomorrow morning. Thank you.

(Whereupon the Jury is dismissed for the night at 5:18 P.M.)

THE COURT: All right, y'all. Just for the record I want to discuss my jury charge. I know you both are familiar with my standard charge which is where this comes from. Just to go over a couple of things and I understand that my law clerk, Robin Graham, had asked you all earlier if there is any specific or special request to charge that you have. I think we've got it pretty much covered, considering we all know what we're talking about here.

Just to give you an outline and for the record, I'm going to, obviously, charge the presumption of innocence and of course, I always start by saying that the charge in the indictment is not evidence. I'm going to charge reasonable doubt of course. The duties of the jury and the trial judge is that the jury is the judge of the facts and I am the judge of the law. I'm going to charge direct and circumstantial evidence and differences. I'm going to charge on expert testimony and we did have two experts in this case. And I'm also gonna charge on the credibility of the witnesses and weighing the credibility of the witnesses. I'm also going to charge with the fact that the Defendant did not

testify cannot even be considered by the jury. That would be highly inappropriate and again I'm adding that the burden of proof remains on the State. I will go ahead and charge that the charges in this case, assault and battery with intent to kill, attempted armed robbery, unlawful possession of a weapon, trafficking in crack cocaine within 28 and 100 grams, trafficking in crack cocaine 10 to 28 grams, and possession with the intent to distribute crack cocaine within a half-mile proximaty of a school, and I'm also going to charge that typical multiple charges just basically saying that the indictments are legible to the charges. Each are a separate, distinct offense. You must weigh them each separately and provide a separate verdict for each of them. Anything else specifically, Mr. Deysach?

MR. IAN DEYSACH: I have two that I have. One is an instruction that the stipulation that my client's been convicted of a crime of violence is to be considered only for that charge, not as evidence of any other charge that he's facing.

THE COURT: I think that's fair enough.

MS. ANGIE TANNER: I have no objection to that.

MR. IAN DEYSACH: I also believe---

THE COURT: (conversation with law clerk)

MR. IAN DEYSACH: The assault and battery of a high and aggravated nature would be appropriate as I read Judge Anderson's charging book that the use of a deadly weapon is an aggravator that is available for assault and battery of a high and aggravated nature, infliction of serious bodily injury. And so I think that there is evidence in the record of a short hospital stay, Reggie reluctant for EMS care, saying he would drive himself to the hospital himself, that the--there wasn't the required malice -- I'm not saying it should be the directed verdict at this point, but that there is enough for an ABHAN charge to go along with the assault and battery with intent to kill.

MS. ANGIE TANNER: Your Honor, the State would ask that not be charged. The fact that he's a poor shot and hit in the arm and not a head or a chest, it doesn't change his criminal intent. I think there is sufficient evidence surrounding the incident that it was an assault and battery with intent to kill. He did use a deadly weapon. He was aiming at the victim. He did strike him, but

for a couple of inches, it wasn't a murder case.

MR. IAN DEYSACH: There is a picture in evidence that appears to show a burn, a blister on Reggie's forearm, that I know the emergency room doctor said that it was the initial contact of the bullet which caused a bruise out of which comes a burn which leads to the injury wound. I think that there's definitely an inference there that the gun was actually pressed up against Mr. Holmes arm. I mean I -- the picture is in evidence. I'll reference it.

THE COURT: What are you alleging that shows?

MR. IAN DEYSACH: That it's not that he's aiming wildly at Reggie as he's ten feet away, but that the gun is up against his arm and therefore that intent to kill wouldn't be there. It was really just be an intent to cause serious bodily injury.

THE COURT: Okay.

MS. ANGIE TANNER: There was testimony that actually completely refuted that. Testimony of a professional. The doctor who examined him said that this was absolutely not a contact wound, there was no stippling, there was no burning, and that what you're looking in the photograph is a

bruise. He was very specific about that and I know that's not what Mr. Deysach wanted him to say. That's the testimony that that was not a burn. That it was not a contact wound. It was from a distance. And he was asked that, was that a shot from a distance and he said yes.

THE COURT: Let me ask you. The only difference between assault and battery with intent to kill and assault and battery with a high and aggravated nature is the malice; am I correct on that?

MR. IAN DEYSACH: Well, I wish that it was clearer---

MS. ANGIE TANNER: The injury doesn't matter.

MR. IAN DEYSACH: I mean both of them require injury, violent injury.

THE COURT: It's not the injury, I'm pretty sure. I'm positive I'm correct. The only difference is the malice required.

MR. IAN DEYSACH: Right.

MS. ANGIE TANNER: That's correct.

MR. IAN DEYSACH: And I'm not saying she can't argue for assault and battery with intent to kill. Clearly that was already covered in my directed verdict motion. But whether there's enough

evidence to instruct on assault and battery of a high and aggravated nature. And I know she disagrees with me on what inference can be drawn from this photo but I'm certainly not drawing a crazy inference. I think anybody who will look at it, would, you know, automatically assume that that would be a contact wound, not a bruise, caused by a flying bullet that then skims along the skin to eventually cause a contact entry wound. And that is State's Exhibit Two that I was looking at.

THE COURT: What are the facts that have been introduced in the case that would make it that there wasn't even implied malice just based on -- obviously the specific intent to kill is not required under ABWIK, you can have a general intent. And certainly intent can be infered from what happened. I guess my question would be, if you had some portion of a self defense -- not that that's ever been raised -- what is in the record that would show that for your client, would show that there was no malice involved?

MR. IAN DEYSACH: When they played the tape, one of the lines that were spoken was, by Marion, as the Solicitor played it -- "I shouldn't have

been even going along with that". I hope you don't mind if there's salty language here. "I shouldn't have been going along with that shit, man. I've been right there. Yeah, I was outside the f-ing door. The man came out there swinging on me and shit so I just dang-gone---", "hush" is the response. So there is evidence in the record, put in by the Solicitor, that Reggie was swinging on him.

THE COURT: Solicitor, can you respond to just that specific -- don't talk to -- again -- just that specific portion he talked about in the tape. Is that on the tape, Mr. Deysach? I didn't hear that but apparently---

MS. ANGIE TANNER: He does say that. He's telling, I think it's conversation with the girlfriend. He said, "Man, I'm not gonna lie, I was there." He does say something about, "that man came swinging up on me and I just dang-gone" and then she says, "hush". That's what I heard.

THE COURT: I'm going to tell you based on that testimony, I'm inclined to charge ABHAN. Other than that, Mr. Deysach, any other evidence in the case that you are content shows that there was no malice, or evil intent? I think there were

evidence for things like, lets say the victim came to his house, that would -- I would then charge and AGHAN, yeah. That would make sense but that's not what we have here. Anything else that you can think of? I'm not saying that the first isn't enough. But is there anything else?

MR. IAN DEYSACH: I've already brought up a photo and I don't need to get back into that. "He was swinging on me"--I can't think of anything right this second, to be honest with you.

THE COURT: Well, let's do this. I can tell you right now, I'm convinced that I think that's enough just based on that testimony alone. So what I'm going to do is I'm going to have Robin pull up the charge and I'm going to have it put in as a lesser included. If you can think of anything else overnight, why don't we just go ahead and put it on the record. But I can tell you as of right now, that I'm inclined to, just based on that testimony alone. And when I say inclined, I'm going to put it in.

MR. IAN DEYSACH: Thanks, Your Honor.

THE COURT: Unless, I take it out again. I think that's fair based on that testimony.

MR. IAN DEYSACH: Yes, Your Honor.

THE COURT: Anything else, Mr. Deysach. So we'll put in obviously the language in regards to how they can use information for the stipulation and also the AGHAN as to a lesser included.

(Talking to law clerk)

MS. ANGIE TANNER: Does the charge on the trafficking include the language about the inference weight? I think it does, I just want to make sure.

THE COURT: Okay. It's not an instruction right now but we can go ahead and put it in.

MR. IAN DEYSACH: I'm not sure that -- my argument is that it's not in there for a reason. And that is if they've proved possession, they don't have to prove an intent to distribute with trafficking. They just need to prove possession or attempted possession of a certain amount. An so the intent to distribute is not an element that they actually have prove and so therefore inference weight -- I guess maybe that would be more appropriate for the PWID charge school zone charge.

THE COURT: Hold on a sec.

(Judge is speaking to Law Clerk)

THE COURT: Solicitor, what are you

specifically asking for me to charge?

MS. ANGIE TANNER: I believe it's in the statute. I'm trying to find it. There is the language in the statute about if it is an inference possession of more than a gram there is an inference of possession with intent to distribute and that is an element of trafficking, I believe. It is the intent to traffic it and distribute it.

THE COURT: It should apply to the possession with the intent to distribute within a half-mile proximity?

MS. ANGIE TANNER: I think it applies to the trafficking as well.

MR. IAN DEYSACH: I really don't believe that they have to prove intent to distribute.

THE COURT: I don't think they do either and I'm just looking at it---

MS. ANGIE TANNER: I don't think they have to but I would like to.

THE COURT: I don't think they have to. Let me just make sure. Solicitor, I can't find anything as to the inference in the statute of either trafficking or possession with the intent to distribute. But I'm sure case law states that.

So I think we just need to go ahead and find a case.

MS. ANGIE TANNER: I'm going through 2453 now. The reason I have it in my head is because it's actually a separate line.

THE COURT: Well, I looked at the 3737550. I think that's where we might find it. It's after the question 445. Let's just see if we can't look overnight about that inference. Of course if we can't, if appropriate, I will charge it. The only other thing that also just saw in here, that I need to charge is when talk about --never mind. It's the section 545370, it says the weight of the controlled substance in a subsection includes the size then and is the substance in pure form or a compound or mixture of the substance. Again dealing -- when you find crack cocaine, that cocaine is something in and of itself, like Mr. Deysach noted. Cut with, is it baking soda? Do I have that right? Solicitor, obviously you didn't have any objection to charge on that portion of it?

MS. ANGIE TANNER: No, ma'am.

THE COURT: That is the law.

MR. IAN DEYSACH: One last line to draw us

away from the drug element of it. I think it's appropriate, an issue in this case is the identification of the defendant as the perpetrator of the crimes charged, the State of South Carolina has the burden to prove identity beyond a reasonable doubt. Identification testimony is an expression of a belief or impression by witness. You may consider the opportunity the witness had to observe. You may consider the credibility --I am jumping because I am reading out of Judge, the Anderson charge.

THE COURT: You're requesting a charge on that?

MR. IAN DEYSACH: Identification, yes. One that includes they must consider the credibility of each identification witness within the same way as any other witness.

THE COURT: All right.

(Judge speaking to Law Clerk)

MS. ANGIE TANNER: I did find the language I was mentioning. It is under 375B which is the possession of the intent to distribute. And it is, you go to 375 subsection big 'B'. It gives one, two, and three, and then there's one sentence by itself. It says, possession of more than one

gram of methamphetamine or cocaine base is prima facia evidence of a violation of a subsection. But it is in 'B' subsection which trafficking is 'C'. So it was in the 'B', Mr. Deysach was right. But I had seen it.

THE COURT: But do you have charges ---

MS. ANGIE TANNER: I would argue that it applies to trafficking as well.

THE COURT: I'm already going to put in the trafficking portion, I can tell you that. I'm asking this to the proper limiting charge.

MS. ANGIE TANNER: And to the proximity charge, they changed on us. It says that the inferences of intent to distribute are set out in 370 and 375 so...

THE COURT: Is that what I just read?

MS. ANGIE TANNER: Yes, ma'am.

MR. IAN DEYSACH: I know that AGHAN has changed name and have become different crime under the old law, makin sure we don't get fouled up by any of that.

THE COURT: Well, as of right now I won't charge the inference portion of it unless...

MS. ANGIE TANNER: I think the statute as it is written for trafficking is pretty much is

THE COURT: Anything else for tonight for tomorrow?

MS. ANGIE TANNER: No, Your Honor.

MR. IAN DEYSACH: No, Your Honor.

THE COURT: Good night, y'all.

(Whereupon Court was dismissed for the night at 5:45 P.M.)

--- END OF TRANSCRIPT OF RECORD ---

I the undersigned Deborah E. Everett, Official Court Reporter for the Fourteenth 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 Beaufort County, South Carolina, on the 15th day of December, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 14, 2011

Deborah E. Everett
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
2010-GS-07-598, 599, 600, 602, 603 & 634

STATE OF SOUTH CAROLINA,
Plaintiff

VS

MARION BONDS,

Defendant

TRANSCRIPT OF RECORD
VOLUME IV

DECEMBER 16, 2010
BEAUFORT COUNTY,
SOUTH CAROLINA

B E F O R E:

HONORABLE CARMEN T. MULLEN, Judge.

Deborah E. Everett
Official Court Reporter

A P P E A R A N C E S

ANGIE TANNER, Attorney at Law
Solicitor for State of South Carolina

IAN DEYSACH, Attorney at Law
Attorney for Defendant

INDEX

NO WITNESSES INTRODUCED

E X H I B I T S

NO EXHIBITS INTRODUCED

(Whereupon Court resumed at 9:48 A.M.)

THE BAILIFF: All rise. Honorable Carmen Mullen presiding.

THE COURT: Thank you. Please be seated. Is the State ready?

MS. ANGIE TANNER: State's ready, Your Honor.

THE COURT: Mr. Deysach?

MR. IAN DEYSACH: I am ready, Your Honor. I have, really I guess, two things I want to bring to Your Honor's attention. One is one that I've already discussed with Ms. Tanner. Seems like we've got an agreement that on those phone calls that she introduced that if they were to want to hear them again, they would have to come out here and listen to them. We wouldn't want them to listen to extra stuff that you had ruled on or anything like that.

THE COURT: Absolutely.

MR. IAN DEYSACH: The next thing I wanted to mention was that after thinking about it last night, our discussion about the school zone charge. I'm going to ask again if you would consider a directed verdict or not instructing on the school zone charge.

I think, as you mentioned, the elements were

that the act occurs within one half mile of a school zone. And when we're talking about the act, we're talking about the conversation that Marion is having from jail. And while the drugs may have been within one half mile of the school, the person committing the act was in jail on the phone which, isn't in one half mile of the school. Do you understand what I'm saying?

THE COURT: I understand your argument.

MS. ANGIE TANNER: But the conspiracy was that when he got out, he was coming back to that location to get his drugs that were to be hidden there and held for him. So the drugs are actually within a half mile of the school which, I believe, is what the Legislators are concerned about. That crack is within half a mile of the school and that the intent to distribute occurs with the crack, where it is located.

MR. IAN DEYSACH: The act must occur within one half mile of the school. It doesn't say the drugs must be, the act must be.

MS. ANGIE TANNER: But the drugs are within a half mile and they have to be present to be distributed. And the conspiracy is to distribute them, they're already there.

THE COURT: But wait a minute. I think the drugs do have to be within a half-mile of the school.

MS. ANGIE TANNER: And they are.

THE COURT: I understand they are but I think they have to be, too. I think that's the whole point of it.

MR. IAN DEYSACH: I'm not saying that the drugs aren't within a half mile of the school.

THE COURT: I know but I'm just saying -- let's just say, theoretically, let's say we put him within a half mile of the school and what he's doing is conspiring to distribute drugs. I don't think that's good enough. I think it's the drugs have to be within a half mile of the school.

MR. IAN DEYSACH: It's actually quite funny because she is now taking the opposite position that I took and vice versa from yesterday when we were talking about whether the distribution has to have been intended to occur within a half mile of the school, she's now saying that she doesn't have to prove that the actual -- well, it's slightly different and I don't want to confuse things but--

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THE COURT: I know what you're saying. I was

actually thinking the same thing.

MR. IAN DEYSACH: But she said the plan was for him to come back within a half mile of the school and complete the conspiracy, but that never occurred. There's never any evidence it occurred. He's been in jail the whole time and so it couldn't have occurred. And it must occur is what the element of the offense is; it must occur.

THE COURT: The whole point of the conspiracy is is that when people get together to conspire to sell or distribute drugs, the reason why there's a separate charge for that is because it's more difficult for one person to do everything. The idea is to stop people from aiding each other. That's why there is a conspiracy in the first place. We can't just have one person doing it all. So, I think clearly despite him being in jail not being within a half mile of the drugs at the time, I think he is promoting and forwarding the conspiracy which has its own distribution of crack cocaine which is within a half a mile of the school. I'm mean, respectfully --- I understand what your argument is but I don't think it's good. I'm going to say is not good. It's interesting but I'm going to deny your motion for directed

verdict. Anything further other than that, ya'll?

MS. ANGIE TANNER: Nothing from the State, Your Honor, but just to add to what Mr. Deysach said about the tape, when evidence goes back, we would just ask if the Bailiff confirm that there is nothing in the Jury deliberation room that would allow them to play a CD. That way I don't think there is I've never seen anything like that but if we could confirm that and that way if they want to listen they've got to come back here and we have to play it or them so that we can redact what was redacted initially.

MR. IAN DEYSACH: One last request is if you'd maybe reconsider not sending that photo lineup back there. I would hate for something as silly is that to kind of call any -- question any type of verdict that they would return. I take the responsibility for not making the objection contemporaneously but I would hate for that mistake on my part be something that would come back and haunt this case later.

THE COURT: I still think because there already is evidence in the case that your client, Mr. Bonds, was in jail. I don't think there's anything prejudicial. Even if it was error, I

think the Court would find this a harmless error, The Court of Appeals, The Supreme Court. Again they were all dressed alike. I don't think it's unduly prejudicial, of course because they already know he's in jail. So I respectfully deny that as well. Anything further?

MS. ANGIE TANNER: No, ma'am.

THE COURT: All right. Are you ready to go?

MR. IAN DEYSACH: Thank you, Your Honor. Yes.

THE COURT: All right. Let's bring the Jury in.

(Whereupon the Jury enters at 9:55 A.M.)

THE COURT: Good morning and welcome back ladies and gentlemen of the Jury. At this time, we're going to hear the closing arguments from the attorneys and then I'm going to go ahead and charge you on the law in this case, and we're going to send the case to you for deliberation. So if you give Ms. Tanner your attention, please.

MS. ANGIE TANNER: Thank you, Your Honor. May it please the Court?

THE COURT: Yes.

MS. ANGIE TANNER: Morning, Ladies and Gentlemen.

THE JURY: Good morning.

MS. ANGIE TANNER: These are just closing arguments. These are our summaries of how we see the case before you go and decide and make a final decision. As I told you at the beginning of this case, that you would see a chain of events. Let's start with the first link in that chain.

There is an assault and battery with intent to kill charge and there's an attempted armed robbery charge. Now a lot of information that you got about those two charges came from Reginal Holmes, also known as Reggie. So a lot of your decision will be based on what you heard from him. But as you're considering what you heard from Reggie, I also want you to consider what other evidence corroborated or backed up what Reggie said.

Well first, you're going to have to consider was it Marion, was it Marion Bonds who committed the crime. Or consider whether or not Reggie can identify his own cousin, does he know that Marion Bonds, someone he grew up with? Consider whether or not he would be able to identify him. Consider the fact that he was able to give descriptors, not only of what he was wearing, but to the fact that he's got a tattoo under his left eye. Then you

have to consider well, was there an assault and battery. Or you have to decide is that an assault and battery, was he shot? Was there a battery committed on the person and the Judge will define for you what a battery is. And it's basically an unwanted, unlawful touching. In this case, with a bullet.

Also consider when you're thinking about Reggie's testimony, Dr. Duff's testimony. This is an individual whose job, who every day works on gunshot wounds. He is the one who does that for a living, no one else in this courtroom does that for a living, only Dr. Duff. And I know that the Defense wanted him to say that the gun was somehow pressed against Reggie's arm when it was pulled. I don't know why, but let's say that the guy that does this for a living, says what? He says this is bruising. He said you can actually see the path of the bullet before it enters the arm and then he tells you, that's dried blood. He tells you there was no burn, there was no soot, there was no, what is called stippling, which is what you would see if the gun was pressed against the skin. The doctor told you, that's not there. In fact, he told you that is a distant shot. That

was his testimony.

What else did he tell you? He told you -- he helped describe for you the trajectory and that's basically -- that's a big word for the path of a bullet. And what did he show you? I asked him to show you on my arm if the bullet enters here and travels through here, and he said that's about the path of a bullet. Reggie told you that when he was shot, he was on his butt, his arm was in the air and he was trying to get up. He said that Marion Bonds was standing on the top of the stairs pointing down at him. And what other evidence do we have that backs up or supports Reggie's description? Well, here's a picture of the bottom of the steps. See that scuff mark? It's his butt or it could be his shoes, as Investigator Kelleher said, as he's scrambling to get up. But that's about location. This is about location. I'm not going to sit on the floor for you, but imagine that's the location. That corroborates Reggie's version of the events.

The last thing you heard yesterday was a phone call made by the defendant. These were Marion Bonds words. What did he say about it? He said, "Man, I ain't gonna lie. I was there. I was

outside the door, the man came swinging off on me and I just dang-gone" and his girlfriend said, "hush". So we didn't get to hear what he 'dang-gone' did. But what he dang-gone did was he dang-gone shot Reggie Holmes from the top of the steps outside that door.

So will your verdict say that pointing a gun, demanding money, and pulling the trigger -- will your verdict say that that is an attempted armed robbery and assault and battery with intent to kill? Because you're gonna be asked to consider a lesser charge of assault and battery of a high and aggravated nature. You're going to be asked to consider that those acts don't include the element of malice.

For assault and battery with intent to kill, you must decide that Marion Bonds had malice at the time he pointed a gun, demanded money, and pulled the trigger. Is that malice or is that just a simple assault and battery that ended up in an injury? You must decide.

The next link, you must decide the charge of whether or not he's guilty of being a felon in possession of a weapon. You heard the stipulation, you heard that it's admitted, and we

all agree that Marion Bonds cannot lawfully possess a gun because of a prior conviction for a violent crime. That is the stipulation.

MR. IAN DEYSACH: I know it's a term of art, Your Honor. It's a crime of violence, not a violent crime.

THE COURT: Noted for the record. You can continue, Solicitor.

MS. ANGIE TANNER: So for that charge, taking that stipulation, you must then decide, was Marion in possession of a gun when he shot Reggie? That's what you have to decide for that charge. And again, each charge will have to be decided separately.

Then we move to the drug charges. He is charged, first, with trafficking crack cocaine between 28 and a hundred grams. Again at the end of the day, you heard the phone calls. You heard him telling everybody he talked to, "go get my black and red Jordans", "go get my black and red Jordans". And what did he say was in those black and red Jordans? I'm going to use his language. I apologize but his language was, "I got a ass of dope in my black and red Jordans." Well, the technical term is 43 grams of crack cocaine but

you must decide if 43 grams is more than 28 grams. Crack cocaine in his black and red Jordans. But that's not the end of the drug charges. Find out a little more. He also had some located in the trash can. You heard how he called Larry and then he called Old School. He conspired with them to get that dope back. He conspired with them, "hide my dope", "keep it for me", "I'm coming back for it". And something else he called his dope. He had another word for it. Did you catch it? He called it his work. If you missed any of those, you can ask to have that replayed. It's evidence. You can ask to re-hear any evidence you've heard here. But what he calls his dope, is his work.

Now you heard from a member of the drug task force, Andrew Rice. And he talked about coke. He talked about the work end of it. What it's worth. What it cost. I didn't do the math on the spot but I started thinking about it. Let's take the small bag, 20 grams, that were in the trash can that Old School grabbed, while he was on the phone, through it under the sink where it was located.

This is 20 grams. Investigator Rice told you that for a hit for one user, it takes about .2

grams. And that makes five hits in one gram. This is 20 grams. That's a hundred high people in this bag. Each one of them paid about 20 bucks for a hit. It's called a dove. You got some new language to take home for Christmas. A dove is 20 bucks of crack cocaine. That's about $2,000 on the street. That is a lot of work. And that's what he calls it, work. He's conspiring to traffic his cocaine.

And finally, he's conspiring to do it and go back to this cocaine that's within a half a mile of a school. You'll see this closer up in your deliberation room. The lighter area is a half mile from St. Helena Elementary School. It's marked by -- the school is marked by the green flag. Old School's house, where all these drugs were hidden, is marked with a red flag. It's inside one half of a mile of the school. So all this work was going on across the street from an elementary school.

Now, I've told you this is a chain of events. I've told you this is about choices, and I told you this was about paths chosen. The witnesses that you heard from Reggie, Old School, you heard about their choices. You heard about paths

they've chosen. Where it's led them. Where it's taken their lives. And the judge will tell you that a part of your deliberation, you will evaluate the credibility of every witness you heard from. And as you're doing that, I ask that you would evaluate Reggie's credibility. He hasn't lived the perfect life. But I ask you to remember one thing in particular, Reggie admitted to you that in the beginning when this first occurred, he didn't want anything to do with the police. He wanted to handle this himself. And what did he say? "I wanted to go give back what he just gave me." That's what he wanted to do. But I submit to you, Ladies and Gentlemen, the difference is Reggie made a different choice. Reggie chose a different path. Reggie left it up to you to decide. The choice is yours. The verdict in this case is yours. I ask that your verdict speak the truth. I asked that you come back and you find Marion Bonds guilty of everything he's charged with and speak the truth.

MR. IAN DEYSACH: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. IAN DEYSACH: Thank you. Solicitor

Tanner. Good morning. Thank you for your attention. It's been a long trial. I think it's been complex. I really appreciate and I'm really counting on how close attention that you all paid throughout this whole thing. And I think maybe -- I guess the first thing I want to say is that it felt like this whole week like there were kind of two trial's going on. The trial about what's happening at the Eddings White Road place, and a trial about what's happening at the [redacted] Ball Park Road place. And if I would've had my choice, it would've been separate. Because I think it gets more confusing with more information to process and I would've liked to have dealt with each case separately. And I'll tell you the main reason why is that I wouldn't want you to think that just because something had happened at Ball Park Road that means that something definitely happened at Eddings White Road or vice versa. You're not supposed to take that as evidence of somebody's guilt. You're supposed to base it on the fact and not on emotion. That's kind of what the big question that I'm asking you -- the big thing that I'm asking you to do is not to look at the negative light that Marion's been painted in. I

mean this -- you're gonna be painted in a negative light when you're the Defendant in a criminal trial. That's always gonna happen. What I'm asking you to do is use your intellect, use logic, and the facts that you heard, the law that the Judge is gonna give you, and make a decision that in the end does speak the truth.

And when you talk about a verdict in this case, it's not a verdict, it's verdicts. There's six different charges in this case. All of which need to be analyzed separately. Each charge has multiple elements to it. Each one of those has to be analyzed separately. And because --it's hard work, I know. I mean, I appreciate that it's hard work, but it's something that needs to be done. I'll tell you that when you're done with your jury service, you're gonna want to know that you went through each one of these charges and tested them to see that the proof beyond a reasonable doubt was there for each and every element. Because you won't want to have to look back and say, you know what, that wasn't really based on the facts or the law that I was given. I think maybe throw out the baby with the bath water. Or like hey, why should we give Marion Bonds the benefit of the doubt in