

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUSTIN ANDREW SERVA,

APPELLANT

APPELLATE CASE NO 2018-000856

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 19, 2018	1
JURY ROLL CALL	3
JURY QUALIFICATION	20
JURY SELECTION	59
SEQUESTRATION MATTERS	69
<u>JACKSON V. DENNO</u> HEARING	81
TESTIMONY	
JAMES THOMAS FOSTER (IN-CAMERA)	82
BRENDA SERVA (IN-CAMERA)	111
ARGUMENTS ON MOTION TO SUPPRESS	115
COURT'S RULING	121
TRIAL TRANSCRIPT DATED MARCH 20, 2018	124
TRIAL IN ABSENTIA COLLOQUY	126
OPENING STATEMENT BY MR. FULMER	137
OPENING STATEMENT BY MR. SMITH	138
TRIAL TESTIMONY	
JAMES THOMAS FOSTER	139
ROGER SCOGINS	168
BELINDA LEE	180
MEREDITH LANFORD	183

STATE RESTS	191
DEFENSE RESTS	192
DEFENSE MOTION TO DISMISS/ DIRECTED VERDICT MOTION.....	193
COURT’S RULING	193
CHARGE CONFERENCE.....	194
CLOSING ARGUMENT BY SOLICITOR	200
CLOSING ARGUMENT BY DEFENSE COUNSEL	203
JURY CHARGE	210
VERDICT	234
SENTENCING HEARING TRANSCRIPT DATED APRIL 19, 2018	239
DEFENSE MOTION FOR NEW TRIAL	241
COURT’S RULING	246
SENTENCING	247
INDICTMENT.....	249
CERTIFICATE OF COUNSEL	251

1 State of South Carolina
2 County of Anderson In the Court of General Sessions

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4 State of South Carolina,
5
6 -vs-
7 Justin A. Serva,
8 Defendant.
9

2017-GS-04-00797 & 798

March 19, 2018

Volume 1 of 2
Pages 1 - 123

Transcript of Record

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

B E F O R E:

The Honorable R. Lawton McIntosh, Judge;
and a jury.

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

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Assistant Solicitor
Tenth Circuit Solicitor's Office
Attorney for the State

Donald Loren Smith, Esquire
Attorney for Defendant

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

I N D E XWitnessesPage

Jury Roll Call	3
Jury Qualification	20
Jackson v. Denno Hearing	81
JAMES THOMAS FOSTER	
Direct Examination By Mr. Fulmer	82
Cross-Examination By Mr. Smith	85
Trial	
JAMES THOMAS FOSTER	
Direct Examination By Mr. Smith	94
Cross-Examination By Mr. Fulmer	107
Redirect Examination By Mr. Smith	109
BRENDA SERVA	
Direct Examination By Mr. Smith	111
Reporter's Certificate	123

E x h i b i t s

For the State:

Marked	Description	I.D.	Admitted
1	Photo-front of home	70	
2	Photo-drugs and paraphernalia	70	
3	Photo-2 guns on a bed	70	
4	Photo-close-up of guns	70	
5	Photo-arrest warrant	70	
6	Photo-spoon scale	70	
7	Photo-street view of home	71	

For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:34 a.m.)

4 THE COURT: Good morning, ladies and gentlemen.
5 Thank you for being here. This is a term of what we
6 refer to as general sessions court. That means it is
7 the criminal side of the court.

8 Before we get started, Mr. Clerk, have you called
9 the roll?

10 THE CLERK: No, Your Honor.

11 THE COURT: Would you mind doing so, please, sir.

12 THE CLERK: If it pleases the court.

13 THE COURT: Yes, sir.

14 THE CLERK: Ladies and gentlemen, before I call
15 the roll, I need to put you under oath.

16 (WHEREUPON, the prospective jury panel was sworn.)

17 THE CLERK: Now, what I'm going to do is I'm going
18 to call your name. When I do, I need for you to stand,
19 and in a voice loud enough for our court reporter,
20 because she has to take down everything that is said in
21 the courtroom, in a loud enough voice, tell us what you
22 do for a living and what your significant other does
23 for a living. That's all I need to know. I don't need
24 to know how many children you've got, where you live.
25 What you do for a living what your significant other

1 does for a living. If you are retired, tell us what
2 you retired from. Like, "I was a farmer," or, "I was a
3 mechanic at Michelin." Just give us some idea of what
4 you did. Okay?

5 Our first potential juror is Number 1, Ronnie M.
6 Adger.

7 PROSPECTIVE JUROR: I'm a product group leader at
8 Bosch. My wife works in the call center at AnMed.

9 THE CLERK: Thank you, sir. That was perfect.
10 Juror Number 2, Teresa R. Alexander.

11 PROSPECTIVE JUROR: I am disabled and I'm not
12 married.

13 THE CLERK: Thank you, ma'am.

14 Juror Number 4, Scott R. Allgood.

15 PROSPECTIVE JUROR: I'm a sales manager for boat
16 steering company, and my wife is a director. She
17 manages sales for ancillary products for senior care
18 facilities.

19 THE CLERK: Juror Number 8, Shanon J. Banister.

20 PROSPECTIVE JUROR: I am a teller at SunTrust
21 Bank, and my husband is active duty in the military.

22 THE CLERK: Thank you. And thank you for your
23 service.

24 Juror Number 10, Caroline W. Barfield.

25 PROSPECTIVE JUROR: I'm at Anderson University.

1 My husband is a minister at Capstone Church.

2 THE CLERK: Juror Number 11, Tyndol M. Barnett.

3 PROSPECTIVE JUROR: I'm an aircraft mechanic for
4 Delta Airlines. My wife is a retired flight attendant.

5 THE CLERK: Thank you, sir.

6 Juror Number 13, Danny L. Beeco.

7 PROSPECTIVE JUROR: I'm disabled. My wife, she's
8 retired. She worked for Anderson County courthouse.

9 THE CLERK: Thank you, sir.

10 Juror 19, Heather J. Bigos.

11 PROSPECTIVE JUROR: I'm a clerk, and I'm not
12 married.

13 THE CLERK: Thank you.

14 Juror 23, Raymond S. Bouchard.

15 PROSPECTIVE JUROR: I'm a registered nurse for
16 St. Francis Downtown.

17 THE CLERK: Thank you, sir.

18 Juror 25, Travis N. Boyd.

19 PROSPECTIVE JUROR: I'm a physical therapist at
20 ATI, and my wife is a physical therapist at AnMed.

21 THE CLERK: Juror 27, Amber P. Briggs.

22 PROSPECTIVE JUROR: I'm a customer service manager
23 for Verizon.

24 THE CLERK: Thank you.

25 Juror 30, Christina H. Bryant.

1 PROSPECTIVE JUROR: I'm an Ingles associate. My
2 husband is deceased.

3 THE CLERK: Thank you.

4 Juror 36, Michelle J. Cagle.

5 PROSPECTIVE JUROR: Logistics specialist with BMW,
6 not married.

7 THE CLERK: Juror 37, Philip C. Cahaly.

8 PROSPECTIVE JUROR: I'm a retired banker, and my
9 wife is a retired college professor.

10 THE CLERK: Thank you, sir.

11 Juror 39, Cedric W. Cannon.

12 PROSPECTIVE JUROR: I'm an armed security guard at
13 Wells Fargo. My wife works at the U.S. post office.

14 THE CLERK: Thank you, sir.

15 Juror 40, Anita A. Carter.

16 PROSPECTIVE JUROR: I'm disabled, and my husband
17 is a truck driver.

18 THE CLERK: Thank you.

19 Juror 42, Kathleen M. Charron.

20 PROSPECTIVE JUROR: I'm a homemaker, and my
21 husband works at BMW, and he is a small business owner,
22 irrigation.

23 THE CLERK: Juror 43, Belinda I. Clark.

24 PROSPECTIVE JUROR: I'm retired from the
25 Greenville Hospital System, and my husband is disabled.

1 THE CLERK: Thank you.

2 Juror 44, Cindy D. Clark.

3 PROSPECTIVE JUROR: I'm a receptionist for King
4 Asphalt. My husband is an electrician at Hard Body
5 Equipment.

6 THE CLERK: Thank you.

7 Juror 48, Brian K. Cox.

8 PROSPECTIVE JUROR: Production associate with
9 First Quality. My wife is medical staff at AnMed.

10 THE CLERK: Thank you.

11 Juror 49, Marshall T. Creamer.

12 PROSPECTIVE JUROR: Temporarily on disability. My
13 wife works for Anderson County Magistrate Judge
14 Shelton.

15 THE CLERK: Thank you, sir.

16 Juror 56, Hampton E. Davenport.

17 PROSPECTIVE JUROR: Self-employed. I do grading
18 work.

19 THE COURT: What kind of work do you do, please?

20 PROSPECTIVE JUROR: Grading.

21 THE COURT: Grading, okay. Thank you.

22 THE CLERK: Juror 57, Kanisha D Davis.

23 PROSPECTIVE JUROR: I work customer service at
24 Priority One Security. I'm not married.

25 THE CLERK: Juror 59, Thomas A. Deane.

1 PROSPECTIVE JUROR: Retired United States Marine,
2 single.

3 THE CLERK: Thank you, sir. Thank you for your
4 service.

5 Juror 65, Travis Durham.

6 PROSPECTIVE JUROR: I run a fire protection route
7 at Cintas. My wife does childcare, daycare.

8 THE CLERK: Juror 67, Bette Y. Ellison.

9 PROSPECTIVE JUROR: Retired store owner, and my
10 husband is a store owner and a fire chief.

11 THE CLERK: Juror 68, Samuel J. Epps.

12 PROSPECTIVE JUROR: Operator attendant at Sealed
13 Air, single.

14 THE CLERK: Thank you.

15 Juror 73, Connie S. Finger.

16 PROSPECTIVE JUROR: Business manager, Anderson
17 Regional Water. My husband is also retired from
18 Anderson.

19 THE CLERK: Thank you.

20 That's our first page. Any questions from any of
21 our attorneys? We're going to keep going.

22 Juror 82, Melissa B. Griffin.

23 PROSPECTIVE JUROR: I'm a scheduling coordinating
24 at AnMed Health, and I'm single.

25 THE CLERK: Juror 83, Carlton B. Griffith.

1 PROSPECTIVE JUROR: I'm a technical support
2 specialist at Anderson School District 4. My wife is a
3 secretary at Mt. Zion Baptist Church.

4 THE CLERK: Juror 84, Henry E. Guess, Jr.

5 PROSPECTIVE JUROR: I'm assistant video director
6 with Clemson Football. My wife works in medical
7 records at Clemson University and AnMed Health Center.

8 Q Thank you.

9 Juror 93, Sherry D. Hart.

10 PROSPECTIVE JUROR: I'm an assistant administrator
11 at a senior living, and my husband, he works at
12 Clemson. He does diesel and electric, mechanic.

13 THE CLERK: Thank you.

14 Juror 96, Tayika L. Heard.

15 PROSPECTIVE JUROR: Hi. I'm a line lead at Nutra
16 and husband mechanic at a garage.

17 THE CLERK: Thank you.

18 Juror 97, Keston B. Helfrich.

19 PROSPECTIVE JUROR: Hello. I'm an owner of
20 Carolina Bauernhaus Ales. My spouse is the bar
21 manager.

22 THE CLERK: Thank you.

23 Juror 99, James C. Hinson.

24 PROSPECTIVE JUROR: Good morning. I'm a switch
25 gear technician at E & I Engineering, and my fiancée is

1 a homemaker.

2 THE CLERK: 100, Cali Janee A. Hitt.

3 PROSPECTIVE JUROR: I'm a supervisor at a coffee
4 shop, and I'm not married.

5 THE CLERK: Juror 101, Jasmine B. Hopkins.

6 PROSPECTIVE JUROR: I'm a nail technician. My
7 husband is a retired truck driver.

8 THE CLERK: Thank you.

9 Juror 103, Austin L. Huffman.

10 PROSPECTIVE JUROR: I'm a dismounter at Snider
11 Tire Solutions.

12 THE CLERK: Thank you.

13 Juror 104, Geraldine Hunter.

14 PROSPECTIVE JUROR: I'm a business assistant at
15 Clemson University, not married.

16 THE CLERK: Juror 106, Barbara J. Johnson.

17 PROSPECTIVE JUROR: I'm a cook at South Pointe
18 Assisted Living, and I'm a widow.

19 THE CLERK: Thank you.

20 Juror 110, Kellie J. Jones.

21 PROSPECTIVE JUROR: I work in Piedmont. I work in
22 a nursing home in Piedmont.

23 THE CLERK: Thank you, ma'am.

24 Juror 114, William A. Krinke.

25 PROSPECTIVE JUROR: Trainer, and my spouse works

Jury Roll Call

State of South Carolina vs. Justin A. Serva

2017-GS-04-00797 & 798

March 19, 2018

1 for a real estate investment company.

2 THE CLERK: Thank you, sir.

3 Juror 115, Shelley Laming.

4 PROSPECTIVE JUROR: I work in the office of a
5 grading and excavation company in accounts payable, and
6 I'm not married.

7 THE CLERK: Juror 116, Juston C. Lance.

8 PROSPECTIVE JUROR: I'm an operator at Michelin,
9 and wife is an assistant at a car lot.

10 THE CLERK: Thank you.

11 Juror 117, Lindsay B. Lecroy.

12 PROSPECTIVE JUROR: I'm a teller at Upstate
13 Federal Bank and not married.

14 THE CLERK: Juror 120, Yashica L. Lee.

15 PROSPECTIVE JUROR: I am a case manager for
16 Anderson School District 5, and my husband is a retired
17 police officer.

18 THE CLERK: Juror 122, Jay A. Lester, II.

19 PROSPECTIVE JUROR: I'm a branch manager at
20 Commercial Bank. My wife is a self-employed
21 cosmetologist.

22 THE CLERK: Thank you.

23 Juror 125, Peter S. Malcolm, III.

24 PROSPECTIVE JUROR: I'm unemployed. I sell stuff
25 at the flea market.

1 THE CLERK: Thank you, sir.

2 Juror 129, Tammy M. Mauldin.

3 PROSPECTIVE JUROR: I'm an administrative
4 assistant at Cromer Food Services.

5 THE CLERK: Thank you.

6 Juror 130, Andrea J. Mavrinac.

7 PROSPECTIVE JUROR: I'm inside sales at M&I
8 Direct, and my husband is inside sales at M&I Direct.

9 THE CLERK: Okay. Juror 131, Caroline M. McCann.

10 PROSPECTIVE JUROR: I'm in retail management at
11 Goody's. My husband is self-employed at Don Curtis.

12 THE CLERK: Thank you.

13 Juror 135, Olivia B. McMurrer.

14 PROSPECTIVE JUROR: I'm a paralegal at McCravy.
15 My husband is a welder at E&I.

16 THE COURT: Thank you.

17 Juror 139, Richard K. Mims.

18 PROSPECTIVE JUROR: Retired operations management,
19 Sunoco Products Company. My wife is a retired school
20 teacher.

21 THE CLERK: Thank you, sir.

22 Juror 140, Ann T. Moore.

23 PROSPECTIVE JUROR: I am a retired CNA from
24 Hospice of Upstate. Husband's retired from the State.

25 THE CLERK: Thank you.

1 Juror 146, John M. Nalley.

2 PROSPECTIVE JUROR: Dry cleaner operator, not
3 married.

4 THE CLERK: Thank you.

5 Juror 147, Bruce S. Neely.

6 PROSPECTIVE JUROR: Truck driver for AVR, single.

7 THE CLERK: That's our second page. Any questions
8 from anybody?

9 148, Sarra M. Neshan.

10 PROSPECTIVE JUROR: I'm a self-employed
11 hairstylist.

12 THE CLERK: "Sarra"?

13 PROSPECTIVE JUROR: "Sarra."

14 THE CLERK: I am sorry.

15 Juror 150, Mary J. Oliver.

16 PROSPECTIVE JUROR: I am a dietary aide at
17 Ellenburg Nursing Home, single.

18 THE CLERK: Thank you.

19 Juror 158, Jessica H. Permar.

20 PROSPECTIVE JUROR: I am a team leader at
21 Michelin, and I'm not married.

22 THE CLERK: Okay.

23 Juror 160, Diana L. Peterson.

24 PROSPECTIVE JUROR: I am disabled and single.

25 THE CLERK: Juror 162, Crystal D. Phillips.

1 PROSPECTIVE JUROR: Certified dialysis technician
2 at U.S. Renal Care.

3 THE CLERK: Thank you.

4 Juror 163, Jason D. Phillips.

5 PROSPECTIVE JUROR: Transmission rebuilder with
6 American Transmissions in Anderson, and my wife is a
7 project manager.

8 THE CLERK: Thank you.

9 Juror 167, Douglas J. Reed.

10 PROSPECTIVE JUROR: Optometrist. I own Electric
11 City Eye Care, single.

12 THE CLERK: 171, Cynthia L. Riley.

13 PROSPECTIVE JUROR: I am a self-employed
14 esthetician, own my own business. My husband retired
15 from John Deere.

16 THE CLERK: Thank you.

17 Juror 173, Michael B. Rogers.

18 PROSPECTIVE JUROR: Senior manager at Walgreen's
19 Distribution, and I'm single.

20 THE CLERK: Thank you.

21 Juror 179, Steven S. Schronce.

22 PROSPECTIVE JUROR: U-Post, River Street. I work
23 for Parts Fleet as a second job. My wife is a 3K
24 teacher.

25 THE CLERK: Thank you.

1 Juror 181, Christi S. Silverstein.

2 PROSPECTIVE JUROR: Retail and business owner with
3 my husband.

4 THE CLERK: Thank you.

5 Juror 182, Frederic A. Sloan.

6 PROSPECTIVE JUROR: CNC technician, ABB,
7 separated.

8 THE CLERK: Thank you, sir.

9 Juror 184, Jarvis L. Smith.

10 PROSPECTIVE JUROR: Production operator at
11 Burgdine (phonetic). My wife is an associate of E&I
12 Engineering.

13 THE CLERK: Thank you.

14 Juror 187, Cody M. Stamps.

15 PROSPECTIVE JUROR: I work as a supervisor at
16 Kravet Fabrics, unmarried.

17 THE CLERK: Juror 191, Rhiannon T. Strange.

18 PROSPECTIVE JUROR: Operations manager with
19 Caldwell Construction. My husband is in information
20 technology at TTI.

21 THE CLERK: Juror 193, Christopher E. Sustar.

22 PROSPECTIVE JUROR: Youth pastor at High Praises
23 Church. I'm single.

24 THE CLERK: 194, Matthew E. Sweet.

25 PROSPECTIVE JUROR: Human resources vice president

1 for Smith Group Corporation, and my wife is a
2 coordinator for blood drives with Blood Connection.

3 THE CLERK: Thank you.

4 Juror 196, Tonetta G. Tate.

5 PROSPECTIVE JUROR: I am disabled, and my husband
6 is disabled.

7 THE CLERK: Thank you.

8 Juror 197, Yakosha S. Tate.

9 PROSPECTIVE JUROR: I work at TTI assembly line,
10 single.

11 THE CLERK: Juror 209, Ruby N. Watt.

12 PROSPECTIVE JUROR: Production worker at Robert
13 Bosch, single.

14 THE CLERK: Juror 215, Thomas G. Wilkes.

15 PROSPECTIVE JUROR: I work at Walker and
16 Whiteside, single.

17 THE CLERK: Thank you.

18 Juror 221, Gary M. Workman, Jr.

19 PROSPECTIVE JUROR: Food service at Bosch, single.

20 THE CLERK: I'm not sure we have ever had this
21 many single people in the group.

22 223, David S. Yaowitz.

23 PROSPECTIVE JUROR: Good morning. Management
24 consultant at PricewaterhouseCoopers. My wife is
25 retired.

1 THE CLERK: Thank you.

2 Is there anyone's name I did not call? Got
3 everybody? All right.

4 Your Honor, that's 79 present and accounted for.

5 THE COURT: Very good. Ladies and gentlemen,
6 thank you for being here. We understand that it is an
7 inconvenience to have you held away from your jobs or
8 your family and required to come up here and
9 potentially sit on juries. I would point out to you,
10 however, without your willingness to do your civic
11 duty, the rule of law is nonexistent. I think it was
12 Winston Churchill that said the most important service
13 a citizen can do for its city, county and state during
14 peacetime is to sit on a jury.

15 With that being said, we'll do our best to try to
16 minimize any inconvenience to you this week, and if
17 you're selected, make it an educational experience.
18 With you being here, it has resulted in a number of
19 people deciding they do not want to go to trial this
20 week. I need to take up a few things outside of your
21 presence. In Anderson County we do not have a jury
22 qualification room, so we do everything here in the
23 courtroom.

24 So in just a second I'm going to ask you to step
25 out and not come back in until we take care of some

1 business that I need to take care of outside of your
2 presence, and then we'll go forward with jury
3 qualification at that time.

4 But if you would, if you would step out in the
5 lobby, we'll have about a ten-minute break, and we'll
6 bring you back in.

7 (WHEREUPON, the prospective jury panel exited the
8 courtroom at 10:15 a.m. while the court took a plea in
9 another matter.)

10 THE COURT: All right. If the bailiffs will check
11 the lobby and make sure we have everybody in here,
12 please, sir.

13 (WHEREUPON, the prospective jury panel came into
14 open court at approximately 10:30 a.m.)

15 THE COURT: Ladies and gentlemen, thank you for
16 your patience. Quite frankly, trying cases and getting
17 cases disposed of sometimes is very methodical and very
18 slow, but we appreciate your patience.

19 Ladies and gentlemen, I have met with the State
20 and met with several of the defense attorneys, and we
21 have multiple trials on the docket this week, so we're
22 probably going to keep you fairly busy. But this term
23 will only be through Friday. So if you are selected,
24 you will understand that you will not be into the
25 weekend or into next week.

1 This morning I need to ask you some questions as
2 to whether or not you're qualified to serve. Not
3 whether you want to serve, but whether you're
4 qualified. Also whether or not you're exempt from
5 service. In other words, you are qualified, but if an
6 exception applies to you, you have a right to say, "I
7 choose not serve."

8 Several of these questions are very personal, and
9 it may be that you do not want to stand up in open
10 court in front of your peers and give the information
11 to us, and that's quite all right. The last thing we
12 want to do is cause anyone any embarrassment. If a
13 question pertains to you and you do not want to stand
14 up in open court and give us the response, make a
15 mental note, and at the end of this process, I'll give
16 all of you a chance to come up and speak with us in a
17 more confidential setting.

18 On the other hand, if you don't mind standing up
19 and giving us the answer, if you would, look at your
20 information you have with you. You will have a jury
21 number. Give us your jury number first and then your
22 name. It just helps us get through the process a
23 little quicker.

24 Can everyone hear me okay? If you cannot or if
25 you do not understand a question, raise your hand and

1 make sure that you do hear me and understand what's
2 being asked. It's very important that we get correct
3 and truthful and up-to-date information from all of
4 you. Remember, you are still under oath.

5 All right. Ladies and gentlemen, the first
6 questions have to do with your qualifications to serve.
7 The first of those is: Is there any member of the jury
8 panel who is not a citizen of the United States? If
9 so, would you please stand.

10 Next question: Is there any member of the jury
11 panel who is not a resident and citizen of Anderson
12 County, South Carolina? If so, would you please stand.

13 Next question: Is there any member of the jury
14 panel who is unable to read, write, speak, or
15 understand the English language? If so, would you
16 please stand.

17 Is there any member of the jury panel that has
18 less than a sixth grade education or its equivalent?
19 If so, would you please stand.

20 All right, sir. What is your jury number?

21 PROSPECTIVE JUROR: 13.

22 THE COURT: I'm sorry, I didn't hear you.

23 PROSPECTIVE JUROR: 13.

24 THE COURT: 13? You're Mr. Beeco?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: All right, Mr. Beeco. At the end of
2 this process, how about coming up -- not right now.
3 Just at the end and when I call for everybody to come
4 forward, if you would just remember to do so, I'd
5 appreciate it. Okay, sir? Thank you so much.

6 Anyone else?

7 Is there any member of the jury panel who is
8 unable, because of intellectual or physical infirmity,
9 to render efficient jury service if you are selected to
10 serve this week? Now, by efficient jury service, what
11 I mean is you will need to be able to sit, stand, or
12 with some other reasonable accomodation listen to the
13 opening statements and closing statements by the
14 attorneys, listen to the testimony and evidence that's
15 given during the trial, listen to the law as I give it
16 to you at the end of this case, and engage in
17 meaningful deliberations when you're instructed to do
18 so. But if there's any member of the jury panel who,
19 because of an intellectual or physical infirmity, is
20 unable to render efficient jury service, if you don't
21 mind doing so, would you please stand.

22 Very good.

23 Has any member of the jury panel been convicted by
24 guilty plea or trial in a state or federal court of
25 record of a crime punishable by imprisonment for more

1 than -- for more than one year and your civil rights
2 have not been restored by pardon or amnesty? Now, by
3 more than one year, I mean that you could have received
4 a sentence in excess of one year regardless of whatever
5 sentence you may have actually received. If that
6 applies to you and you don't mind standing, would you
7 please do so.

8 All right, sir. What is your jury number?

9 PROSPECTIVE JUROR: 221. I think it applies to
10 me.

11 THE COURT: I'm sorry, Mr. Overby. Did you hear
12 what that was?

13 MR. OVERBY: Number 221, Mr. Workman.

14 THE COURT: All right. Do you have information on
15 him?

16 MR. OVERBY: Well, I have a felony --

17 THE COURT: Hang on.

18 MS. WYSE: Your Honor, we're getting it.

19 THE COURT: If you do, just bring it forward,
20 please, sir.

21 (Document handed to the court.)

22 THE COURT: All right. Mr. Workman, thank you for
23 being here. I'm going to excuse you from service this
24 week. You are free to leave. For your attendance
25 today, our clerk is going to send you a big, whopping

1 check in the mail, so don't spend it all in one place.

2 Okay, sir? You are free to go.

3 Anyone else?

4 All right. Ma'am, what is your jury number?

5 PROSPECTIVE JUROR: 158. I think it pertains to
6 me, Jessica Permar.

7 THE COURT: Do you have her report?

8 For everybody, ladies and gentlemen, for each of
9 you, when you turn in your information, the State is
10 required by law to do a background check on you, so
11 that's what they're looking up.

12 (Document handed to the court.)

13 THE COURT: I tell you what, if you would come
14 forward at the end of this process. Not now, in just a
15 minute. Thank you.

16 Anyone else?

17 Is there a member of the jury panel who is a clerk
18 or deputy clerk of court, a constable, sheriff or other
19 commissioned law enforcement officer, a probate judge,
20 a county commissioner, magistrate or other county
21 officer or who's employed within the walls of any
22 courthouse? If so, would you please stand.

23 Is there any member of the jury panel that has
24 previously served in circuit court, here in state court
25 as opposed to federal court, city court, or

1 magistrate's court, this calendar year, during 2018?

2 If so, would you please stand.

3 Lastly, is any member of the jury panel a member
4 of the Anderson County Grand Jury over the last several
5 years? If so, would you please stand.

6 All right. Ladies and gentlemen, those are the
7 questions that have to do with your qualifications to
8 serve. I'll now move over to exemptions. An exemption
9 is just that. It may be that you're qualified to
10 serve; however, if an exemption applies to you, you
11 have the right to say, "I choose not to serve this
12 week."

13 The first of those would be for those of you who
14 have reached the age of 65 years or older. If you have
15 reached the age of 65 or more, you have a right to say,
16 "I choose not to serve this week in general sessions
17 court." Before any of you who may fit that bill
18 exercise your exemption, let me urge you to stay with
19 us. If you've made it 65 or more years in this world,
20 you would be a benefit to any jury you may sit on. But
21 with that being said, if you're 65 or older, you have
22 the absolute right to say, "I do not want to serve this
23 week." If that applies to you and you wish to be
24 exempt, would you please stand.

25 I saw some gentleman in the back here. What's

1 your jury number?

2 PROSPECTIVE JUROR: 139, Richard Mims.

3 THE COURT: Mr. Mims, you are 65 or older?

4 PROSPECTIVE JUROR: A little bit more, 75.

5 THE COURT: Oh, good for you. Do you wish not to
6 serve this week?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: All right. Mr. Mims, thank you for
9 being here. You are excused.

10 PROSPECTIVE JUROR: I got five grandchildren, back
11 and forth to school.

12 THE COURT: All right. Take care.

13 That's better than a lot of them say to me, I tell
14 you.

15 Anyone else?

16 All right. The next exemption has to do with
17 prior jury service. If the qualification, you will
18 recall that if you served in 2018, you are not
19 qualified to serve again in 2018. This question has to
20 do with whether or not you served in 2017 or 2016.

21 Under our law in South Carolina, a citizen cannot be
22 required to serve more than once every three years in
23 circuit court. Again, that is opposed to federal
24 court, city court, or magistrate's court. So if any
25 member of the jury panel served in state court in 2016

1 or 2017 and you wish to be exempted, would you please
2 stand.

3 Also, anyone who has served as a grand juror
4 anywhere in the state of South Carolina within the last
5 five calendar years may choose to be exempt from
6 service this week. If that exemption applies to you
7 and you wish to be exempt, would you please stand.

8 All right. Ladies and gentlemen, the next
9 exemption has to do with those of you who have a small
10 child or children. There are four subparts, all of
11 which must apply before you can claim your exemption,
12 but you may be exempt from jury service: Number one,
13 if you have a small child or children that are under
14 the age of seven; number two, you have legal custody of
15 your child or children; number three, you are the
16 primary caretaker of your child or children; and number
17 four, you would be unable to make suitable arrangements
18 for their care if you are selected to serve on jury
19 duty this week. If all four of those subparts apply to
20 you and you wish to be exempt, would you please stand.

21 Very good.

22 The next exemption has to do with those of you who
23 are teaching or attending school on a full-time basis.
24 It applies whether or not it's a public school, a
25 private school, or a technical school. Now, if this

1 exemption applies to you, you will not be excused from
2 jury service totally. You will just be simply
3 transferred to another term of court that will not
4 interfere with your work or your studies at an
5 educational institution. Therefore, if we have any
6 person on the jury panel who is a full-time student,
7 teacher, crossing guard, or bus driver, or who works in
8 some other capacity at a public, private, or technical
9 school that would like to be transferred to another
10 term of court, would you please stand.

11 Very good.

12 Is there any member of the jury panel who is
13 employed with the Department of Corrections at a
14 penitentiary who wishes to be exempted from jury
15 service? If so, would you please stand.

16 Ladies and gentlemen, is there any juror who
17 performs services for a business, commercial, or
18 agricultural enterprise whose services are so essential
19 to the operation of that business that, if you were
20 selected to serve this week, that business would have
21 to shut its doors and not operate while you're
22 performing your services as jurors? If that applies to
23 you and you wish to be exempt, would you please stand.

24 Very good.

25 Ladies and gentlemen, is there any juror who is

1 the primary caretaker of a severely disabled person who
2 is unable to care for himself or herself and cannot be
3 left unattended or is the primary caretaker of a person
4 aged 65 years or older? If so, would you please stand.

5 Ma'am, what is your jury number?

6 PROSPECTIVE JUROR: 110.

7 THE COURT: 110?

8 PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: You're Ms. Jones?

10 PROSPECTIVE JUROR: Ms. Jones.

11 THE COURT: You have someone?

12 PROSPECTIVE JUROR: My daughter is epileptic.

13 THE COURT: Ma'am?

14 PROSPECTIVE JUROR: My daughter has epileptic
15 seizures, and somebody has to be with her. Her husband
16 is with her most of the days, but she has to call me a
17 lot. I'm her mother. She has to call me a lot and has
18 to go to the hospital a lot, go there or whatever. She
19 have them all the time.

20 THE COURT: Didn't I hear that you work somewhere?

21 PROSPECTIVE JUROR: I work -- yeah, I work in
22 Piedmont, but he with her. I get off like 2:30, 1:30.

23 THE COURT: Tell you what, at the end of this
24 process, how about coming up -- not now, but come talk
25 to me so I can get a little more information. Thank

1 you, Ms. Jones.

2 What's your jury number.

3 PROSPECTIVE JUROR: 101.

4 THE COURT: You are Ms. Hopkins. Do you mind
5 telling me what your situation is.

6 PROSPECTIVE JUROR: 85-year-old father who lives
7 with me and has recently come out of the hospital, so
8 he does have a nurse, home healthcare coming in, but
9 I'm his only child.

10 THE COURT: You are there during the day, too?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: And the healthcare comes in. Are they
13 there through the day?

14 PROSPECTIVE JUROR: No. One visit three times a
15 week.

16 THE COURT: You are charged with taking his care?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Do you wish to be exempt?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Thank you, Ms. Hopkins, for being
21 here. You are excused.

22 Anyone else?

23 All right. Ladies and gentlemen, those are the
24 questions that have to do with exemptions. It may be
25 that you're qualified and that no exemption applies to

1 you; however, having to serve on jury duty this
2 particular week would cause you an undue hardship
3 because of your particular circumstances. State law
4 does not allow me to excuse qualified and nonexempt
5 jurors; however, under compelling circumstances, I can
6 transfer you to another term of court that may not
7 present you with such a hardship.

8 If anyone would like me to consider a hardship
9 request, please stand. All can stand at the same time,
10 it's all right.

11 Ma'am, what's your jury number?

12 PROSPECTIVE JUROR: 131.

13 THE COURT: You're Ms. McCann?

14 PROSPECTIVE JUROR: My father was in a car
15 accident on Thursday and is in the hospital.

16 THE COURT: Do you mind coming up here? The
17 acoustics in this courtroom are terrible, and I've got
18 gray hair. My ears don't work as well.

19 PROSPECTIVE JUROR: My father was in a car
20 accident on Thursday and on crutches in the hospital in
21 Spartanburg.

22 THE COURT: I'm so sorry. If we move you --

23 PROSPECTIVE JUROR: I don't mind doing it another
24 time.

25 THE COURT: Say, July?

1 PROSPECTIVE JUROR: Yeah. Even another month, he
2 should be fine.

3 THE COURT: Tell you what, we have not gotten the
4 second -- they assign for six months at a time, so the
5 second part of the year has not been assigned yet, but
6 once it comes out, our clerk will send you a new notice
7 for sometime during July. Is that okay with you?

8 PROSPECTIVE JUROR: That's perfect.

9 THE COURT: Are you going to be on vacation during
10 July?

11 PROSPECTIVE JUROR: No. I did arrange it.

12 THE COURT: They will send you notice just like
13 they did this one and tell you when you need to come
14 back. Good luck with your dad.

15 PROSPECTIVE JUROR: Thank you.

16 THE COURT: Yes, ma'am.

17 All right, sir. What is your jury number?

18 PROSPECTIVE JUROR: 49.

19 THE COURT: 49, Mr. Creamer.

20 PROSPECTIVE JUROR: Yes, sir. I would be glad to
21 serve today and tomorrow, but my wife works for Judge
22 Sharp, magistrate's office, and she's going out of town
23 to the beach, and I'm going with her for classes
24 Thursday, Friday, Saturday.

25 THE COURT: I'm going to make you serve all week

1 when you come, so what if we let you come back in July
2 as well or September?

3 PROSPECTIVE JUROR: Be glad to.

4 THE COURT: Thank you, sir. Good luck.

5 PROSPECTIVE JUROR: Thank you so much.

6 THE COURT: All right.

7 In the blue, what's your jury number?

8 PROSPECTIVE JUROR: 99, Your Honor.

9 THE COURT: Mr. Hinson?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Okay, sir.

12 PROSPECTIVE JUROR: I'm the only licensed driver
13 in my household, and I have my our daughter in school.

14 THE COURT: You're the only one who drives in your
15 household?

16 PROSPECTIVE JUROR: Yes, Your Honor. I'm the only
17 licensed driver.

18 THE COURT: I tell you what, Mr. Hinson, come talk
19 to me at the end of this process. I want to hear a
20 little more without having to bring it all up in open
21 court.

22 Yes, ma'am.

23 PROSPECTIVE JUROR: 160.

24 THE COURT: Ms. Peterson?

25 PROSPECTIVE JUROR: Yes. I'm the primary

1 caregiver of a disabled person. He's currently right
2 now in the hospital, due to be released today or
3 tomorrow whenever they let him go. So I'm the only one
4 that can -- he can be released to.

5 THE COURT: So you are a caregiver for whom?

6 PROSPECTIVE JUROR: For Sylvan Byrd. Disabled.
7 He has paralysis on his right side. He's currently in
8 the hospital right now with a bone infection.

9 THE COURT: Is that your employment?

10 PROSPECTIVE JUROR: That's who I live with, and I
11 care for him.

12 THE COURT: I tell you what, Ms. Peterson, how
13 about you talk to me as well at the end of this
14 process. I'm going to get a little more information.
15 Thank you.

16 Anyone else?

17 All right. Ladies and gentlemen, those of you who
18 did not stand but needed to throughout the
19 qualification or exemption process, would you come
20 forward. For those who I asked to come forward, if you
21 would do so. If you have a question whether or not
22 you're qualified, exempt, or you want me to consider a
23 transfer request but didn't stand, if you would come
24 stand at the bar, and I'll speak to you in a more
25 confidential setting.

1 THE COURT: You're Ms. Jones?

2 PROSPECTIVE JUROR: Uh-huh.

3 THE COURT: Hang on. Let me look at this. Number
4 110?

5 PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: Tell me again.

7 PROSPECTIVE JUROR: My daughter, she have
8 epileptic seizures, and she have them in her sleep.
9 Her husband, he work from home, so he be with her
10 during the day. I give him a break sometimes. She go
11 to the hospital two or three times a week, and they
12 call me and I go. It's been scary. She's been doing
13 this now for about a year, and they can't get her under
14 control to get the right medicine. It worries me
15 because I'm scared.

16 THE COURT: I understand.

17 PROSPECTIVE JUROR: I have a friend that worked.
18 Her sister died in her sleep from epilepsy, so that
19 scares me. It really scares me.

20 THE COURT: You work in Piedmont?

21 PROSPECTIVE JUROR: I work in nursing home.

22 THE COURT: And how much do you work?

23 PROSPECTIVE JUROR: From 6:00 to 1:30.

24 THE COURT: 6:00 to 1:30?

25 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: Tell you what, let's let you stay here
2 for a day or so, and if something comes up, bring it to
3 our attention.

4 PROSPECTIVE JUROR: I will. That's fine.

5 THE COURT: I don't want you to not be able to see
6 your daughter.

7 PROSPECTIVE JUROR: That's fine. I'll stay.

8 THE COURT: Are you sure?

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: Thank you. I appreciate it.

11 Tell me your jury number again.

12 PROSPECTIVE JUROR: 160.

13 THE COURT: You are the healthcare tech?

14 PROSPECTIVE JUROR: No. When I say single, it's
15 kind of like engaged.

16 THE COURT: This is Peterson.

17 PROSPECTIVE JUROR: And I live with a disabled
18 person. He has paralysis on his right side. And right
19 now he's in the hospital with a bone infection. And
20 this fine looking young man right here is also my
21 attorney.

22 THE COURT: I tell you what, that might make
23 grounds to excuse you in and of itself, I tell you.
24 The fact you said he is good looking makes me worry.
25 No, seriously. Do you work anywhere?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: You care for him?

3 PROSPECTIVE JUROR: I'm disabled.

4 THE COURT: Anybody have a problem if I excuse her
5 from service this week?

6 I'm going to excuse you, ma'am.

7 PROSPECTIVE JUROR: Thank you.

8 THE COURT: We don't see where on your record that
9 you have been found guilty.

10 PROSPECTIVE JUROR: I wasn't sure. I mean, I just
11 completed PTI so I wasn't sure.

12 THE COURT: They expunged the record. Tell me
13 your jury number again.

14 PROSPECTIVE JUROR: 158.

15 THE COURT: This is Ms. Permar.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: So you -- it was ill treatment to
18 animals, and you got PTI?

19 PROSPECTIVE JUROR: I had credit card fraud, too.

20 THE COURT: What happened to the ill treatment of
21 animals?

22 PROSPECTIVE JUROR: They was supposed to throw
23 that case away.

24 THE COURT: So you had one charge you were found
25 guilty of, and you went to PTI on that, so they

1 expunged your record?

2 PROSPECTIVE JUROR: I haven't got my record
3 expunged yet, but I did PTI.

4 THE COURT: I'm going to let you stay.
5 Double-check her because right now it's not
6 showing up on NCIC.

7 Hey, how you doing? What's your jury number.

8 PROSPECTIVE JUROR: 13.

9 THE COURT: You're Mr. Beeco. What's it you were
10 telling me when you stood up? I can't remember now.

11 PROSPECTIVE JUROR: Education.

12 THE COURT: Yeah, yeah, yeah. Are you married?
13 Raise any children?

14 PROSPECTIVE JUROR: No.

15 THE COURT: How long you been married?

16 PROSPECTIVE JUROR: About 22 years.

17 THE COURT: Do you work?

18 PROSPECTIVE JUROR: I'm disabled.

19 THE COURT: What did you do before that?

20 PROSPECTIVE JUROR: Yard work, just to make a
21 little bit of money.

22 THE COURT: So you have less than a sixth grade
23 education?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: All right. I'm going to excuse you,

1 Mr. Beeco. Thank you for coming.

2 All right. Tell me your jury number again.

3 PROSPECTIVE JUROR: 99, sir.

4 THE COURT: 99. Mr. Hinson. You were wanting
5 to -- what is it you have a job, or --

6 PROSPECTIVE JUROR: I'm the only person working
7 and the only licensed driver in the home.

8 THE COURT: Say that again.

9 PROSPECTIVE JUROR: I'm the only one working and
10 the only licensed driver in the home, sir.

11 THE COURT: In your house? Really?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Your wife doesn't?

14 PROSPECTIVE JUROR: She is almost legally blind,
15 sir.

16 THE COURT: Anybody have an objection to me
17 letting him go this week?

18 Thank you for coming. I'm going to let you go.
19 All right, Buddy.

20 PROSPECTIVE JUROR: I'm Ruby. I don't know the
21 number. I thought I would remember.

22 THE COURT: Irby?

23 PROSPECTIVE JUROR: Ruby.

24 THE COURT: Ruby Watt, 209.

25 PROSPECTIVE JUROR: I wasn't sure the criminal

1 thing fell under me. I a got a CDV.

2 THE COURT: Was it in magistrate's court?

3 PROSPECTIVE JUROR: I forgot because it was in
4 '07.

5 THE COURT: Ms. Watt?

6 MR. FULMER: We didn't find a record, Judge.

7 PROSPECTIVE JUROR: I also had another question
8 with a child. I have a small son that go to school
9 that don't ride the bus because he's too close to the
10 school. I'm the only one that have to pick him up
11 around -- if I can get out of here around 2:30, I will
12 be good, but I'm the only one that can pick him up.

13 THE COURT: Will he be going to school this
14 summer?

15 PROSPECTIVE JUROR: No. They get out in June,
16 right?

17 THE COURT: So what if I transfer you to the
18 summer. That way you can come back here and not worry
19 about it. I'm going to transfer you in July. Are you
20 going on vacation?

21 PROSPECTIVE JUROR: No. I would like to.

22 THE COURT: Me, too. July, they will send you a
23 notice.

24 PROSPECTIVE JUROR: Okay. Thank you.

25 THE COURT: Ms. Watt, transfer.

1 How you doing? What is your jury number?

2 PROSPECTIVE JUROR: 167.

3 THE COURT: Mr. Reed?

4 PROSPECTIVE JUROR: Yes. I'm sorry, I should have
5 spoke up when you asked about shutting the business.
6 It's not that we'll technically close down. I will
7 keep one employee to answer the phone, but if I'm not
8 there, no business will happen.

9 THE COURT: What kind of business?

10 PROSPECTIVE JUROR: Optometrist. Without a
11 license, no patients get seen, and we can't dispense
12 without a licensed person there.

13 PROSPECTIVE JUROR: My wife is an orthopedic
14 surgeon. Same thing happens to her. Do you have a
15 better time of the year?

16 PROSPECTIVE JUROR: There's -- it's just not
17 seeing any patient for a week is painful for a
18 business.

19 THE COURT: I'm sure. Tell you what, I'm going to
20 let you stay for a day or so. I may not let you stay
21 all week long.

22 PROSPECTIVE JUROR: And tomorrow is very light. I
23 don't have anything today, and I'm lightly booked
24 tomorrow, so today and tomorrow is good.

25 THE COURT: Remind me if I don't let you go that I

1 would let you go. Thank you, Doctor.

2 All right. Hey. What is your jury number?

3 PROSPECTIVE JUROR: 196.

4 THE COURT: Ms. Tate?

5 PROSPECTIVE JUROR: I am disabled, and I take some
6 heavy narcotic medication.

7 THE COURT: What kind of narcotics are you taking?

8 PROSPECTIVE JUROR: I do OxyContin. I take
9 OxyContin, MS Contin, amitriptyline, Celebrex -- oh,
10 gosh.

11 THE COURT: Now, are you able to drive, Ms. Tate?

12 PROSPECTIVE JUROR: I do do some driving.

13 THE COURT: You do?

14 PROSPECTIVE JUROR: Yeah, I do some driving.

15 THE COURT: Well, let me ask you this. If you are
16 sitting here during this time, you understand what
17 you're doing now?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: And when you take these medications,
20 does that impact on your ability to understand and
21 comprehend what's going on around you?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Well, do you just want not to serve or
24 do you want to serve?

25 PROSPECTIVE JUROR: It doesn't matter, but I

1 thought I would bring that to your attention.

2 THE COURT: Ms. Tate, I think I'm going to let you
3 stay here with us, and if you have any problems now, if
4 you need us to stop, bring it to my attention and we'll
5 do that.

6 PROSPECTIVE JUROR: Okay.

7 THE COURT: You take care. Thank you.
8 Hey.

9 PROSPECTIVE JUROR: 146.

10 THE COURT: Mr. Nalley?

11 PROSPECTIVE JUROR: Yes, sir. Only worker in a
12 dry cleaners, and if I'm gone, the place is closed.

13 THE COURT: Are you the owner?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: And you're the only one there?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: I'm going to let you go.

18 All right. Anyone else?

19 Very good.

20 Mr. Clerk, I'm going to find the remaining pool
21 qualified to serve.

22 THE CLERK: Thank you, Your Honor.

23 THE COURT: All right. Ladies and gentlemen let
24 me go over a few of the basic rules of court, if you
25 would allow me to do so, then we'll take a quick break,

1 and then we'll pick the jury selection on the first
2 case, then we'll start at 2:00 o'clock today.

3 Are the lawyers ready to do that at 2:00 -- I mean
4 now?

5 MS. WYSE: Yes, Your Honor.

6 THE COURT: Very good.

7 All right. Ladies and gentlemen, if you would,
8 this should be in the notice to you when you got your
9 jury summons; however, if you would, don't bring any
10 cell phones or beepers or any type of device that is
11 capable of taking pictures or recording here in the
12 courtroom. This lady over here to my right is called a
13 court reporter, and she's the only one allowed by law
14 to record the proceedings unless you are a member of
15 the press. And if you are a member of the press, even
16 they come up and get an order that allows them to
17 record the proceedings.

18 Also phones go off in courtrooms all over the
19 state at the most inopportune time. So leave your
20 devices in your car when you come to jury service. If
21 a bailiff sees you with your phone or similar-type
22 device, they're going take it from you. They're not
23 going to keep it, obviously, but they will give it back
24 at the end of the day just so it won't interfere with
25 the proceedings.

1 As you have already seen once this morning, we do
2 everything here in the courtroom which means that there
3 is a lot of opportunity for you to run into someone who
4 may be a lawyer in the proceedings, who may be a
5 witness or a party to the proceedings. And the lawyers
6 know, their clients know they're not allowed to talk to
7 you as jurors. I'm going to ask and also instruct you
8 please do not have any interaction with the lawyers,
9 parties, or any witnesses that you may know. It's okay
10 to nod your head in acknowledgement, but don't engage
11 in conversation with them. If the other side sees you
12 speaking with a party or a witness, they're going to
13 think that it's improper ex parte communications,
14 they're going to bring it to my attention, then we have
15 to have hearings, and it's not a good thing. So if you
16 would, nod to the lawyers or other people, but don't
17 engage in conversation while you're here this week.

18 Also, if we ask you to be here, say, 9:30.
19 Typically, I'll start court about 9:30 with the jurors.
20 Be here a little bit early. We will be as prompt as we
21 can. A lot of times, if you're selected to serve on a
22 jury in a case, you will be sitting in the back room
23 wondering what in the world we're doing out here. But
24 I can promise you we get here about 8:30 in the
25 morning, and we'll start working right away. But if

1 you straggle in, it will delay the proceedings even
2 longer than necessary, so try to be prompt if you can.

3 Mr. Clerk, you have your handout; is that correct?

4 THE CLERK: I will before the --

5 THE COURT: Right. Ladies and gentlemen, in just
6 a few minutes, we're going to take a break, and then I
7 will come back and we'll begin jury selection on the
8 first case. If you are not selected and if you are
9 selected to serve on the first jury, I'm going to ask
10 that the clerk hand out a number. And each night this
11 week beginning tonight, if you would call in after --
12 after 6:00 o'clock to the number that is given to you
13 by our clerk, there will be a message on there when and
14 if we need you to return back. As I told you, we have
15 about four cases or four trials for court this week.
16 Sometimes they will go forward, and sometimes they may
17 resolve themselves during the course of the week.
18 However, if you will call in each day, even if you're
19 on the jury, to make sure you don't need to return, if
20 so, when.

21 With that being said, let's take about a
22 ten-minute break, and we'll come back with jury
23 selection.

24 (WHEREUPON, the prospective jury panel exited the
25 courtroom at 11:05 a.m.)

1 (WHEREUPON, a recess was taken from 11:05 a.m. to
2 11:21 a.m.)

3 THE COURT: Is Mr. Frederic Sloan here?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Would you please step up here.

6 (WHEREUPON, a conference was held out of the
7 hearing of the court reporter.)

8 THE COURT: Ladies and gentlemen, we're trying to
9 round up everyone. Sometimes being up here is like
10 herding cats, I promise you. But if you will bear with
11 us and just stand at ease for a second, we will begin
12 jury selection in just a moment.

13 Mr. Smith, defense ready?

14 MR. SMITH: Yes, we are.

15 THE COURT: Is the State ready?

16 MR. FULMER: Yes, sir.

17 THE COURT: Call your first case.

18 MR. FULMER: Judge, the State calls Justin Andrew
19 Serva on indictment 2017-GS-04-00798. That's a
20 true-billed indictment for possession with intent to
21 distribute methamphetamine.

22 THE COURT: Ladies and gentlemen, the first trial
23 we're going to start with this week is the State versus
24 Justin Andrew Serva, who's been indicted for possession
25 with intent to distribute methamphetamine.

1 Let me tell you before we get started that the
2 fact that this gentleman was arrested, charged, and
3 indicted is not evidence of guilt. It doesn't raise an
4 inference nor a presumption of his guilt. It's simply
5 the mechanism by which the State of South Carolina will
6 bring a person before the court at a trial for a
7 determination of guilt or innocence.

8 Ladies and gentlemen, I remind you that you are
9 still under oath. I'm going to be asking some
10 questions that are more particularly designed for
11 trials as opposed to general jury qualification. If
12 you would, unless you just have a dire need to do so,
13 if a question pertains to you, if you will stand up,
14 give us your jury number, give us the information in
15 open court, and then we'll make our decision
16 accordingly. If you feel like there is an absolute
17 need, let me know, and I will let you come forward, but
18 otherwise, please stand up and give us the information.

19 First question is -- can everyone hear me okay?
20 Again, if you can't hear me or don't understand the
21 question, raise your hand. The first question: Has
22 any member of the jury panel ever been related by blood
23 or marriage to Justin A. Serva.

24 Mr. Smith, would you have your client stand,
25 please, sir.

1 (Defendant complies.)

2 THE COURT: Thank you, sir.

3 Any member of the jury panel ever been related by
4 blood or marriage to Justin A. Serva? If so, please
5 stand.

6 Has any member of the jury panel ever had a close
7 personal or social relationship with Justin A. Serva?
8 If so, would you please stand.

9 All right. Ladies and gentlemen, I'm going to
10 read a list of possible witnesses who may appear in
11 this case. I'm going to go through the entire list
12 consisting of 12 witnesses. If anyone does not get a
13 name or understand the name that I read out, please
14 make sure you raise your hand, but I will ask you
15 questions at the end of process.

16 Potential witnesses are: Detective Javon Chaff,
17 Deputy Rusty Scogins, Anderson County Sheriff's Office,
18 Deputy Matthew McDonald, Anderson County Sheriff's
19 Office, Detective J.T. Foster, Anderson County
20 Sheriff's Office, Sheldon Clinkscales, Deputy Dustin
21 Williams, Anderson County Sheriff's Office, Deputy
22 Patrick Smith, Anderson County Sheriff's Office,
23 Beverly Hankins, Deputy Alan Hendrix, Anderson County
24 Sheriff's Office, Belinda Lee, who is in Anderson
25 County, South Carolina, Pansy Allen, Anderson County

1 Sheriff's Office, Chris Buesse, Anderson County
2 Sheriff's Office, and Meredith Lanford, Anderson-Oconee
3 Regional Forensics Lab.

4 Did anyone not get all those names?

5 Very good.

6 All right. First question is: Has any member of
7 the jury panel ever been related by blood or marriage
8 to any of the potential witnesses I've just given to
9 you? If so, please stand.

10 Next question: Has any member of the jury panel
11 ever had a close personal or social relationship with
12 any of the witnesses? Please stand.

13 All right, ma'am. What is your jury number?

14 PROSPECTIVE JUROR: 191, Rhiannon Strange.

15 THE COURT: 191?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Which witnesses are those?

18 PROSPECTIVE JUROR: Patrick Smith.

19 THE COURT: Patrick Smith?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: And how do you know Mr. Smith?

22 PROSPECTIVE JUROR: I'm a close family friend.

23 THE COURT: He's a close family friend?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Do you currently socialize with

1 Mr. Smith?

2 PROSPECTIVE JUROR: With his mother.

3 THE COURT: Okay. Well, would the fact that
4 Mr. Smith may appear in these proceedings affect your
5 ability to be fair and impartial to both this defendant
6 and the State?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: And would you, if he testifies,
9 believe his testimony over any other witness who may
10 appear in these proceedings?

11 PROSPECTIVE JUROR: Ask that again.

12 THE COURT: Okay. If Mr. Smith testifies.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: Because of your relationship, would
15 you believe him over any other witness who may appear
16 and testify in these proceedings?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: So you feel like you can be fair and
19 impartial to both sides of this case?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Any additional voir dire from the
22 State?

23 MR. FULMER: No, sir.

24 THE COURT: From the defense?

25 MR. SMITH: No, sir.

1 THE COURT: Thank you, ma'am.

2 Anyone else?

3 Mr. Smith, would you stand up and introduce
4 yourself and your firm.

5 MR. SMITH: My name is Don Smith, and I practice
6 law here in Anderson.

7 THE COURT: Mr. Fulmer, would you do the same.

8 MR. FULMER: My name is Danny Fulmer. I work in
9 the solicitor's office.

10 THE COURT: Would you introduce the other folks at
11 the table with you, please.

12 MR. SMITH: This is Mr. David Wagner. He's our
13 elected Solicitor. This is Catherine Wyse, assistant
14 solicitor, and Chris Beeco, assistant solicitor.

15 THE COURT: Everyone get all those? Anyone who
16 did not get all those?

17 Ladies and gentlemen, has any member of the jury
18 panel ever been represented by any of the attorneys
19 here in the courtroom or any attorney who works for the
20 Tenth Judicial Circuit Solicitor's Office, or are you
21 currently represented by either? If so, would you
22 please stand.

23 Has any member of the jury panel ever been related
24 by blood or marriage, or have you ever had a close
25 personal or social relationship with any of the

1 attorneys here in the courtroom or any attorney
2 employed by the Tenth Judicial Circuit Solicitor's
3 Office? If so, would you please stand.

4 All right, sir. What is your jury number?

5 PROSPECTIVE JUROR: Number 4.

6 THE COURT: 4? Okay, sir.

7 PROSPECTIVE JUROR: It might pertain to the first
8 question about the solicitors representing me.

9 THE COURT: They typically represent the State and
10 not you.

11 PROSPECTIVE JUROR: Right, but a case that I'm
12 involved with, and I really don't want to discuss it
13 with all the people.

14 THE COURT: Let me get the attorneys to come up
15 here and let me come down there.

16 All right. You are Mr. Allgood. Are you a victim
17 or a defendant?

18 PROSPECTIVE JUROR: A victim.

19 THE COURT: Okay. What's the charge?

20 PROSPECTIVE JUROR: It was an assault case and
21 trespassing. This guy came to my house, and we had an
22 altercation. The police came, and it was expunged when
23 one of the deputies left the sheriff's department for
24 another department, and then they just reinstated it.

25 THE COURT: Reinstated the charges?

1 PROSPECTIVE JUROR: Uh-huh, and I'm not sure --

2 THE COURT: Mr. Smith, do you want me to excuse

3 Mr. Allgood?

4 MR. SMITH: I would like that.

5 THE COURT: I think I'm going to excuse you. Come

6 back for a civil term.

7 PROSPECTIVE JUROR: That's fine.

8 THE COURT: I think that would be better.

9 PROSPECTIVE JUROR: Thank you, sir.

10 THE COURT: Hang on. We'll transfer you to a

11 civil term.

12 PROSPECTIVE JUROR: Appreciate it.

13 THE COURT: Anyone else?

14 All right. Ladies and gentlemen, has any member

15 of the jury panel read, heard, or seen anything prior

16 to today about the case of the State of South Carolina

17 versus Justin A. Serva? If so, would you please stand.

18 And follow-up to that: Has any member of the jury

19 panel formed or expressed an opinion about any issue or

20 matter in the case of the State of South Carolina

21 versus Justin A. Serva, who's been charged with

22 possession with intent to distribute methamphetamine?

23 If so would, you please stand.

24 Is there any member of the jury panel aware of any

25 bias or prejudice that you may harbor against the State

1 of South Carolina or against Mr. Serva or their
2 respective attorneys? If so, would you please stand.

3 Is there any member of the jury panel that was a
4 member of the Anderson County Grand Jury that issued
5 the indictment in this matter? If so, would you please
6 stand.

7 Ladies and gentlemen, is there any member of the
8 jury panel who is a member of or a contributor to any
9 group which has, as its primary concern the promotion of
10 law enforcement or victims' rights? Examples but
11 certainly not an exhaustive list would be MADD, SADD,
12 or CAV. But if you are a member of or a contributor to
13 any group which has as its primary concern the
14 promotion of law enforcement or victims' rights, would
15 you please stand.

16 Does any member of the jury panel know of any
17 reason whatsoever why he or she should not be selected
18 to serve in the trial of this matter with particular
19 emphasis being placed about your ability to be fair and
20 impartial to the State as well as to Mr. Serva? Do you
21 know of any reason why you should not serve? If you
22 would stand.

23 What is your jury number?

24 PROSPECTIVE JUROR: 65.

25 THE COURT: You're Mr. Durham?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Do you mind telling us why?

3 PROSPECTIVE JUROR: No. My mother works in
4 Greenville County under Walt Wilkins in PTI, so I
5 didn't know if that would have anything to do with it.

6 THE COURT: No, sir, I don't think it will, but
7 let me ask you this since you stood up: Can you be
8 fair and impartial to both sides of this case?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Will you be fair and impartial to both
11 sides of this case?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Would the fact that your mother works
14 in the PTI program over in Greenville affect your
15 ability to listen to the testimony, to listen to the
16 evidence, to listen to the law as I give it to you and
17 make your decision based on that unaffected by your
18 mother's employment?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: Any additional voir dire for the
21 State?

22 MR. FULMER: No, sir.

23 THE COURT: From the defense?

24 MR. SMITH: No, sir.

25 THE COURT: Thank you, sir, for standing up.

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Anyone else?

3 Any additional voir dire from the defense -- I
4 mean for the defense?

5 MR. SMITH: No, sir.

6 THE COURT: From the State?

7 MR. FULMER: No, Your Honor.

8 THE COURT: All right. Ladies and gentlemen, back
9 before I had gray hair, when we would select a jury,
10 what happened is we would bring a person here who
11 couldn't read or write, and they would draw names out
12 of a spindle to make sure that the jury selection
13 process was not rigged. Now we have computers that
14 does essentially the same thing or does the same thing.
15 We will have the clerk run your names through the
16 computer, and you will be randomly selected.

17 If your name is called out, I'm going to ask you
18 to come forward, come through this bar, stand in front
19 of our clerk and in between him and our court reporter,
20 face the State, face the defense, and a decision will
21 be made whether or not you will sit on the jury.

22 If your name is called, please bring your personal
23 belongings you may have in case you are, in fact,
24 selected.

25 Mr. Smith, it may be a good idea for you and your

1 client to move on over to the next table, if you don't
2 mind, sir.

3 We're going to have one alternate; is that
4 correct?

5 MR. FULMER: Yes, Your Honor.

6 THE COURT: Mr. Smith, is that okay with you?

7 MR. SMITH: Yes, Your Honor.

8 Your Honor, may I approach?

9 THE COURT: Yes, sir.

10 (WHEREUPON, a bench conference was held off the
11 record in the presence of the prospective jury, but out
12 of their hearing.)

13 THE COURT: Mr. Clerk.

14 THE CLERK: If it pleases the court.

15 THE COURT: Yes, sir.

16 THE CLERK: Ladies and gentlemen, when I call your
17 name, I'm going to ask that you come through the gate
18 and stand here in front of me and turn around and face
19 the audience, please.

20 Our first potential juror is 196, Tonetta G. Tate.

21 (WHEREUPON, a black female stepped forward.)

22 THE CLERK: What say you for the State?

23 MR. FULMER: Please excuse this juror.

24 THE CLERK: You can have a seat back in the
25 audience, please, ma'am.

1 Juror number 30, Christina H. Bryant.
2 (WHEREUPON, a black female stepped forward.)
3 THE CLERK: What say you for the State?
4 MR. FULMER: Please present this juror.
5 THE CLERK: What say you for the defense?
6 MR. SMITH: Please seat this juror.
7 THE CLERK: Juror number 158, Jessica H. Permar.
8 (WHEREUPON, a white female stepped forward.)
9 THE CLERK: What say you for the State?
10 MR. FULMER: Please excuse this juror.
11 THE CLERK: Juror number 120, Yashica L. Lee.
12 (WHEREUPON, a black female stepped forward.)
13 THE CLERK: What say you for State?
14 MR. FULMER: Please present this juror.
15 THE CLERK: What say you for the defense?
16 MR. SMITH: Please excuse this juror.
17 THE CLERK: You can have a seat back in the
18 audience.
19 Juror number 37, Phillip C. Cahaly..
20 (WHEREUPON, a white male stepped forward.)
21 MR. FULMER: Please present this juror.
22 THE CLERK: What say you for the defense?
23 MR. SMITH: Please seat this juror.
24 THE CLERK: Juror number 43, Belinda I. Clark.
25 (WHEREUPON, a white female stepped forward.)

1 THE CLERK: What say you for the State?

2 MR. FULMER: Please present this juror.

3 THE CLERK: What say you for the defense?

4 MR. SMITH: Please seat the juror.

5 THE CLERK: Juror number 125, Peter S. Malcolm,

6 III.

7 (WHEREUPON, a white male stepped forward.)

8 THE CLERK: What say you for the State?

9 MR. FULMER: Please present this juror.

10 THE CLERK: What say you for the defense?

11 MR. SMITH: Please seat this juror.

12 THE CLERK: Juror number 215, Thomas G. Wilkes.

13 (WHEREUPON, a white male stepped forward.)

14 THE CLERK: What say you for the State?

15 MR. FULMER: Please present this juror.

16 THE CLERK: What say you for the defense?

17 MR. SMITH: Please seat this juror.

18 THE CLERK: Juror number 27, Amber P. Briggs.

19 (WHEREUPON, a black female stepped forward.)

20 THE CLERK: What say you for the State?

21 MR. FULMER: Please present this juror.

22 THE CLERK: What say you for the defense?

23 MR. SMITH: Please seat this juror.

24 THE CLERK: Juror number 39, Cedric W. Cannon.

25 (WHEREUPON, a black male stepped forward.)

1 THE CLERK: What say you for the State?

2 MR. FULMER: Please present this juror.

3 THE CLERK: What say you for the defense?

4 MR. SMITH: Please seat this juror.

5 THE CLERK: Juror number 103, Austin L. Huffman.

6 (WHEREUPON, a white male stepped forward.)

7 THE CLERK: What say you for the State?

8 MR. FULMER: Please present this juror.

9 THE CLERK: What say you for the defense?

10 MR. SMITH: Please seat this juror.

11 THE CLERK: Juror number 191, Rhiannon T. Strange.

12 (WHEREUPON, a white female stepped forward.)

13 THE CLERK: What say you for the State?

14 MR. FULMER: Please present this juror.

15 THE CLERK: What say you for the defense?

16 MR. SMITH: Please excuse this juror.

17 THE CLERK: Juror number 65, Travis Durham.

18 (WHEREUPON, a white male stepped forward.)

19 THE CLERK: What say you for the State?

20 MR. FULMER: Please present this juror.

21 THE CLERK: What say you for the defense?

22 MR. SMITH: Please excuse this juror.

23 THE CLERK: You can have a seat back in the

24 audience, please, sir.

25 Juror number 179, Steven S. Schronce.

1 (WHEREUPON, a white male stepped forward.)

2 THE CLERK: What say you for the State?

3 MR. FULMER: Please present this juror.

4 THE COURT: What say you for the defense?

5 MR. SMITH: Please seat this juror.

6 THE CLERK: Juror number 2, Teresa R. Alexander.

7 (WHEREUPON, a white female stepped forward.)

8 THE CLERK: What say you for the State?

9 MR. FULMER: Please present this juror.

10 THE CLERK: What say you for the defense?

11 MR. SMITH: Please excuse this juror.

12 THE CLERK: You can have a seat in the audience,
13 please, ma'am.

14 And I have that's our fourth strike, Mr. Smith.

15 MR. SMITH: Yes, sir.

16 THE CLERK: Thank you.

17 Juror number 56, Hampton E. Davenport.

18 (WHEREUPON, a white male stepped forward.)

19 THE CLERK: What say you for the State?

20 MR. FULMER: Please present this juror.

21 THE CLERK: What say you for the defense?

22 MR. SMITH: Please seat this juror.

23 THE CLERK: Juror number 84, Henry E. Guess, Jr.

24 (WHEREUPON, a black male stepped forward.)

25 THE CLERK: What say you for the State?

1 MR. FULMER: Please present this juror.

2 THE CLERK: What say you for the defense?

3 MR. SMITH: Please seat this juror.

4 THE CLERK: Juror number 83, Carlton B. Griffith.

5 (WHEREUPON, a black male stepped forward.)

6 THE CLERK: What say you for the State?

7 MR. FULMER: Please present this juror.

8 THE CLERK: What say you for the defense?

9 MR. SMITH: Please excuse this juror.

10 THE CLERK: You can have a seat back in the

11 audience, please, sir.

12 Juror number 130, Andrea J. Mavrinac.

13 (WHEREUPON, a white female stepped forward.)

14 THE CLERK: What say you for the state?

15 MR. FULMER: Please present this juror.

16 THE CLERK: For cause, Mr. Smith?

17 MR. SMITH: Please seat this juror.

18 THE CLERK: Your Honor, that's 12. We'll go with

19 one alternate.

20 THE COURT: One alternate.

21 THE CLERK: Juror number 184, Jarvis L. Smith.

22 (WHEREUPON, a black male stepped forward.)

23 THE CLERK: What say you for the State?

24 MR. FULMER: Please excuse this juror.

25 THE CLERK: You can have a seat back in the

1 audience, please.

2 Juror 104, Geraldine Hunter.

3 (WHEREUPON, a black female stepped forward.)

4 THE CLERK: What say you for the state?

5 MR. FULMER: Please present the juror.

6 THE CLERK: What say you for the defense?

7 MR. SMITH: Please seat this juror.

8 THE CLERK: That is 12 and an alternate, Your

9 Honor.

10 THE COURT: Thank you.

11 All right. Any motions from the State with regard
12 to the jury selection process?

13 MR. FULMER: No, Your Honor.

14 THE COURT: From the defense?

15 MR. SMITH: No, sir.

16 THE COURT: Thank you.

17 All right. Ladies and gentlemen, those of you who
18 are selected, just for your information, I'm going to
19 excuse you in just a few minutes, but before you go,
20 I'm going to ask that you go back to the jury room with
21 the bailiff. I need you to select someone to be the
22 foreperson over the jury.

23 Now, our alternate has the right to vote but may
24 not serve as the foreperson because you are the
25 alternate. The foreperson will be someone who

1 communicates with the court any time there needs to be
2 any communications as well as presides over the
3 deliberations of this case at the end of the case.

4 Once you select the person who you want to be your
5 foreperson -- it just has to be by a simple majority.
6 It doesn't have to be unanimous -- that person needs to
7 write their name down on a piece of paper, and if you
8 would, turn around and ask your other jurors whom, if
9 anyone, would like to have pad and pen to take notes
10 with during the course of this trial. Once you get a
11 figure, would you write that down, knock on the door,
12 and we'll give you some parting instructions before we
13 excuse you for lunch. But if you will go back with the
14 bailiff now, please.

15 (WHEREUPON, the jury exited open court at
16 11:55 a.m.)

17 THE COURT: All right. To those out in the jury
18 panel, I can see the look of disappointment on your
19 faces out there. We're going to give you some other
20 opportunities. Unless things settle out, we'll
21 probably have at least two more trials during the
22 course of this week.

23 I'm going to excuse you in just a minute. Before
24 you go, I'm going to ask the clerk to hand out the
25 numbers where you call in after 6:00 o'clock.

1 Remember, please don't call in until after
2 6:00 o'clock. Usually that message may not get there
3 until a little bit later, so after 6:00 o'clock, if you
4 will call in each night until we have information
5 saying you are excused.

6 In the off chance that you are not asked to come
7 on back, I want to thank you for being here. Without
8 you, the system doesn't work. With that being said,
9 once you get the number from our clerk, you are
10 excused.

11 (WHEREUPON, the remainder of the prospective jury
12 panel exited the courtroom at 11:57 a.m.)

13 (Pause in proceedings.)

14 THE COURT: Number 130 will be our foreperson.

15 Now, what they have done is sent a note back, in
16 other words, like we have a designated note-taker for
17 the jury. Does anybody have a problem if I just have
18 the bailiff say no, it's open for anybody to take notes
19 if you need to do that? Anybody have a problem?

20 MR. SMITH: No, sir.

21 MR. FULMER: No.

22 THE COURT: That's the second time I've seen that.

23 (WHEREUPON, the jury came into open court at
24 approximately 12:04 p.m.)

25 THE COURT: All right. You are our foreperson?

1 JURY FOREPERSON: Yes, sir.

2 THE COURT: If you would, I think the bailiff
3 already told you, but if you would use that chair each
4 time you come in and out the courtroom, please, ma'am.
5 And our alternate, if would you use that chair. Okay?
6 The rest of you, other than those two designated seats,
7 can sit where you like throughout the course of this
8 trial.

9 I'm going to excuse you in just a minute. We're
10 going to start the trial at around 2:00 o'clock. I
11 have one administrative matter to take up, then we're
12 going to bring you in here for opening statements. But
13 I need to give you some instructions right now that
14 will apply until you are excused from the trial of this
15 matter.

16 First, now that you have been selected to serve on
17 this jury, you may not listen, read, or hear any news
18 about this case. I don't know that there's going to be
19 any out there, but in the event there is, you are not
20 to listen to it, watch it, or read it. You are to walk
21 away from it.

22 Also, I would suspect that some of you are
23 married. I know I am. I have a little girl, and if I
24 were selected to sit on a jury, my wife and my daughter
25 would ask me a bunch of questions about the case. It

1 is improper from this point forward until you are
2 dismissed for any of you to have any communications
3 with anyone about this case. That includes
4 face-to-face conversation, e-mails, Twitter, phone
5 calls, any type of communication.

6 Also, until you're instructed to begin your
7 deliberations, that means amongst yourselves, quite
8 often the bailiffs tell me that they will hear jurors
9 commenting to each other about the testimony that they
10 hear throughout the course of a trial as they're
11 walking up and down the hallway going back to the jury
12 room. You are not to do that. You are not to discuss
13 this case amongst yourselves until I give you very
14 explicit instructions to begin your deliberations.

15 And, Madam Forelady, if you hear any of your
16 jurors trying to do that, it's going to be your job to
17 kind of be a monitor and kind of calm that down.

18 Finally, ladies and gentlemen, this is my don't
19 speech. I'm required by the supreme court to give
20 these on all cases. Okay? So don't take offense.
21 It's not directed to you personally. But, finally, you
22 are not to engage in any independent jury research
23 until you have been released. What that means is you
24 are not to look up anything about any issue you hear
25 about in this case or any issue you think may be

1 helpful to you as a jury. It will be the
2 responsibility of the State to bring its case and
3 convince you of its charges against this defendant
4 satisfactory for you to make a decision.

5 Also, you're not to look up anything about any
6 participant in this case meaning the lawyers, the
7 court, the court reporter, the clerk of court, the
8 defendant, or any witnesses who may appear. After the
9 case is over, you can look to your heart's desire, but
10 until it's over with, we want you to make your decision
11 based solely on the testimony and evidence that you
12 hear in this courtroom and according to the law as I
13 will give it to you at the end of this case unaffected
14 by any outside sources.

15 With that being done, Madam Forelady, I understand
16 we have one juror who would like to have pad and pen;
17 is that correct?

18 JURY FOREPERSON: Yes, sir.

19 THE COURT: We will have that for you when we
20 begin trial at 2:00 o'clock. Is there any reason
21 anyone on the jury can't come back here at 2:00 o'clock
22 so we can begin opening statements?

23 Very good. I'm going to get the bailiff to escort
24 you out.

25 As a reminder, I have about a five- or ten-minute

1 thing that starts at 2:00 o'clock, but I'll get you in
2 here immediately after that, and we'll begin opening
3 statements. If you will go with the bailiff, you are
4 excused until 2:00.

5 (WHEREUPON, the jury exited open court at
6 12:07 p.m.)

7 THE COURT: Any additions or exceptions from the
8 State as to my instructions?

9 MR. FULMER: No, Your Honor.

10 THE COURT: From the defense?

11 MR. SMITH: No, sir.

12 THE COURT: All right. For the record, the
13 defense has passed up a motion in limine. One has to
14 do with any prior arrests or convictions of the
15 defendant. I asked the State whether or not they had
16 any, and the State is going to look it up. We're going
17 to cross that bridge at the time I give the defendant
18 his rights under the Fifth Amendment, and then we'll
19 cross that then.

20 Also, there is a request for sequestration. I
21 grant that, as I normally do.

22 So if you would, Mr. Fulmer, make sure, other than
23 the chief investigating officers, make sure that
24 everybody is out of the courtroom. Okay?

25 Anything further from the defense before we get

1 started?

2 MR. FULMER: Judge, the defense has not asked for
3 a *Jackson v. Denno* hearing.

4 THE COURT: Sir?

5 MR. FULMER: The defense has not requested a
6 *Jackson v. Denno* hearing; however, I expect my officers
7 will testify to some brief statements the defendant
8 made during the course of the execution of the search
9 warrant. I don't know if you would like to have a
10 short *Jackson v. Denno* hearing.

11 THE COURT: Do you want to have a *Jackson/Denno*
12 hearing?

13 MR. SMITH: Yes, sir.

14 THE COURT: Are you ready to go now?

15 MR. FULMER: My officers are not here until
16 2:00 o'clock.

17 THE COURT: Y'all need to let me know when y'all
18 have that. All right. We'll do the *Jackson/Denno* at
19 2:00. All right. Anything else before we break?

20 MR. FULMER: No, sir.

21 MR. SMITH: No, sir.

22 THE COURT: All right. We'll be in recess until
23 2:00 o'clock.

24 (Lunch recess taken from 12:10 p.m. to 1:55 p.m.)

25 (WHEREUPON, State's Exhibit Numbers 1 through 7

1 were marked for identification.)

2 THE DEFENDANT: Your Honor.

3 THE COURT: Just one second. I'm going to hear
4 from you, and we're going to bring up some matters.

5 For the record, I got a call from the solicitor's
6 office, Mr. Fulmer. When I came back from lunch,
7 called him back. Mr. Fulmer advised that he and
8 Ms. Wyse were getting on the elevator, and Mr. Serva
9 got on the elevator with them, and Mr. Serva started
10 trying to speak with them, said, "We can't talk to
11 you." He said that, "I want to be able to work out a
12 deal. I can turn in individuals including my lawyer."
13 And the State made me aware of that, and so it came to
14 my attention.

15 THE DEFENDANT: I can't hear you, sir.

16 (Defendant slaps himself in the head.)

17 THE COURT: So that's what was brought to my
18 attention, Mr. Smith and Mr. Serva.

19 Now, Mr. Serva, you started to say something just
20 a second ago.

21 THE DEFENDANT: Yeah. I've got evidence --

22 THE COURT: You need to stand up when you speak to
23 me.

24 THE DEFENDANT: I've got evidence on multiple
25 officers --

1 THE COURT: Sir?

2 THE DEFENDANT: I have evidence on multiple
3 officers in relation to the --

4 THE COURT: Come around here. I cannot hear you.
5 (Defendant acting aggressively to Mr. Smith.)

6 THE BAILIFF: Watch your mouth.

7 THE COURT: Sir, let me tell you --

8 THE DEFENDANT: I apologize. I have been
9 threatened with -- or my life has been -- look. My
10 life has been -- they tried to stab me -- they stabbed
11 me seven times, and the guy that stabbed me ain't got
12 arrested. Stabbed me in my heart --

13 (Defendant unbuttoning his shirt.)

14 THE COURT: I don't need to see that --

15 THE DEFENDANT: -- and my lung --

16 THE COURT: Mr. Serva --

17 THE DEFENDANT: -- stabbed me in the head --

18 THE COURT: Mr. Serva, stop. Your case has
19 been --

20 THE DEFENDANT: Stabbed me in my heart, slit my
21 throat --

22 THE COURT: I don't need to see that --

23 THE DEFENDANT: -- popped my lung, stabbed me in
24 the back of the head. Didn't even get arrested.

25 THE COURT: Mr. Serva, stop. Your case has

1 been --

2 THE DEFENDANT: This is why all this has happened.

3 THE COURT: Mr. Serva, stop. I'm going to let you
4 speak. Let me tell you, we have picked a jury.

5 THE DEFENDANT: I understand that.

6 THE COURT: We're going to go forward with the
7 trial today. Okay, sir? Understand that. Now, is
8 there anything you want to bring to my attention?

9 THE DEFENDANT: Yeah.

10 THE COURT: Button your shirt up, please.

11 THE DEFENDANT: I was threatened by one of your
12 bailiff's brothers just the other day. His name is
13 Morgan, Shane Morgan, Ruby Skelton's husband. He
14 called me and threatened me the other day, told me that
15 I was going to die, made sure I was going to die when I
16 got to prison, that all the judges were behind it. Not
17 the judges, per se, but the courts, the lawyers. I
18 have been railroaded from the get-go. It wasn't my
19 stuff. It was my girlfriend's stuff who was there.

20 THE COURT: Well, hang on. Mr. Serva, stop for a
21 second. First, understand this. Right now, that's why
22 we pick a jury, that's why we have the presumption of
23 innocence, and the State has to meet the burden of
24 proof by proof beyond a reasonable doubt.

25 THE DEFENDANT: I understand.

1 THE COURT: That's why we have trials.

2 THE DEFENDANT: I understand.

3 THE COURT: I don't even know any of the people
4 you just referenced to me.

5 THE DEFENDANT: Richard Shirley.

6 THE COURT: So I don't know nothing about your
7 case. Let me tell you something else and give you a
8 warning. Whatever you say right now --

9 THE DEFENDANT: I understand that.

10 THE COURT: -- can be used against you.

11 THE DEFENDANT: Okay.

12 THE COURT: Do you understand that?

13 THE DEFENDANT: Yes, sir, I do. May I ask you a
14 question, sir?

15 THE COURT: I can't advise you, but go ahead.

16 THE DEFENDANT: Can I get some more time to
17 prepare my case?

18 THE COURT: No, sir. We're going to trial today.

19 THE DEFENDANT: That's not fair.

20 THE COURT: We're going to trial today.

21 THE DEFENDANT: My lawyer hasn't done nothing for
22 me but hurt me. I have proof of that on my phone.

23 THE COURT: Mr. Serva, there's remedies for that.
24 We're going forward.

25 THE DEFENDANT: The day I get to prison, they will

1 have me killed. I have already been told this. It's
2 been passed down from the last 15 years.

3 THE COURT: Mr. Serva --

4 THE DEFENDANT: They tried to kill me already
5 three times. I got hit in the head three days after I
6 got stabbed. I got arrested from saving my own life.
7 Literally.

8 THE COURT: Mr. Serva, let me just tell you, I
9 don't know anything about that and --

10 THE DEFENDANT: I'm trying to explain it to you.
11 One of the witnesses, Detective Chow, she had me for
12 attempted murder on Charles Edgar Smith, Jr. A gun
13 accidentally went off when I handed it back to him. And
14 ever since then, his uncle is Vern Bagwell from the
15 Labor of the Fields. I mean, I know stuff about Harlan
16 Harvey. I mean, I know all kind of -- federal
17 indictment. It says federal trumps state. I'm asking
18 you guys --

19 THE COURT: Sir. Mr. Serva, you need to address
20 me.

21 THE DEFENDANT: I tried to contact our sheriff
22 several times. I've tried to contact law enforcement.
23 Hell, one of your deputies brought me back a bag up to
24 my house that had stuff in it from somebody else. So I
25 threw it out the window because the guy had his shit in

1 my car. The deputy brought it back and said, I'm not
2 messing with you Serva. We done told you this. That
3 same deputy from Anderson County went over to Oconee
4 County, bought some dope, waited two hours, went back
5 and bought more dope, waited three hours, went back and
6 bought more dope, went back that night and kicked the
7 damn door in, his own words, sir, and said, How do you
8 like my new boat?

9 THE COURT: Well, let me just tell you this,
10 Mr. Serva. What we're about here today --

11 THE DEFENDANT: I understand, and all that leads
12 up to -- this case pertains to that.

13 THE COURT: Stop. Stop.

14 THE COURT: Mr. Clerk, would you give me that
15 indictment.

16 What we are here about today?

17 THE DEFENDANT: Possession of methamphetamine with
18 intent to distribute.

19 THE COURT: Says or on around April 27, 2016, in
20 Anderson County, South Carolina, that you, Justin
21 Andrew Serva, did attempt to distribute, disburse,
22 deliver, purchase, or otherwise aid, abet, attempt or
23 conspire to disburse, distribute, deliver, purchase or
24 possess with intent to distribute, disburse, deliver,
25 or purchase methamphetamine, a Schedule II controlled

1 substance, et cetera. This is the indictment. This is
2 what we're here about today, and this is what we're
3 going to do.

4 Other facts to this case, if they're relevant to
5 your defense in this case, then you will be given an
6 opportunity to present a defense. If it's not
7 relevant, I'm going to say it's not relevant and not
8 admissible. I don't know until I hear the information.
9 Do you understand that?

10 THE DEFENDANT: I'm trying to give that you
11 information now.

12 THE COURT: Mr. Serva, we're not going to do it
13 right now. That's why we're having a trial, and that's
14 what we're going to do. Okay?

15 Do you have any other matters you want to bring up
16 besides trying to disclaim the defense?

17 THE DEFENDANT: No. Yeah.

18 What do you say, Don, co-counsel?

19 THE COURT: Mr. Serva.

20 THE DEFENDANT: I'm asking my attorney now.

21 THE COURT: I'm asking you to talk to me.

22 Mr. Smith, come around, please.

23 Okay. Now talk to Mr. Serva for a second.

24 You've got to stand back and let them have some
25 privacy.

1 (WHEREUPON, an off-record discussion was had
2 between Mr. Smith and the defendant.)

3 THE COURT: Mr. Smith, let me just state this to
4 you. We're going to go forward today with this trial.

5 MR. SMITH: Yes, sir.

6 THE COURT: I'm going to let you and Mr. Serva go
7 back.

8 THE DEFENDANT: Can we get --

9 THE COURT: Mr. Serva, listen to me. Talk to
10 Mr. Smith. Y'all go back in the back and talk, and
11 then we're going to do a plea.

12 Is there a plea ready to go?

13 MS. WYSE: Yes, there is.

14 THE COURT: We're going to do that plea and bring
15 you back in here and start this trial by doing a
16 Jackson/Denno hearing.

17 THE DEFENDANT: I never received a plea for this
18 case.

19 THE COURT: Go back and talk to Mr. Smith.

20 (WHEREUPON, a recess was taken from 2:20 p.m. to
21 3:02 p.m.)

22 THE COURT: All right. State ready to proceed?

23 MR. FULMER: Yes, sir.

24 THE COURT: Mr. Smith, you ready to proceed?

25 MR. SMITH: I am ready, sir, but I don't know if

1 it's me that's relevant.

2 THE COURT: Sir?

3 MR. SMITH: I don't know if it's me that's
4 relevant. I'm ready. It's up to Mr. Serva.

5 THE COURT: Let me tell you, Mr. Serva. I gave
6 you a chance to speak with your attorney, and I gave
7 you a chance to briefly address the court. The issues
8 that you are raising are not germane to this case. To
9 the extent they are, you can raise them at the point in
10 time in this case when you present a defense or through
11 your attorney or on cross-examination. Okay, sir? Do
12 you have anything further?

13 THE DEFENDANT: No.

14 THE COURT: Okay. What I would suggest we do,
15 since it's the late hour, you told me you have a
16 *Jackson/Denno*.

17 MR. FULMER: Yes, sir, Judge.

18 THE COURT: How long will that take?

19 MR. FULMER: I have one witness.

20 THE COURT: One witness?

21 MR. SMITH: The suppression, too, sir.

22 THE COURT: Sir?

23 MR. SMITH: Suppression.

24 THE COURT: You have a Fourth Amendment issue?

25 You guys, when I start scheduling juries back

1 here, you need to let me know this. I would have
2 brought them back tomorrow or later this afternoon
3 instead of sitting back there for an hour.

4 What I'm going to do, I'm going to bring them in,
5 bring them back in the morning. I don't know what else
6 to do. I don't want to swear them in yet. Bring the
7 jury back in.

8 (WHEREUPON, the jury entered open court at
9 3:05 p.m.)

10 THE COURT: Madam Forelady, ladies and gentlemen
11 of the jury, thank you for your patience. I don't know
12 if you heard me say it earlier, sometimes trying cases
13 is like trying to herd cats. It's difficult. We have
14 a bunch of different moving parts.

15 Quite frankly, I had some issues that came up.
16 That's why you've been in the back. We have been in
17 here trying to deal with those. It's going to take a
18 little bit longer than I anticipated. I'm going to
19 dismiss you for today. I'm going to ask that you be
20 back in your jury room at 9:25, and we'll begin opening
21 statements at 9:25 tomorrow. Okay? I apologize to you
22 for that. It's my fault. But if you would, I'm going
23 to have you go back with the bailiff to the jury room.

24 Whoever has a notepad, do you have it? If you
25 would just leave your pad in the jury room and do that

1 each night when we leave here and during lunch breaks.
2 Nobody will look at it. Nobody will do anything to it.
3 But I'm going to ask you all to be back at 9:25 in the
4 morning. Thank you. You are dismissed.

5 (WHEREUPON, the jury exited open court at
6 3:07 p.m.)

7 THE COURT: Let's do the *Jackson/Denno* first.
8 Would you call your first witness.

9 MR. FULMER: Yes, sir, Judge. The State calls
10 Deputy J.T. Foster.

11 THE COURT: To the extent the witnesses have been
12 sequestered, they need to leave the courtroom even
13 during *Jackson/Denno*.

14 JAMES THOMAS FOSTER,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE COURT: Mr. Smith, I noticed there was a lady
17 sitting out there. I think she's in the back of the
18 courtroom. Is she one of your witnesses?

19 MR. SMITH: She may be.

20 THE COURT: She needs to be out, too.

21 Do you have any other potential witnesses in here,
22 Mr. Smith?

23 MR. SMITH: I don't see any, sir.

24 THE COURT: Okay.

25 THE CLERK: If you could state your name and spell

1 your last name for the reporter.

2 THE WITNESS: James Thomas Foster, F-o-s-t-e-r.

3 DIRECT EXAMINATION

4 BY MR. FULMER:

5 Q Deputy Foster, where do you work?

6 A The Anderson County Sheriff's Office.

7 Q How long have you worked there?

8 A Just about 12 years.

9 Q What are your duties and responsibilities at the
10 sheriff's office?

11 A Currently, I am assigned to the street narcotics
12 unit. I hold the rank of sergeant.

13 Q And were you working at the sheriff's office
14 April 27th, 2016?

15 A Yes, sir.

16 Q And on that date, did you have an occasion to be
17 involved in the service of a search warrant at [REDACTED]
18 Pioneer Lane?

19 A Yes, sir.

20 Q And did you, in fact, serve a search warrant on
21 that location?

22 A Yes, sir, our division did.

23 Q What was the basis of the search warrant?

24 A Prior to obtaining the search warrant, myself and
25 Detective Alan Hendrix utilized a confidential source

1 to make a controlled purchase from [REDACTED] Pioneer Lane.
2 Before the purchase was made, we searched the
3 confidential source, followed the confidential source
4 to the address, listened to the conversation while the
5 confidential source was inside.

6 After the confidential source had made the
7 purchase, we followed the confidential source to a
8 predetermined meeting location. There the confidential
9 source gave us the drugs that was purchased. We
10 searched the confidential source afterwards and found
11 negative results. We used documented funds for this
12 controlled purchase.

13 Q During the course of the service of the search
14 warrant, did you come in contact with the defendant?

15 A Yes, sir.

16 Q Where was he in the house when you first saw him?

17 A I believe we made contact with the defendant right
18 inside his bedroom or in the apex of the door going
19 from the living room to the bedroom.

20 Q Did you say anything to the defendant?

21 A Yes, sir. We told him that we were with the
22 sheriff's office in Anderson, and we had a search
23 warrant for the property.

24 Q Did you advise the defendant of his Miranda
25 rights?

1 A I did, sir.

2 Q Do you think he understood those Miranda rights?

3 A He verbally said that he did understand those
4 rights.

5 Q After he was advised of his Miranda rights, did he
6 say anything to you?

7 A Yes, sir.

8 Q What did he say to you?

9 A He told us that when he saw that law enforcement
10 was approaching, he took two guns and hid them under
11 his mattress or under the sheet on top of his mattress.
12 After that, he went on to say that he would like to
13 maybe potentially work for the sheriff's office in a
14 controlled purchase, making stifled employment to where
15 he helps himself with charges.

16 Q Did you locate any illegal drugs that day?

17 A Yes, sir, we did.

18 Q Where did you locate those drugs?

19 A The drugs that were directly connected to the
20 defendant were found in his bedroom, the bedroom that
21 he said was his. We found them in a TV stand inside of
22 a Styrofoam cup. One package was a rather small, clear
23 plastic baggie; another was a little larger. All of
24 them were in that TV stand area.

25 Q At any point during this time, did you threaten

1 the defendant?

2 A No, sir.

3 Q Did you coerce him into speaking with you?

4 A No, sir.

5 Q Did you promise him anything in exchange for
6 speaking to you?

7 A No, sir.

8 Q Was his statement speaking with you free and
9 voluntary?

10 A Yes, sir.

11 Q Did you make him any promises about leniency if he
12 spoke with you?

13 A No, sir.

14 Q Was any of that recorded by audio or video?

15 A Not the talking to at the house, no, sir.

16 MR. FULMER: Please answer any questions Mr. Smith
17 may have for you.

18 THE COURT: Yes, sir.

19 MR. SMITH: Please the court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. SMITH:

23 Q So you got a search warrant?

24 A Yes, sir.

25 Q And you showed that to the owner of the property?

1 A That's correct. And the defendant as well.

2 Q Who was the owner of the property?

3 A His mother is the lady who said that she was in
4 control of the house.

5 Q Where did you show it to her at?

6 A We showed it to her in the living room.

7 Q That's where Mr. Serva was; is that right?

8 A That's correct. And his grandmother was there,
9 too.

10 Q You sure Mr. Serva wasn't outside?

11 A When I made contact with him, he was inside.

12 There was a slew of people in the back porch, but I
13 didn't go through the back. I came through the front.

14 Q Are you sure you wouldn't let her in, into the
15 house?

16 A Wouldn't let whom in?

17 Q Ms. Serva.

18 A Ms. Serva?

19 Q Mrs. Serva.

20 A She was allowed back into the property, and then
21 she was read the search warrant with the defendant and
22 the grandmother, who was in a wheelchair.

23 Q Was she in the house or out of the house?

24 A When I got there, she was out of the house.

25 Q So what was this statement again?

1 A Which part of it?

2 Q You said he gave a free statement?

3 A That's right, that he had two guns. When law
4 enforcement showed up, that he hid them under the
5 sheets in his bedroom. And we discussed and talked
6 about him potentially working as a confidential source
7 for the sheriff's office in Anderson.

8 Q Did he have anything in writing?

9 A No, sir. He was arrested that day and several
10 days later got into some issues that doesn't really
11 concern this matter, but ended up not working out as
12 far as being a confidential source through us.

13 Q Those guns that you're talking about, what were
14 they?

15 A One was a Norinco. It's an odd-caliber pistol.

16 THE COURT: Let me stop you, Mr. Smith. The gun
17 charges are dropped, right?

18 MR. FULMER: It has been.

19 THE COURT: They're not relevant. So that's not
20 an issue, all due respect, but not an issue.

21 BY MR. SMITH:

22 Q What gun did you find?

23 A There were two guns.

24 THE COURT: They're not going to be able to
25 testify about that, so it's not relevant.

1 MR. SMITH: I understand that, sir. My point is
2 for impeachment purposes.

3 Q I don't see two guns. What two guns?

4 A One was definitely a Norinco. The other was a
5 black gun that was right on the bed. I don't have the
6 model or serial number, but they were both photographed
7 prior to their removal with the serial numbers and the
8 calibers and magazines that were with them.

9 Q It's understood that there was a gun charge on
10 Mr. Serva?

11 A That's correct.

12 Q One gun?

13 A That's correct.

14 Q Where is the other one?

15 A One was stolen out of Arkansas, and I thought that
16 we were not worried about the guns, but the other gun
17 is still in evidence. Both guns should be in evidence,
18 unless one has been returned to Arkansas because there
19 is a victim in Arkansas.

20 Q The affidavit -- or the judge signed a search
21 warrant. Why did he write 9:55 by his name?

22 A I'm not sure. You would have to ask the judge who
23 issued it.

24 MR. SMITH: Your Honor, this is a *Denno* hearing.
25 I'll save that for the suppression hearing.

1 THE COURT: Okay, sir.

2 BY MR. SMITH:

3 Q But you don't have anything -- you knew you were
4 going to be executing a search warrant; is that right?

5 A That's correct.

6 Q And you didn't do anything to preserve or
7 memorialize that event, right?

8 A I'm not sure what you mean. You mean the
9 controlled buy being memorialized?

10 Q No, no. The execution of the search warrant. You
11 know, when he was offering a bunch of stuff to you
12 without reason.

13 A We didn't offer him anything --

14 Q No, I'm not saying that.

15 A -- other than a chance to work.

16 Q You're saying that he offered you.

17 A Yes, that's correct.

18 Q But you don't have anything to prove it; you don't
19 have any audio or video?

20 A No, sir.

21 Q Even though you knew you were going into his home
22 to execute a search warrant?

23 A That's correct.

24 Q So you can prove what went on there, right?

25 A If we had body cameras, yeah, but we don't have

1 body cameras.

2 MR. SMITH: Yes, sir. Nothing further, Your
3 Honor.

4 THE COURT: Redirect?

5 MR. FULMER: I don't have anything, Judge.

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

7 You don't have any other witness in the
8 *Jackson/Denno*?

9 MR. FULMER: No, sir, Judge.

10 THE COURT: Mr. Smith, do you have any witnesses
11 on *Jackson/Denno*?

12 MR. SMITH: Not in *Jackson/Denno*.

13 THE COURT: I'll be glad to hear from you,
14 Mr. Smith, as far as whether or not the statement is
15 voluntary. Again, the guns are out. I'm not going to
16 let them testify to that because it's not relevant.

17 MR. SMITH: Yes, sir.

18 Your Honor, the statements that were made are
19 vague at best, and the State continues to say that
20 defendants are making statements, but they don't do
21 anything to try to preserve them. They have the
22 technology to video and take audio, but they don't do
23 anything like that. And without that, we believe that
24 there is a doubt as to what was said and what was
25 offered. And since they had the opportunity, since

1 they knew they were going in there, they knew what
2 their purpose was, we believe that in and of itself is
3 a doubt necessarily to keep out any statements.

4 THE COURT: Mr. Smith, are you aware of any
5 authority out there that requires law enforcement,
6 other than DUI scenario, that they have to use body
7 cams or have it recorded or an audio version of it?

8 MR. SMITH: Your Honor, I can't point to that.

9 THE COURT: I don't disagree with you that it's
10 best practices to do that.

11 MR. SMITH: Yes, sir.

12 THE COURT: At least it takes away a lot of the
13 question, but it doesn't necessarily negate the ability
14 of law enforcement to bring charges even without it
15 that I'm aware of.

16 So going back, clearly, this gentleman under the
17 circumstances, was subject to a custodial
18 interrogation. I don't think that's a big issue in
19 this case, but he received, according to law
20 enforcement, Miranda and then made the statement. I
21 haven't heard any evidence of coercion. Doesn't sound
22 like the interrogation was at the house where either he
23 lived or his mother lived, and there was -- you know,
24 actually, it's his bedroom. It wasn't a long time. He
25 doesn't look to be immature, but there's no evidence

1 about that. There's no information about his physical
2 or mental health condition or his prior experience, but
3 there's no evidence that there's any misrepresentation,
4 threats, promises of leniency, and whether or not he's
5 isolated from his mother is irrelevant based on his
6 age, so I'm going to find by a preponderance that there
7 was a statement by the defendant. Again, since the gun
8 charges have been dismissed, it's not relevant or
9 material to the case-in-chief, so I will not let you
10 testify as to what he allegedly said about guns being
11 placed on his mattress. But the other, I'm going to
12 let it in and be subject to cross-examination.
13 Obviously, the jury will have to make the ultimate
14 call.

15 MR. SMITH: Based on that finding, what exactly
16 did he say that relates to the drugs?

17 THE COURT: Sir?

18 MR. SMITH: What did he say about the drugs? All
19 he did was say something about the guns. I didn't hear
20 anything about the drugs.

21 THE COURT: No, he said he found it on the TV
22 stand by the bed. There was a small packet and a
23 larger packet, if I'm not mistaken.

24 Is that correct, Officer?

25 DEPUTY FOSTER: Yes, sir.

1 THE COURT: I think the only statement he said
2 other than the guns was that I'd like to be able to
3 help work undercover, et cetera. That's the limit of
4 what y'all are going to bring up, right?

5 MR. FULMER: He also said the room in which the
6 drugs were found was his bedroom. In addition to the
7 fact that he wanted to work with law enforcement.

8 MR. SMITH: I was concerned about statements.

9 THE COURT: I don't think he admitted ownership to
10 the drugs necessarily from what I heard. Anyway, but
11 if you feel like it's the outside the scope of *Denno*,
12 we will take it up outside the presence of the jury.

13 MR. SMITH: Yes, sir.

14 THE COURT: Now, motion to suppress.

15 MR. SMITH: The search warrant was bad. That's
16 our contention. There wasn't probable cause, and we
17 believe --

18 THE COURT: Do you have a copy of the search
19 warrant?

20 MR. SMITH: Yes, sir.

21 He said that they had had a controlled buy within
22 the last 72 hours and --

23 THE COURT: Now, if I'm not mistaken, is this the
24 case where the information as to who the confidential
25 informant was was brought up, and I think, Mr. Smith,

1 you said we know who it is? Is that the same case or a
2 different case?

3 MR. SMITH: I believe it may be a different case.

4 THE COURT: Different case?

5 MR. SMITH: Yes, sir.

6 THE COURT: Okay. Do you have a copy of the
7 search warrant?

8 MR. FULMER: I do, Judge.

9 THE COURT: Pass it forward.

10 All right, sir.

11 THE COURT: Mr. Smith.

12 MR. SMITH: The defense calls J.T. Foster.

13 THE COURT: All right. Officer, you are still
14 under oath.

15 JAMES THOMAS FOSTER,

16 BEING PREVIOUSLY SWORN, FURTHER TESTIFIED AS FOLLOWS:

17 THE COURT: Were you the affiant?

18 THE WITNESS: Yes, sir, I was.

19 DIRECT EXAMINATION

20 BY MR. SMITH:

21 Q So your confidential source, was it somebody
22 working off charges?

23 A Yes, sir, it was.

24 Q What charges?

25 A Possession of meth.

1 Q Did you ever work with this person prior?

2 A Yes, sir.

3 Q How many times?

4 A Without the notice in front of me, it would be
5 hard to say, but more than five, less than ten.

6 Q Did they all result in convictions?

7 A They all resulted in buys that occurred.

8 Q Did they result in arrests --

9 THE COURT: Hang on. What was your answer?

10 THE WITNESS: They all resulted in controlled
11 purchases that happened.

12 BY MR. SMITH:

13 Q Who was the purchase made from?

14 A Inside the home, and it was made from Justin
15 Serva.

16 Q It was a purchase made from Justin Serva?

17 A That's correct.

18 Q You have video of that?

19 A We have audio of the conversation between the two.

20 Q Didn't the discovery say that you had a video and
21 audio?

22 A No, sir. It says that we have audio recording of
23 the controlled purchase. It was visually observed when
24 the confidential source arrived at the house and
25 entered the house, when they exited the house.

1 Q What time was that?

2 A I don't have it in front of me.

3 Q What day was it?

4 A I don't have that in front of me either.

5 Q Could you get it?

6 A I certainly could.

7 Q Could you please get it.

8 A Now?

9 Q Yes, sir.

10 A It will take a moment. I have to go to the office
11 and bring up confidential source files that are kept
12 over lock and key.

13 Q You know we're trying to this case today?

14 A That's correct.

15 Q You don't have your information?

16 A I have what I believe we need.

17 THE COURT: What is it you're asking for?

18 MR. SMITH: Your Honor, I'm asking for what day it
19 occurred versus the day it was executed, the search
20 warrant was executed. They had a controlled buy, and
21 then we don't know how many days it was before the
22 execution of the search warrant, don't know what time
23 the purchase was made, we don't know once again the
24 time element from the purchase and then the search
25 warrant and the execution of the search warrant.

1 THE COURT: Mr. Fulmer, do you have that
2 information here in the courtroom?

3 MR. FULMER: I don't. I just have the face of the
4 search warrant which says, "Within the last 72 hours a
5 controlled buy was made," Judge.

6 THE COURT: Go ahead, Mr. Smith. If I feel like
7 we need it, I'll have him bring it up here.

8 MR. SMITH: Yes, sir.

9 Q Was it the same day?

10 A No, sir, it was not the same day.

11 Q Was there a two-day lapse?

12 A Without the information in front of me, I'm not
13 sure.

14 Q But you asked for a no-knock search, right?

15 A That's correct.

16 Q For evidence preservation?

17 A That's correct.

18 Q But you weren't doing it the same day?

19 A That's correct.

20 Q Well, if this really happened, why wouldn't you go
21 in there right now? You know the sale was just made,
22 right?

23 A That's correct.

24 Q And you allegedly gave him money. So that way you
25 would be able to get your marked money back, right?

1 A That's correct.

2 Q So why didn't do you that?

3 A We did the no-knock for evidence preservation and
4 because, during the controlled purchase, there was talk
5 of a Norinco handgun.

6 Q But if you're worried about the preservation of
7 evidence, you're waiting a couple days to go in and see
8 if it's still there?

9 A That's correct.

10 Q Where is that money at? Can we see it?

11 A The money that what?

12 Q The marked money.

13 A There is a copy of it in the controlled purchase
14 buy.

15 Q Is it here in evidence?

16 A I don't know. I'm not sure if you mean it's here,
17 because nothing from the buy is here.

18 Q You don't have the evidence from the --

19 A From the controlled purchase, no, it's not here.

20 Q You didn't bring the drugs they're alleging were
21 purchased?

22 A The drugs are here.

23 Q There's pictures of those?

24 A Of the drugs?

25 Q Yeah.

1 A Yes. We took pictures of the house.

2 Q Do you know which one it is?

3 A It's all labeled inside the BEST evidence kit.

4 Q Can you show us that, too?

5 A Sure.

6 THE WITNESS: Would you like me to get it?

7 THE COURT: Yes, sir.

8 (Witness stepped down and returned to the stand.)

9 BY MR. SMITH:

10 Q How much weight was it?

11 THE COURT: Hang on. Let him do one thing at a
12 time.

13 MR. SMITH: Yes, sir.

14 (Witness is cutting open a BEST evidence kit.)

15 THE WITNESS: Bring them up to you or show them to
16 you?

17 THE COURT: Quite frankly, I don't know.

18 Ask the question. Go ahead.

19 Bring the one thing he was asking you about, bring
20 it with you and let him continue questioning.

21 THE WITNESS: Which one did you have issue?

22 MR. SMITH: I had a question about the controlled
23 buy.

24 THE COURT: You were asking him about the drugs,
25 were you not?

1 MR. SMITH: Yes, sir.

2 MR. FULMER: Judge, he's charged today with
3 possession with intent to distribute, which is what
4 these drugs are in evidence from. He's not charged or
5 being prosecuted on the distribution charge, and we
6 don't have that evidence here today. In fact, he was
7 never charged with distribution, as far as I know.

8 THE COURT: Are the drugs here?

9 MR. FULMER: The drugs from this case, yes, sir.

10 THE COURT: Bring them forward. I mean, if he's
11 going to ask a question. I'm not going to open them
12 yet.

13 MR. SMITH: I mean, that's --

14 THE COURT: If you do, you're going to have to
15 stipulate to the chain of custody and admissibility,
16 but we're not going to open them up.

17 MR. SMITH: That's our entire suppression hearing,
18 that there wasn't a purchase. We don't have -- I'm not
19 seeing the money, I'm not seeing the drugs that were
20 purchased, and that's why I want to see the drugs that
21 were purchased.

22 THE COURT: Well, do you then stipulate to the
23 chain of custody and admissibility of what's in that
24 box?

25 MR. SMITH: I can't do that. He --

1 THE COURT: Well, you know, Mr. Smith, I can't let
2 you open it up until we establish chain of custody.

3 MR. SMITH: So do we want to do that in the
4 suppression hearing?

5 THE COURT: What I can do is -- if your position
6 is that there was no drugs found at his residence at
7 all, then I can listen to your argument and listen to
8 your questions and take it under advisement and then
9 wait and see what develops during the case. But at
10 this juncture, you understand -- I know you do. I know
11 you have a client who's a little bit reticent, but if
12 you can't stipulate to chain of custody, I understand
13 that, but I can't require they open up this evidence
14 BEST kit without jeopardizing the chain of custody
15 issues. You understand that, saying it's been tampered
16 with.

17 THE WITNESS: This is the controlled purchase
18 drugs that was just away from the BEST evidence kit.

19 THE COURT: Sir?

20 THE WITNESS: This is the controlled purchase
21 drugs. It was separated from the sealed BEST evidence
22 kit, but it's been in evidence over here.

23 THE COURT: Is that what you're asking about,
24 Mr. Smith?

25 MR. SMITH: Yes, sir.

1 THE COURT: Okay.

2 THE WITNESS: Sorry for the confusion.

3 THE COURT: Does that answer your question?

4 MR. SMITH: It helps, sir.

5 THE COURT: Okay. I'm sure not all of it.

6 MR. SMITH: Yes, sir.

7 THE COURT: Go ahead.

8 BY MR. SMITH:

9 Q How much weight was that?

10 A I'm not sure. I don't have it weighed right
11 there.

12 Q How much money did you spend on it?

13 A I don't have that in front of me. That's all with
14 the controlled buy information. There's not a weight
15 on the bag itself. I didn't write down the weight.

16 Q There's no --

17 A It would be an amount of money we paid for it.

18 Q Yes.

19 A And that would all be on the controlled buy
20 recording.

21 Q So you don't have the evidence necessary to prove
22 your probable cause?

23 A We have the evidence, it's just not in this
24 courtroom. I was unaware that the controlled purchase
25 information regarding a confidential source would be

1 brought into this phase of the trial.

2 Q Is there another proceeding I don't know about?

3 A No, sir.

4 Q So what are you saving it for?

5 A I didn't save it. I just wasn't told to bring it.

6 Q How many people were in the home, according to
7 your source?

8 A At the time? If memory serves me correct, but the
9 recording said that the mother is there, potentially
10 the grandmother is there, the defendant was there, and
11 a Beverly was there.

12 Q So is that what you learned two days prior to the
13 execution of your search warrant?

14 A We found that out 72 hours before I signed the
15 search warrant or up until 72 hours before I signed it.

16 Q So when you executed a search warrant, how many
17 people did you believe to be in that home?

18 A We were unsure as to how many people were there at
19 the time we got ready to execute the search warrant.

20 Q Didn't your source share that with you?

21 A Not that day.

22 Q What did the source share with you?

23 A Nothing on the day of the execution of the search
24 warrant.

25 Q When the source went to the home, what were you

1 told?

2 A That Justin and Beverly was in his bedroom, the
3 mother was in the living room along with his
4 grandmother. Yeah, I believe that's correct.

5 Q Beverly was Mr. Serva's girlfriend?

6 A I'm not sure what their relationship was.

7 Q What did the source tell you, that she was there
8 regularly?

9 A She was just there for that buy for sure. I don't
10 know how well she knows Beverly.

11 Q She knew Beverly?

12 A She knew her as Beverly.

13 Q Did you have to do a no-knock?

14 A Just general standard practice, when you have guns
15 and drugs coordinated, that you request a no-knock.

16 Q Yes, sir. Did you have to do a no-knock?

17 THE COURT: Let me interject something. This is a
18 suppression hearing.

19 MR. SMITH: Yes, sir.

20 THE COURT: My understanding is that you're
21 challenging the search warrant in and of itself, so the
22 question would be probable cause or lack of probable
23 cause, correct?

24 MR. SMITH: Yes, sir.

25 THE COURT: And the issues you're bringing up

1 about the drugs, weight, that would be more of an issue
2 for a directed verdict of acquittal, not whether or not
3 there's probable cause to search, correct?

4 MR. SMITH: Yes, sir. However --

5 THE COURT: So what this question asks, as far as
6 it relates to a suppression hearing, is not relevant,
7 is it?

8 MR. SMITH: It is to me.

9 THE COURT: I understand it is to you, but for
10 purposes of this hearing and establishing whether or
11 not there's probable cause to search these premises
12 where these drugs were alleged to be found, is what I
13 understood this motion or this hearing is about,
14 correct?

15 MR. SMITH: Yes, sir.

16 THE COURT: Okay. So these issues are beyond
17 establishing probable cause or lack of probable cause,
18 are they not?

19 MR. SMITH: Well, if --

20 THE COURT: Or if they are, to establish a lack of
21 probable cause, tell me how we go that way.

22 MR. SMITH: If Deputy Foster is our source for
23 probable cause, then his credibility is of the utmost
24 importance, so the things I'm asking relate to his
25 credibility and what he knows and what he doesn't know

1 or didn't.

2 THE COURT: That's at the time the search warrant
3 was issued, is it not?

4 MR. SMITH: Yes, sir.

5 THE COURT: Don't you have to go to the point in
6 time when it's issued, not what happens when you go and
7 conduct the search?

8 MR. SMITH: Yes, sir.

9 THE COURT: Let's limit our questioning to
10 establishing probable cause for that time frame.

11 MR. SMITH: Yes, sir.

12 Q The search warrant that you got was gotten after
13 you went into the home; is that right?

14 A After the controlled purchase was made, that's
15 correct.

16 Q No. I mean after you executed the search warrant,
17 read the search warrant, because you didn't show the
18 search warrant to the homeowner.

19 A We have already said that, yeah, I did read it to
20 Beverly -- or, excuse me, Justin Salve's mother and the
21 defendant himself inside the home.

22 Q That definitely happened in the home?

23 A That's correct.

24 Q And the audio that you have is certainly
25 Mr. Serva?

1 A During this controlled purchase, it is Mr. Serva's
2 voice, in my opinion.

3 Q Are you an expert?

4 A I am not.

5 Q Is that what you wanted it to be?

6 A Did I want it to be his voice?

7 Q Did you want it to be his voice?

8 A It didn't matter whose voice it was, but we
9 started out the controlled purchase to buy from a
10 person named Justin at [REDACTED] Pioneer Lane.

11 Q Did you give the person money to give you the
12 information?

13 A I did not pay the confidential source at the time.

14 Q Didn't give him \$175?

15 A Not that I remember, no, sir.

16 MR. SMITH: No further questions for this witness.

17 THE COURT: Any questions?

18 MR. FULMER: Yes, sir, just a few.

19 CROSS-EXAMINATION

20 BY MR. FULMER:

21 Q Deputy Foster, the basis of the search warrant is
22 a controlled buy within the previous 72 hours; is that
23 right?

24 A Yes, sir.

25 Q Did you monitor that controlled buy?

1 A We did.

2 Q How did you monitor it?

3 A We visually observed the confidential source go to
4 the home. Prior to the confidential source leaving the
5 control of the agents involved, they were given a
6 recording device where we could listen to the
7 interactions.

8 Q And you monitored it live, realtime?

9 A Yes, sir.

10 Q And did you perceive what appeared to you to be a
11 controlled buy of narcotics?

12 A Yes, sir.

13 Q Did you relate that and inform the affidavit to
14 the judge in order to get the search warrant?

15 A Yes, sir.

16 Q Did you give the judge truthful information at
17 that time?

18 A Yes, sir.

19 Q Was the residence, the address of the residence
20 where this controlled buy took place, [REDACTED] Pioneer
21 Drive?

22 A Pioneer Lane, I believe.

23 Q And is that the location of the search warrant?

24 A Yes, sir.

25 MR. FULMER: I don't have any further questions.

1 MR. SMITH: Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. SMITH:

4 Q The affidavit, this is your affidavit, right?

5 A I can't see it from here, but it probably is.

6 MR. SMITH: Permission to approach the witness,
7 Your Honor.

8 THE COURT: Yes.

9 THE WITNESS: Yes, sir, that's mine.

10 BY MR. SMITH:

11 Q It says 9:55 under the judge's signature. I've
12 never seen the time written down on a judge's
13 signature. Why is that?

14 A I don't know why the judge would write the time
15 down.

16 Q Did you write it?

17 A No, sir.

18 Q Was this done the day of the execution or the day
19 after?

20 A When he wrote his name -- the time?

21 Q Yes.

22 A I don't know when -- if the judge wrote the time
23 on it when he signed the warrant, it would have been
24 when I presented him with the affidavit.

25 Q You presented it to him in the morning?

1 A I don't recall, but I presented it to him within
2 72 hours of the controlled purchase.

3 Q When did you go to the house?

4 A When I executed it?

5 Q Yes.

6 A The 27th of April.

7 Q What time was it, in the afternoon?

8 A It was definitely daylight, maybe afternoon.

9 Q But 9:55, doesn't have a date, we should assume it
10 was April 27th; is that right?

11 A I don't know what you're trying to assume. I
12 didn't write the time under the judge's signature. I'm
13 sorry, I'm not sure I follow your question.

14 Q Well, as I said, I don't know why he would do
15 that. I have never seen that. Have you?

16 A Yeah, I've seen judges put their signature and the
17 time. But I don't know why they do it.

18 MR. SMITH: Nothing further.

19 THE COURT: Thank you. You can step down.

20 All right. Mr. Smith, I'll be glad to hear your
21 argument in regard to suppression.

22 MR. SMITH: I'd like to call Ms. Serva.

23 THE COURT: Bring Ms. Serva in, please.

24 **BRENDA SERVA,**

25 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

1 THE CLERK: If you would, take the stand and state
2 your name and spell your last name for the record.

3 THE WITNESS: Name is Brenda Serva, S-e-r-v-a.

4 MR. SMITH: May it please the court.

5 THE COURT: Yes, sir.

6 DIRECT EXAMINATION

7 BY MR. SMITH:

8 Q Ms. Serva, where do you live?

9 A [REDACTED] Pioneer Lane.

10 Q How long have you lived there?

11 A In April, it will be 20 years.

12 Q Do you remember April 27, 2016?

13 A Vaguely, yeah.

14 Q What happened on that day?

15 A Do you want me to tell all of it?

16 Q No. What was the event?

17 A Okay. I was leaving to go get my glasses. I seen

18 a car across the lawn on another street. And at the

19 same time I got a text that said, "You're dead." I

20 thought it was my ex stalking me. So I went around

21 there, told them to roll down their window and to leave

22 me alone because I thought it was him, and it was the

23 narcotics guy. He said, "Did you just leave that

24 residence?" I said, "Yes, sir, I did." He said,

25 "Well, can I have your cell phone and your license?" I

1 handed them to him.

2 He said, "We got a no-knock warrant, getting ready
3 to bust down your door." I said, "Please do not do
4 that," because my mom was right in the front room by
5 the door eating her lunch, and she was disabled. I
6 said, "Please let me get my mom out of there before you
7 go in." And he said, "No problem." So he called over
8 there, told them not to do anything. And he said okay.

9 So he let my sister go get my mom, took her away.
10 My dad was already gone. And he came in. When I got
11 into the front room, they already had Justin, Beverly,
12 I think Carlos was his name, and her daughter Presley
13 handcuffed on the deck. I asked him, I said, when all
14 this was going on, they went through the house, I said,
15 "Sir, you told me you had a warrant." And he says,
16 "Yes, ma'am, I do." I said, "Well, can I see it?" He
17 wouldn't hand me the paper. He started reading from a
18 paper. An officer in my hallway said, "Woman, you're
19 lucky you're here because you didn't have to be here."

20 Q Yes, ma'am. Tell me --

21 A He never showed me a copy or never give me
22 anything.

23 Q Did the police go into your home prior to you
24 being back in your home?

25 A They were, yeah, coming through the back door,

1 yeah, they were.

2 Q So they went into your home, then you went in
3 afterward?

4 A Yeah.

5 Q When did they let you come back in the house?

6 A When they had them in custody. I told you when I
7 was coming through, they already had them in custody.
8 They was coming from the back door. But I said, "Sir,
9 you told me you had a warrant. May I see your
10 warrant?" He read it to me. He read something to me.
11 And then another officer said, "You're lucky you're
12 here. Woman, you're lucky you're here. You don't even
13 have to be here. You're lucky we're letting you be
14 here."

15 Q Did you see a warrant before they went in the
16 house?

17 A No, I didn't. They wouldn't show me nothing. He
18 had a piece of paper. He was reading it to me. He
19 never gave me a copy or anything.

20 Q How long were they at your house?

21 A Oh, I don't know. It's been a while ago. I know
22 a little over an hour. And they were even using my
23 dad's medical supplies to get their evidence.

24 Q Did they at any time during that hour show you a
25 warrant for your house?

1 A No.

2 Q What were they wearing?

3 A Some of them was wearing green, some of them was
4 wearing -- I think the other guy was wearing -- I can't
5 remember. It was either pants and a shirt, the
6 narcotics guy. Which I told, you know, I just asked
7 for the warrant and they wouldn't show it to me. They
8 wouldn't give me a copy of anything.

9 Q What time did the execution of the search warrant
10 take place?

11 A Well, it was around lunchtime. My mom was getting
12 ready to eat her lunch, and I was going to get a set of
13 glasses.

14 Q How many people were in your house?

15 A How many people were in my house?

16 Q Yes.

17 A My mom, I know my mom, and I know Justin and
18 Beverly and Carlos. I didn't know Presley was there,
19 but she was. I believe that was it, sir.

20 Q So when did you first see a search warrant for
21 your home?

22 A I never seen one. Until this day, I have never
23 seen one. When I asked him about the search warrant,
24 he was reading something to me that he had in his hand.
25 And when I asked him if I could see it, you know, that

1 was when one of the other officers said, "Woman, you're
2 lucky you're here."

3 Q I understand.

4 MR. FULMER: I don't have any questions, Judge.

5 THE COURT: Thank you, ma'am. You may step down.

6 Any additional witnesses, Mr. Smith?

7 MR. SMITH: No further witnesses.

8 THE COURT: All right. I'll be glad to hear your
9 arguments.

10 Let me stop for a second. We have sequestered the
11 courtroom. Out of an abundance of caution, probably
12 best, even though she's testified, let's let Ms. Serva
13 leave the courtroom.

14 After you testify in court in the trial, if you
15 do, you will be allowed back in the courtroom. But
16 right now, let's go ahead and ask you to leave.

17 THE WITNESS: Okay.

18 THE COURT: Thank you, ma'am.

19 MR. SMITH: May it please the court.

20 THE COURT: Hang on.

21 Now you can go.

22 MR. SMITH: May it please the court.

23 Your Honor, Ms. Serva talks about how she did not
24 see the search warrant. But more importantly, she
25 talks about how she was not in the living room as

1 Deputy Foster or Sergeant Foster testified to. He said
2 Ms. Serva was in the home in the living room. She was
3 not in the home, and that right there goes to
4 credibility. Credibility is the only thing we have
5 based on the fact he didn't feel like he needed to
6 bring things from the office, what have you.

7 Suppression is obviously required to keep out
8 evidence that is acquired wrongfully. We believe,
9 based on the circumstances, the inability to know when
10 the purchase was made and different things like that,
11 we think that that was created following the entrance
12 to the home, entrance to the home that Ms. Serva was
13 never provided a search warrant even though she's the
14 owner of the home, and clearly that falls outside the
15 legal manner in which to serve and execute a search
16 warrant. We believe that, based on those
17 circumstances, that the search warrant should be null
18 and void and, therefore, anything recovered should be
19 suppressed.

20 THE COURT: Thank you, sir.

21 Mr. Fulmer.

22 MR. FULMER: Judge, the State asserts that there's
23 abundant probable cause for the search warrant. In
24 this case the confidential informant does not have to
25 even be relied on. The officer testified that he

1 witnessed the confidential informant enter the home
2 with funds, come back out of the home. He had a
3 recording device that he could hear what's taking place
4 inside the home. So, in essence, this officer
5 witnessed this drug transaction which is clearly
6 probable cause for a search warrant to search that
7 house.

8 MR. SMITH: If I may, he didn't see it. We
9 don't -- he didn't bring anything here to show us that,
10 yes, here is the marked money; here is the audio.
11 There's nothing been provided that supplements his
12 argument that, in fact, there was probable cause. Only
13 thing we have is what he said occurred but nothing to
14 support that, even though he says he has it.

15 THE COURT: All right. You know, when you raise
16 the issue of credibility, that's inherently factual.
17 The only issue for me is whether or not there's
18 probable cause to sustain the warrant. The matter of
19 whether or not they meet their burden at trial is
20 another issue altogether, but there was sufficient
21 probable cause. They had a controlled buy that the
22 officer witnessed. The officer also further testified
23 that they had five prior occasions where they had the
24 same CI provide valuable information for them that was
25 proven to be correct, that they were able to make the

1 purchases.

2 I don't think that's really even necessary because
3 it's not necessarily a CI in the formal sense that you
4 know who this is going in there and doing the alleged
5 controlled buy. To the extent it is, he has been
6 correct in the past, so there's certainly probable
7 cause to support the issuance of the warrant. It will
8 be up to the State to see if it proves its case.

9 MR. SMITH: May it please the court, can I make an
10 oral motion for a redacted version of anything that the
11 confidential source can provide?

12 THE COURT: Say that again, please.

13 MR. SMITH: Redacted versions of anything related
14 to the confidential source that occurred prior to our
15 case.

16 THE COURT: Prior to this controlled buy?

17 MR. SMITH: Yes, sir.

18 THE COURT: Where were you asking to be redacted
19 from?

20 MR. SMITH: Whatever. The incident report,
21 whatever. Just the name out to show what this person
22 allegedly helped with.

23 THE COURT: Mr. Fulmer, is it your intention to
24 present any information on this CI's prior purchases?

25 MR. FULMER: No, sir.

1 THE COURT: So your case will be solely related to
2 this alleged controlled buy in this case from this
3 residence resulting in this warrant?

4 MR. FULMER: I don't even --

5 THE COURT: Yes or no, sir.

6 MR. FULMER: It would not even be based on that.
7 I would not even mention the controlled buy. My intent
8 was to only assert that they were serving a search
9 warrant on that residence and found the contraband. I
10 wasn't even going to bring in the controlled buy that
11 the search warrant was based on. To the jury, that is..

12 THE COURT: Well, to the extent you may change
13 your mind, would it be anything other than the
14 controlled buy in this case?

15 MR. FULMER: No, sir.

16 MR. SMITH: The reason I want it is credibility,
17 once again.

18 THE COURT: Credibility is a jury question,
19 Mr. Smith.

20 MR. SMITH: Yes, sir, and that's exactly why I'm
21 making this oral motion to get redacted versions of the
22 cases that this confidential source was in.

23 THE COURT: You're making a motion for discovery.
24 I thought you were asking to redact certain
25 information.

1 MR. SMITH: No.

2 THE COURT: Do you have evidence of these other
3 controlled buys?

4 MR. FULMER: I do not, Judge. I could ask the
5 deputy if he has that information.

6 THE COURT: Ask him how hard it would be to get
7 it. And let me ask you this. We are now on the day of
8 trial. This has been brought up after we picked the
9 jury, and these are the kind of things we need to take
10 up ahead of time.

11 Would you ask -- Detective Foster still around?

12 MR. FULMER: I believe he's outside.

13 THE COURT: Would you check with him.

14 Detective Foster, how difficult would it be to
15 come up with the controlled buys from this alleged
16 confidential informant?

17 DEPUTY FOSTER: I would have to speak with my
18 lieutenant, who's now over all the recordkeeping. As
19 you're aware, we went through a changeover. I'm not
20 sure what was kept from the previous administration to
21 what is still kept now. I need to look and find that.
22 I'm not a hundred percent sure because I left from
23 narcotics investigations to the role I'm in now, so I
24 don't handle confidential sources any longer.

25 THE COURT: Could you make that inquiry for us?

1 DEPUTY FOSTER: Yes, sir.

2 THE COURT: Anything further from the defense?

3 MR. SMITH: Not at this time.

4 THE COURT: From the State?

5 MR. FULMER: Nothing, Judge.

6 THE COURT: All right, guys. For the record, the
7 *Jackson/Denno* hearing, the statement will be admissible
8 excluding the guns unless you want the gun testimony in
9 for subsequent impeachment.

10 MR. SMITH: Yes, sir.

11 THE COURT: Sir?

12 MR. SMITH: I will know when I'm cross-examining
13 or what have you. I'll know from cross-examining if
14 I'm going to go that route. I don't know what else to
15 say, sir. I'm not sure how I'm going to approach it.
16 It's not in until it's in, right?

17 THE COURT: The statement is admitted excluding
18 the guns since right now they're not relevant. If you
19 think they are, Mr. Fulmer, tell me, and I'll certainly
20 look at it and maybe include it.

21 MR. FULMER: Yes, sir.

22 THE COURT: The motion to suppress is denied.
23 There's probable cause for the issuance of the warrant
24 and the search.

25 With that being said, 9:30 in the morning. Any

1 reason we can't get started at 9:30?

2 MR. FULMER: Not from the State.

3 MR. SMITH: Not at all, sir.

4 THE COURT: Mr. Serva, we're going to start the
5 trial at 9:30 in the morning. You need to be here
6 ahead of that.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And I'm sure they have told you this
9 already when they gave you a bond, but I'm going to
10 tell you, just for the record, if you don't show up
11 tomorrow, which I'm sure you will --

12 THE DEFENDANT: Yeah.

13 THE COURT: Trial is going to go forward in your
14 absence, okay? I just say that because I tell
15 everybody.

16 All right. We'll see everybody in the morning.

17 THE DEFENDANT: Your Honor, may I get my phone?

18 THE COURT: Yeah. Don't bring that back tomorrow.
19 (WHEREUPON, proceedings adjourned at 3:58 p.m.)
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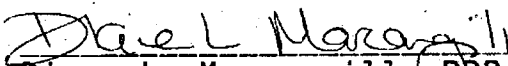
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 19th day of March 2018.

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

August 14, 2018



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

State of South Carolina vs. Justin A. Serva

2017-GS-04-00797 & 798

March 20, 2018

1 State of South Carolina
2 County of Anderson In the Court of General Sessions

3
4 State of South Carolina,)
5) 2017-GS-04-00797 & 798
6 -vs-) March 20, 2018
7 Justin A. Serva,) Volume 2 of 2
8 Defendant.) Pages 124 - 237
9) Transcript of Record
10
11

12 B E F O R E:

13 The Honorable R. Lawton McIntosh, Judge;
14 and a jury.

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

16 Danny Nelson Fulmer, Jr., Esquire
17 Assistant Solicitor
18 Tenth Circuit Solicitor's Office
19 Attorney for the State

20 Donald Loren Smith, Esquire
21 Attorney for Defendant
22

23 Diane L. Marcengill, RPR, CRR, CRC
24 Circuit Court Reporter
25

I N D E XWitnessesPage

JAMES THOMAS FOSTER

Direct Examination By Mr. Fulmer 139

Cross-Examination By Mr. Smith 151

Redirect Examination By Mr. Fulmer 166

Recross-Examination By Mr. Smith 167

ROGER SCOGINS

Direct Examination By Mr. Fulmer 168

Cross-Examination By Mr. Smith 171

Redirect Examination By Mr. Fulmer 179

BELINDA LEE

Direct Examination By Mr. Fulmer 180

MEREDITH LANFORD

Direct Examination By Mr. Fulmer 183

Cross-Examination By Mr. Smith 190

Charge Conference 194

Closing Argument By the State 200

Closing Argument By the Defense 203

Jury Charge 210

Verdict 234

Reporter's Certificate 238

E x h i b i t s

For the State:

Marked	Description	I.D.	Admitted
1	Photo-front of house		144
2	Photo-drugs & paraphernalia		144
5	Photo-arrest warrant		144
6	Photo-spoon scale		144
7	Photo-street view of house		144
8	Digital scale spoon	146	146
9	Square digital scale	146	147
10	Lab report		189
11	Drugs (2 samples)	190	190

For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:32 a.m.)

4 THE COURT: Mr. Smith, have you seen your client
5 this morning?

6 MR. SMITH: I have not, sir.

7 THE COURT: Why don't you take a quick minute and
8 see if you can't find him real quick.

9 MR. SMITH: Yes, sir.

10 (WHEREUPON, a recess was taken from 9:33 a.m. to
11 9:39 a.m.)

12 THE COURT: Mr. Smith, were you able to find your
13 client?

14 MR. SMITH: I was not.

15 THE COURT: Did you try to contact him?

16 MR. SMITH: I have.

17 THE COURT: All right, sir.

18 For the record, before we broke yesterday, as a
19 matter of precaution, I gave Mr. Serva the admonition
20 that the trial would proceed in his absence if he did
21 not appear today, so that's my intent.

22 Anything from the State?

23 MR. FULMER: No, Your Honor.

24 THE COURT: You ready to proceed?

25 MR. FULMER: Yes, sir.

1 THE COURT: Do you have your witnesses sequestered
2 properly?

3 MR. FULMER: My first witness is in the courtroom.

4 THE COURT: He's the investigating officer. He
5 has a right to be here. Otherwise, do you have
6 everybody sequestered?

7 MR. FULMER: Yes, sir. I don't see anyone in the
8 courtroom.

9 THE COURT: Mr. Smith, you ready to proceed?

10 MR. SMITH: Yes, sir, I am.

11 THE COURT: Very good. Bring the jury in.

12 (WHEREUPON, the jury entered open court at
13 9:41 a.m.)

14 THE COURT: Good morning. Does the juror or
15 jurors who requested pads have them with them today?
16 Very good.

17 All right. Ladies and gentlemen, we're about to
18 start the trial of the case of the State of South
19 Carolina versus Justin Andrew Serva, who I informed you
20 yesterday has been indicted and charged with possession
21 with intent to distribute methamphetamine.

22 Before we get started, I'm going to ask our clerk
23 to swear in the jury, please, sir.

24 THE CLERK: If it pleases the court.

25 THE COURT: Yes, sir.

1 THE CLERK: If I could have you stand and raise
2 your right hands, please.

3 (WHEREUPON, the jury was impaneled.)

4 THE COURT: All right. Before we get started,
5 Madam Forelady, just a few words to you, if I may.

6 Number one, trials are not endurance contests, so
7 if at any time I ask you to come to the courtroom
8 before the jury is ready to come back, just send word
9 you need a few more minutes. If you need anything
10 during the course of your stay, let our bailiffs know.
11 If they can reasonably accommodate you, they will.

12 If at any time any juror can't see or hear the
13 proceedings, raise your hand or indicate, and we'll
14 stop and make sure that you can. It's very
15 important -- in fact, it's critical that you're able to
16 listen to and see all aspects of this trial. And,
17 also, if anyone needs a break before I take one, our
18 court reporter can tell you right now I have a tendency
19 to run long, so if you need a break before I give you a
20 break, raise your hand, and I'll be more than glad to
21 do so.

22 With that being said, ladies and gentlemen, I
23 don't know if any of you have ever been involved in a
24 trial before, whether it be civil or criminal. I
25 suspect, however, that each and every one of you have

1 watched on TV or at the movies something that purports
2 to be a trial. Let me quickly dispel you of any
3 notions you may have of watching shows on the
4 television or at the movies. Trials are nothing like
5 that in real life. They're slow, they're very
6 deliberate, and they're very methodical. They're
7 certainly not entertainment, but they are a fundamental
8 part our democracy.

9 Ladies and gentlemen, these attorneys, when they
10 are sworn in, as all attorneys are, are advocates for
11 their clients. They take an oath to zealously
12 represent their clients or their position in any court
13 proceeding, and you'd expect no less of them in this
14 case. However, they're also officers of the court.
15 What that means is that you can expect them to be
16 professional and competent and ethical in their
17 dealings with one another and their dealings with the
18 court and any witness that appears before this court.

19 Also, ladies and gentlemen, you just took an oath
20 where you swore or affirmed that you would be fair and
21 unbiased in this case, and throughout the qualification
22 process, you also indicated that you would do just
23 that. What that means is these attorneys in court have
24 the right to expect of you that you will be fair, that
25 you will be unbiased, and you will be ethical in your

1 dealings in this matter.

2 Now, ladies and gentlemen, what I tell you now is
3 not the law that you will apply in this case. I will
4 give that to you at the end of this trial. This is
5 basically an introduction and an explanation of what
6 you can reasonably understand to happen throughout the
7 course of this trial.

8 Let me point out that those of you who have
9 requested to take notes, at the end of the day, when
10 you're asked or end of this trial when you're asked to
11 begin your deliberations, please note, Madam Forelady,
12 just because something appears in a juror's notes
13 doesn't mean it trumps another juror's memory. They're
14 all on the same footing. Some people are better
15 note-takers; some people are better listeners. That's
16 why they're called deliberations. You will just have
17 to hash out those differences in your deliberations.

18 Also, ladies and gentlemen, in performing your
19 duties as jurors, you will have to determine which
20 testimony you wish to believe and also whether or not
21 there's any testimony you wish not to believe. Part of
22 that process is determining the credibility of the
23 witnesses.

24 In doing so, you need to look at the witnesses
25 while they're on the stand. If you're so engrossed in

1 taking notes that you miss somebody's body reaction to
2 a question or while they're on the stand, it may
3 indicate to you whether or not you should or should not
4 believe their testimony. I just give you that as a
5 heads-up. So don't become so engrossed in your notes
6 that you miss some subtle reaction that may be
7 important to you.

8 As I told you, the defendant has been charged with
9 possession with intent to distribute methamphetamine in
10 this case. Let me tell you before we go further. You
11 may note that the defendant is not present this
12 morning. Under the laws of our state, a defendant may
13 be tried even if the defendant does not attend a trial.
14 But the fact that the defendant is not present may not
15 be considered against the defendant in any manner
16 whatsoever, and, Madam Forelady, I will remind you of
17 that at the end of the day before you begin your
18 deliberations.

19 Now, in this case I remind you that the fact that
20 the defendant has been indicted and charged is not
21 evidence of his guilt. It doesn't raise an inference
22 nor a presumption of his guilt. An indictment is
23 simply the mechanism by which the State brings the
24 defendant such as this one before the court in a trial
25 for determination of guilt or innocence by you, the

1 jury, in this matter.

2 In fact, the indictment will not be sent back to
3 you when the evidence is sent back to you for you to
4 begin your deliberations. In this case, in fact, the
5 defendant has said, "I'm not guilty." That means that
6 he is presumed evidence -- I mean he's presumed
7 innocent, excuse me; therefore, the burden is on the
8 State of South Carolina to prove each and every element
9 of the charge of possession with intent to distribute
10 methamphetamine by proof beyond a reasonable doubt.

11 At the end of the day, when you are asked to begin
12 your deliberations, it will be up to you to determine
13 whether or not the State has met its burden of proof by
14 establishing the defendant's guilt by proof beyond a
15 reasonable doubt.

16 So let me give you a brief explanation of what
17 reasonable doubt is. A reasonable doubt is the kind of
18 doubt that would cause a reasonable person to hesitate
19 to act in an important matter in their own affairs. As
20 I told you, the State has the burden of proving the
21 defendant guilty by proof beyond a reasonable doubt.

22 If you have ever been involved in a civil case, a
23 civil case, the burden of proof is what we call a
24 preponderance or the greater weight of the evidence.
25 In criminal cases, the burden is much higher. It's the

1 highest burden we recognize in our jurisprudence in
2 this state. Proof beyond a reasonable doubt is proof
3 that leaves you firmly convinced of the defendant's
4 guilt.

5 With that being said, ladies and gentlemen, there
6 are very few things in this world that we know with
7 absolute certainty, and in criminal cases, the law does
8 not require that proof overcomes every possible doubt
9 that may occur in a case. At the end of the case when
10 you are asked to begin your deliberations, if, based on
11 your thorough consideration of the evidence, if you are
12 firmly convinced of the defendant's guilt, then it will
13 be your duty to find him guilty. On the other hand, if
14 you think there is a real possibility that the
15 defendant is not guilty, then it will be your duty to
16 find him not guilty and give him the benefit of the
17 doubt.

18 Now, ladies and gentlemen, under the vernacular of
19 lawyers, in other words, what we usually say, you are
20 the judges of the facts. You are the sole judges of
21 the facts. I can't invade your providence as being a
22 fact-finder, neither can the State, neither can the
23 defense. It's up to you to determine the facts of this
24 case, in other words, which verdict you wish to bring
25 back. Therefore, if at any time during the course of

1 this trial I make a comment, a gesture, or do anything
2 that seems to indicate to you how you are to find facts
3 in this case, I'm going to ask you but also instruct
4 you that you are to disregard that. Our state
5 constitution does not allow any trial judge to make a
6 comment or have an opinion on the facts of a case.
7 Essentially, we're like referees to make sure that both
8 sides have a fair and impartial trial, and I instruct
9 you on the law at the end of the case.

10 And, ladies and gentlemen, you will determine what
11 the facts are in this case from the testimony and the
12 evidence that you hear from this witness stand and the
13 exhibits that I allow into evidence and from no other
14 source. You are not to be influenced by anything you
15 may hear outside of the courtroom.

16 Now, ladies and gentlemen, the law that makes you
17 the sole judges of the facts makes me the sole judge of
18 the law. What that simply means is you must accept the
19 law as I give it to you. I may not invade your
20 providence as being the fact-finders. You may not
21 invade my providence as being the instructor on the
22 law. You may disagree with it; you may think it should
23 be something else, but you must apply it as I give it
24 to you. I tell you now that if I make a mistake as to
25 the law, there are groups down in Columbia that will

1 correct my error of law.

2 I also remind you, ladies and gentlemen, do not
3 begin your deliberations or talk about this case with
4 anyone until you are instructed to do so. Don't listen
5 to any news about this case or engage in what I told
6 you yesterday was independent jury research.

7 In every single case, including criminal cases,
8 there are five phases. In just a moment, the State is
9 going to give you an opening statement. What that
10 simply means is the State is going to stand up and tell
11 you what their contentions are in this case and what
12 they intend to be able to show you in this case. What
13 the attorney tells you from the State is not evidence.

14 If the defendant wishes to make an opening
15 statement, he may. He's not required to because the
16 burden remains on the State at all times to prove the
17 defendant's guilt. Again, if the defense chooses to
18 make an opening statement, what he tells you is not
19 evidence. It's simply what their contentions are about
20 this case.

21 At the end of this case, and I'll remind you,
22 Madam Forelady, if what these attorneys tell you now or
23 at the end of this case or any time in between differs
24 from your memory of the facts, your memory of those
25 facts will control. In every single case I was ever

1 involved with as an attorney and every case I've been
2 involved with as a judge, there will be objections.
3 Lawyers have an ethical obligation to object any time
4 he or she feels like there's improper procedure or
5 evidence being tendered in a case. Sometimes I may let
6 you stay in here and see my ruling. Sometimes I may
7 ask you to leave the courtroom because I don't want you
8 to hear something that is not appropriate for you to
9 hear. You may feel like cattle sometimes coming in and
10 out of the courtroom. I apologize to you in advance,
11 but that's simply the way we do things in the
12 courtroom.

13 Again, Madam Forelady, if you need a break, I'll
14 be glad to give it to you at any time. If you need to
15 communicate with me, write a note down like you did
16 yesterday, sign your name to it, give it to the bailiff
17 and he will bring it to my attention, and we'll deal
18 with it here in open court. Okay?

19 With that being said, any additions or exceptions
20 to the opening instructions?

21 MR. FULMER: Not from the State, Your Honor.

22 THE COURT: From the defense?

23 MR. SMITH: No, sir.

24 THE COURT: State ready to proceed?

25 MR. FULMER: Yes, sir.

1 THE COURT: Defense, do you intend to have an
2 opening statement?

3 MR. SMITH: I do.

4 THE COURT: Very good.

5 Mr. Fulmer.

6 MR. FULMER: May it please the court, Judge.

7 THE COURT: Yes, sir.

8 MR. FULMER: Good morning, ladies and gentlemen.

9 As I told you yesterday, my name is Danny Fulmer. I'm
10 a prosecutor here in Anderson County. It's my job
11 today to set before you a set of facts which constitute
12 a crime in South Carolina. This particular crime that
13 the defendant is charged with is possession with intent
14 to distribute methamphetamine.

15 Back on April 27, 2016, police had the defendant's
16 residence under surveillance. They were in possession
17 of a search warrant. They executed that search warrant
18 on [REDACTED] Pioneer Lane, the defendant's residence. Once
19 inside, they located the defendant. They also located
20 approximately 8.8 grams of methamphetamine, and that's
21 the basis of this case.

22 You're going to hear from a couple of the
23 detectives involved in that search warrant. You will
24 also hear from the forensic chemist who tested the
25 material that was found in the house and determined it

1 to be methamphetamine.

2 We don't expect this case to take very long. I
3 would ask that you just listen carefully to the
4 testimony you're going to hear, examine the evidence
5 you're going to see carefully, use your good judgment
6 and common sense as you listen to the testimony. Thank
7 you very much.

8 THE COURT: Mr. Smith.

9 MR. SMITH: May it please the court.

10 THE COURT: Yes, sir.

11 MR. SMITH: Good morning, ladies and gentlemen.
12 Today's case is about the constitution. I know that
13 sounds hokey or something to that effect. But the
14 first thing the judge told you when you were sitting
15 out in the jury pool was, "Is anyone not a citizen of
16 the United States?" You all said that you were
17 citizens of the United States. And, in fact, that
18 provides you with the comfort, if you will, of having
19 the constitution that protects you as individuals.

20 Today is about proving through the use of
21 evidence. Just because someone is sitting next to me
22 doesn't mean they're guilty of anything. Until the
23 State can provide you with evidence, and that's
24 tangible evidence is something. All right? Just
25 because he's sitting there, it's not trial by

1 assumption. I pray that that is something you're
2 taking into consideration.

3 Look for the evidence, look for the lack of
4 evidence. That's your job. If we as a society are
5 going to find people guilty as they are charged and not
6 follow the rules of evidence, follow what the
7 reasonable doubt statement is, then we're in deep
8 trouble. Beyond a reasonable doubt. They have to
9 provide evidence. And like myself, I hope you will
10 wait and see it. Thank you.

11 THE COURT: Call your first witness, please, sir.

12 MR. FULMER: Yes, sir, Judge. The State calls
13 J.T. Foster.

14 JAMES THOMAS FOSTER,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: If you would, take the witness stand
17 and state your name and spell your last name for the
18 reporter, please.

19 THE WITNESS: James Thomas foster, F-o-s-t-e-r.

20 DIRECT EXAMINATION

21 BY MR. FULMER:

22 Q Deputy Foster, where do you work?

23 A With the Anderson County Sheriff's Office.

24 Q How long have you worked there?

25 A Right at 12 years.

1 Q Do you have any training in addition to your
2 experience at the sheriff's office?

3 A Yes, sir. I have a good bit of training.

4 Q What's your educational background?

5 A I have a four-year degree from Anderson
6 University. I will finish my master's degree in two
7 months.

8 Q Were you on duty at the sheriff's office back on
9 April 27, 2016?

10 A Yes, sir, I was.

11 Q And what were you doing that day?

12 A I conducted surveillance at [REDACTED] Pioneer Lane prior
13 to executing a search warrant.

14 Q Had that search warrant been authorized by a
15 judge?

16 A Yes, sir.

17 Q Was anybody else with you that day?

18 A Yes, sir, several members of the narcotics
19 division at that time.

20 Q Did you know who lived at [REDACTED] Pioneer Lane?

21 A Yes, sir.

22 Q Who would that be?

23 A Justin Andrew Serva, his mom, and I believe two
24 grandparents.

25 Q Can you tell the jury about the execution of the

1 search warrant?

2 A Yes, sir. Several -- several of our units had
3 been surrounded, around the house, in the wooded areas
4 trying to keep an eye on the house. A couple of agents
5 approached from the back while there were people
6 standing on the deck. Myself and a couple of other
7 agents went through the front door. Myself and a
8 couple agents made contact with Mr. Serva in or around
9 the living room. We read the search warrant to him and
10 his mother in a common area of the house. We then
11 walked into the bedroom, which Mr. Serva said was his.
12 He was Mirandized, as witnessed by Agent Scoggins.

13 After Miranda, we talked about why we were there.
14 We explained to him what had gone on prior to the
15 search warrant being executed at his home, asked him if
16 he had any illegal substances he wanted to talk about.
17 He didn't say anything about illegal substance.

18 We searched the house for a little while. We
19 found approximately nine grams, a little less, after
20 being weighed without the bag, in a TV stand in the
21 room that Mr. Serva said was his. After we found that,
22 we let him know he was still under the same Miranda as
23 before and asked him if he wanted to help himself as in
24 work for the sheriff's office in a controlled or
25 confidential source capacity. He said that he did.

1 He was arrested that day along with several
2 codefendants who were not in the bedroom with him at
3 the time. We arrested him, seized the evidence. A
4 couple days later, we were set to meet with Mr. Serva
5 to go forward with the confidential source --

6 MR. SMITH: Objection to any reference --

7 THE COURT: Sir?

8 MR. SMITH: I'm objecting to any reference that he
9 has to some other issue.

10 THE COURT: Overruled.

11 THE WITNESS: We were supposed to meet with
12 Mr. Serva. Some things happened and that never worked
13 out, and we never were able to utilize him as a
14 confidential source.

15 BY MR. FULMER:

16 Q You mentioned there were some other folks there
17 that day. Were they inside the house or outside the
18 house?

19 A When we approached from the rear -- when they
20 approached from the rear, they were outside on the back
21 deck.

22 MR. FULMER: May I approach the witness, Your
23 Honor?

24 THE COURT: Yes, sir.

25 BY MR. FULMER:

1 Q Deputy, I've handed you some pictures. Can you
2 take a look at those and tell me if you recognize
3 those.

4 A Yes, sir. Would you like me to hold them up and
5 show them?

6 THE COURT: Not until they're admitted into
7 evidence.

8 BY MR. FULMER:

9 Q Do you recognize these pictures?

10 A I recognize these pictures, yes, sir.

11 Q What are those pictures of?

12 A The exterior and interior of [REDACTED] Pioneer Lane in
13 Anderson.

14 Q And when were those pictures taken?

15 A The 27th of April 2016.

16 Q Was that during the course of the execution of the
17 search warrant?

18 A Yes, sir.

19 Q Thank you.

20 THE COURT: What exhibit numbers are those?

21 MR. FULMER: Judge, these are marked State's
22 Exhibit 1, 5, 2, 6, 7.

23 Judge, I'd like to move these into evidence.

24 THE COURT: Any objection?

25 MR. SMITH: Without objection.

1 THE COURT: Admitted.

2 (WHEREUPON, State's Exhibit Numbers 1, 2, 5, 6 & 7
3 were admitted into evidence.)

4 MR. FULMER: May I publish these to the jury?

5 THE COURT: You may.

6 BY MR. FULMER:

7 Q Deputy, can you tell the jury what that is a
8 picture of?

9 A Yes, sir. That's the front of the residence at
10 [REDACTED] Pioneer Lane in Anderson.

11 THE COURT: If you would, each exhibit, would you
12 identify them for the record, please.

13 THE CLERK: May I see -- can the jury see the TV
14 because I can turn it?

15 JUROR: Not that good.

16 THE CLERK: We had turned this earlier. How is
17 that? Okay.

18 MR. FULMER: This was State's Exhibit 7, Judge.

19 Q Deputy, this is State's Exhibit 1. What is that?

20 A Closer picture of the front door at [REDACTED] Pioneer
21 Lane.

22 Q This is State's Exhibit 5.

23 A That's an arrest warrant with the information of
24 Justin Andrew Serva on it. It was located in his
25 bedroom.

1 Q Do you recall where in the bedroom that came from?

2 A Around the TV stand.

3 Q This is State's Exhibit 2. Can you tell the jury
4 what that is.

5 A That is a digital scale. At the closest side of
6 the picture to us, right behind that is a smaller bag
7 of suspected crystal methamphetamine. Just to the
8 right of that small bag, there is a hypodermic needle.
9 Just in front of that bag is a hypodermic needle and to
10 the left in a Styrofoam bowl is a larger bag of crystal
11 substance that we suspected to be crystal
12 methamphetamine.

13 Q So this would be the larger bag?

14 A Yes, sir.

15 Q And where are these items located within the
16 house?

17 A In the TV stand in Mr. Serva's bedroom.

18 Q And this is the room that he told you was his
19 bedroom?

20 A That's correct.

21 Q I'm going to show you State's Exhibit 6. Can you
22 tell the jury what that is.

23 A Yes, sir. That is a spoon digital scale. It's
24 commonly used by folks in the narcotics realm to dip
25 into larger bags without having to pour from one to

1 another. They can dip in with a spoon, tell the
2 weight, and put it a smaller bag.

3 (WHEREUPON, State's Exhibit Number 8 was marked
4 for identification.)

5 BY MR. FULMER:

6 Q I'm going to show you what's been marked State's
7 Exhibit 8. Can you take a look at that.

8 A That's a digital scale spoon.

9 Q Is that the same spoon that's in this picture?

10 A Yes, sir.

11 Q Is that the one you collected from Mr. Serva's
12 bedroom?

13 A Yes, sir, it is.

14 MR. FULMER: Judge, I'd like to move State's
15 Exhibit 8 into evidence.

16 THE COURT: Any objection?

17 MR. SMITH: Without objection.

18 THE COURT: Admitted.

19 (WHEREUPON, State's Exhibit Number 8 was admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit Number 9 was marked
22 for identification.)

23 BY MR. FULMER:

24 Q I'm going to show you what's been marked State's
25 Exhibit 9. Would you take a look at that.

1 A Yes, sir. That's a square digital scale. It's
2 powered on at the moment. It's got marijuana and what
3 appears to be crystal residue on it.

4 Q And is it the same scale that's pictured in this
5 photo?

6 A Yes, except for the top is not on top of it.

7 Q Was this also located in the residence at [REDACTED]
8 Pioneer Lane?

9 A Yes, sir.

10 Q Was it in the bedroom that Justin claimed was his?

11 A Yes, sir.

12 MR. FULMER: Judge, I'd like to move into evidence
13 State's Exhibit 9.

14 MR. SMITH: Without objection.

15 THE COURT: Admitted.

16 (WHEREUPON, State's Exhibit Number 9 was admitted
17 into evidence.)

18 BY MR. FULMER:

19 Q So you mentioned earlier that you found some white
20 crystal substance?

21 A Yes, sir, some off-white crystals.

22 Q What did you do with that?

23 A They were photographed before they were moved, and
24 they were moved into a sealed BEST evidence kit. We
25 transferred that into evidence where it's taken from

1 our evidence to the lab, and the lab technicians test
2 it from there.

3 Q Can you tell the jury what a BEST kit is or a BEST
4 bag?

5 A A BEST kit is a sealed evidence bag that we put
6 items in that need to be tested further by the lab
7 into. We seal it, we sign our name, we put what we
8 think it is after a field test. Once we fill out the
9 documents that accompany it, we put it into evidence.
10 And that way it's all the same when it gets to the lab
11 and nothing has shifted or nothing could have gotten
12 out of the seal.

13 Q Can a BEST bag be opened once it's sealed without
14 it being obvious?

15 A No, sir.

16 Q Would you take a look at that tell me if you
17 recognize it.

18 A Yes, sir, I recognize this.

19 Q How do you recognize that?

20 A From the BEST kit that we sealed up on the 27th of
21 April 2016.

22 Q It appears that the BEST kit is inside of another
23 heat-sealed plastic envelope?

24 A That's correct.

25 Q During the course of the proceeding yesterday, did

1 you open that heat-sealed envelope?

2 A I did, yes, sir.

3 Q And was it sealed at the time you opened it?

4 A It was, yes, sir.

5 Q And did it appear to have been tampered with or
6 anything?

7 A No, sir.

8 Q And you opened that in court yesterday; is that
9 right?

10 A That's correct.

11 Q Could you take what's inside the plastic
12 heat-sealed bag out and take a look at that.

13 A (Witness complies.)

14 Q Do you recognize those?

15 A Yes, sir, I do.

16 Q Are those the items you collected during the
17 course of the search warrant?

18 A Yes, sir.

19 Q Are some of those items the white substance that
20 you collected from Mr. Serva's bedroom?

21 A That's correct.

22 Q Can you identify which one of those that you
23 collected from his bedroom?

24 A Items marked that were sealed into evidence bag
25 listed as letter A. The other letters were for

1 codefendants.

2 Q So Justin Serva's drugs were marked A?

3 A That's correct.

4 Q Were they marked with his name as well?

5 A On the evidence bag, yes, sir.

6 Q And once you collected those from his bedroom, you
7 put that into the BEST bag?

8 A That's correct.

9 Q Along with some other evidence you also collected
10 at the scene?

11 A That's correct.

12 Q And you sealed that BEST bag?

13 A Yes, sir.

14 Q And what did you do with that BEST bag after it
15 was sealed?

16 A Transported it to our evidence drop where we
17 secured it in our evidence location.

18 Q When you dropped it off, was it sealed?

19 A Yes, sir.

20 Q Did you tamper with anything once you sealed it in
21 the BEST bag?

22 A No, sir.

23 Q The defendant is not in the courtroom today;
24 however, he was in the courtroom yesterday.

25 MR. SMITH: Objection.

1 THE COURT: Sustained. Ladies and gentlemen, the
2 fact that the defendant is not here is not a
3 consideration for the jury.

4 Go ahead.

5 BY MR. FULMER:

6 Q The person that you saw in the courtroom
7 yesterday, is that the same person that was at the site
8 of the search warrant?

9 A Yes, sir.

10 Q Is that the person known to you as Justin Serva?

11 A Yes, sir.

12 Q Is that the person who told you these drugs --
13 admitted to you that the bedroom in which the drugs
14 were found was his bedroom?

15 A Yes, sir.

16 MR. FULMER: Thank you. Please answer any
17 questions Mr. Smith may have for you.

18 THE COURT: Cross-examination.

19 MR. SMITH: May it please the court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. SMITH:

23 Q Who all was at the location when you executed --

24 A Who all as in law enforcement or as far as people
25 who lived there?

1 Q Anybody in that house or around that house when
2 you executed your search warrant.

3 A I don't have their names in front of me. It's all
4 in our report, though.

5 Q You don't remember Sheldon Clinkscates?

6 A Yes, I remember Sheldon Clinkscates.

7 Q What did you find on him?

8 A A bag of meth and a handgun.

9 Q How much, 14 grams?

10 A Presumptive weight was around 14 grams.

11 Q And Beverly Hankins?

12 A Uh-huh. She had less than a gram, if I remember
13 correctly, presumptive weight, of meth, and maybe some
14 pills also.

15 Q That was Mr. Serva's girlfriend at the time,
16 right?

17 A I believe that's what we decided yesterday. I was
18 unsure of that yesterday.

19 Q The weight that Ms. Hankins had, was that in one
20 bag?

21 A I have the bags in front of me. I could take a
22 look.

23 Q Please do.

24 A (Witness complies.)

25 Small amount in one small bag, small amount in

1 another small bag, small amount in a third bag, and
2 what appears to be crushed-up pills in two other bags.

3 Q As an experienced drug detective or narcotics
4 agent, would that indicate that she might be selling
5 those?

6 A It could but not on itself by -- not on itself
7 alone. Generally, when you're thinking of somebody
8 selling it, they either have scales or baggies, extra
9 that they may or may not be using to facilitate a sale.

10 Q Gosh, isn't that a set of scales right there?

11 A Yes, sir.

12 Q So you could use that to put in those bags, right?

13 A Yes, sir.

14 Q And, of course, Ms. Hankins has already done
15 prison time for distribution of methamphetamine, right?

16 A I'm not sure.

17 Q Why not?

18 A I don't know if she's been in prison. I charged
19 her with first offense based on her criminal history
20 for possession. I don't know if she done time for
21 possession with intent to distribute or trafficking.

22 Q Didn't happen in 2001?

23 A That would have been over the ten-year mark.

24 Q Could she have done that?

25 A She could have.

1 Q She pled guilty to your simple possession, right?

2 A It would have been possession, yes, sir.

3 Q Isn't that, four bags, possession with intent to
4 distribute?

5 A It could be.

6 Q But you didn't do that to her?

7 A No, sir.

8 Q The people that you found outside, Clinkscales and
9 Hankins, they were together?

10 A That's correct.

11 Q What were they doing?

12 A I'm not sure. I didn't see them out there. They
13 appeared to be hanging out on the back porch from the
14 other agents in the area.

15 Q So Mr. Clinkscales had 14 grams; Ms. Hankins had
16 individual bags. Oh, what fingerprints did you get off
17 those scales?

18 A We didn't have it fingerprinted.

19 Q Why not?

20 A It was found in his bedroom in the TV stand.

21 Q Oh, so is it safe to say that you assumed it's
22 his?

23 A I would say that it's probably his when we were
24 there.

25 Q Probably his. What about that spoon, take any

1 prints off that?

2 A No, sir.

3 Q Do you think a defendant has the right to defend
4 himself?

5 A Certainly I do.

6 Q Do you have the video of your button cam when you
7 went in and executed the search warrant?

8 A No, sir. We don't have body cameras or button
9 cams that we wear when we execute search warrants.

10 Q Your agency has body cams?

11 A I don't know that we have body cams, per se. I
12 know we have tried and tested them, but we don't have
13 them as a general every person has them.

14 Q So, let's see. You didn't take a body cam in
15 there, right?

16 A Correct.

17 Q So you can't see where people were; we can't see
18 where this location that you placed the drugs is
19 compared to the bed or the bedroom, right?

20 A That's correct. You can't see that.

21 Q And you found them in a nightstand?

22 A TV stand, yes, sir.

23 Q TV stand. When was the last time Mr. Serva was in
24 the bedroom?

25 A It would be hard for me to say. I don't know how

1 he acts throughout the day.

2 Q When was the last time Ms. Hankins was in the
3 bedroom?

4 A Again, I don't know.

5 Q You found phones as well?

6 A That's correct.

7 Q You didn't take any fingerprints, didn't do any
8 forensic review of the phones, right?

9 A That's correct. We contacted our TFO with the DEA
10 to see if he had any want-to to run the numbers and
11 maybe do a search warrant on the phones, and he
12 declined on wanting that.

13 Q So Mr. Clinkscales and Ms. Hankins have already
14 pled guilty to this day, right?

15 A That's correct.

16 Q You didn't want to find out if this stuff was
17 really Mr. Serva's, did you?

18 A It was in his bedroom or a bedroom that he said
19 was his.

20 Q Okay. There were at least six people at that
21 house?

22 A That's correct.

23 Q How else would you assess your determination that
24 this was, in fact, Mr. Serva's except for using the
25 word "guess"?

1 A When we located the substance, he wanted to work
2 as a confidential source, so I inferred that he was
3 taking responsibility for the drugs found in his
4 bedroom.

5 Q You assumed that because he didn't tell you that,
6 right?

7 A That's correct. He didn't say that they belonged
8 to him.

9 Q And, of course, you didn't video that even though
10 you're going into the house, executing a search
11 warrant, had every opportunity to prove what you're
12 talking about?

13 A That's correct.

14 Q But you don't do that?

15 A We don't as a practice, no, sir. We don't have
16 the body cameras. However, I'm an advocate for them,
17 having tried them several years back.

18 Q So it's your word against the criminal, right?

19 A Well, it's other agents and myself who were
20 present that day during the execution versus the
21 defendant, yes.

22 Q Mr. Serva didn't say those drugs were his?

23 A No, sir.

24 Q We know Ms. Hankins was already breaking stuff
25 down because she had four bags, right?

1 A Three, if I remember correctly. Three and then
2 some pills.

3 Q So she's not just using the methamphetamine, she's
4 doing pills, too?

5 A Maybe. I'm not sure. I'm not sure what she does
6 with them.

7 Q You know that she smokes Marlboros, right?

8 A I don't know what kind of cigarettes she prefers.

9 Q Didn't you find marijuana in a Marlboro pack?

10 A I believe it was a Marlboro, but I'm not a hundred
11 percent. I would have to look at the pictures.

12 Q And you know Mr. Serva smokes L&Ms, right?

13 A I don't know what brand he prefers.

14 Q The owner of the home, did you ever present a
15 search warrant to her?

16 A If that's Mr. Serva's mother, I did.

17 Q And where did you do that?

18 A In the common area, the living room or the
19 kitchen. It's kind of connected right there. We read
20 it to both her and Justin.

21 Q When did you first see her?

22 A I first saw her before we executed the search
23 warrant.

24 Q Which was out in the, I don't know, the yard?

25 A No. It was across the street when we were

1 conducting surveillance.

2 Q When did Ms. Serva come in the house?

3 A She came in after we went there.

4 Q How much time, do you think?

5 A One, maybe two minutes after we went inside, made
6 sure folks were secure. She actually followed us from
7 our surveillance spot back to her home.

8 Q Do you remember telling me yesterday that
9 Mr. Serva was found in his bedroom?

10 A He was found around his bedroom, yes, sir.

11 Q He was found in the living room, right?

12 A Common area, right close to the apex where the
13 living room and the bedroom are. When I come in
14 contact with him.

15 Q Methamphetamine was found in a pink purse, right?

16 A I don't recall any being in a pink purse. I would
17 have to look at the report.

18 Q You do recall a pink purse?

19 A I remember pictures of a pink purse.

20 Q Clearly that's not Mr. Serva's, right?

21 A You wouldn't think so, but I couldn't be sure if
22 he carries a pink purse or not.

23 Q So that was found in the bedroom, right?

24 A If I recall right.

25 Q Mr. Serva was stabbed recently, right?

1 A That's correct.

2 MR. FULMER: Objection. That's not relevant,
3 Judge.

4 MR. SMITH: May we approach?

5 THE COURT: Yes, sir. Come up.

6 (WHEREUPON, a bench conference was held off the
7 record in the presence of the jury, but out of the
8 hearing of the jury.)

9 THE COURT: Madam Forelady, would you take your
10 jury back to the jury room, please.

11 (WHEREUPON, the jury exited open court at
12 10:22 a.m.)

13 THE WITNESS: Your Honor, can I secure these or do
14 they just sit right here?

15 THE COURT: What is it?

16 THE WITNESS: The drugs.

17 THE COURT: Yes.

18 THE WITNESS: Thank you.

19 THE COURT: All right. There was a question about
20 whether or not defendant had been stabbed. There was
21 an objection. Mr. Smith and Mr. Fulmer came to the
22 bench, and Mr. Smith was starting to explain why he
23 wanted to bring out this information, so I felt like we
24 needed to put it on the record.

25 Go ahead, Mr. Smith.

1 MR. SMITH: May it please the court. Your Honor,
2 Mr. Serva was stabbed six times in the last -- an
3 incident here in the last two months. Despite the fact
4 that he's told them who did it, them being the
5 sheriff's department, nothing has been done on it. And
6 in this case, nothing was done with regard to the
7 evidence. There's no fingerprints. I mean, it's just
8 an assumption.

9 So with that in mind, it's my contention that
10 they're out to get Mr. Serva. And so the idea that
11 someone stabbed him, darn, they didn't kill him. And
12 that's my reflection of the events.

13 THE COURT: Mr. Fulmer.

14 MR. FULMER: Judge, I can't see any relevance
15 between the stabbing and this particular case, and I
16 don't see any evidence that the sheriff's office has
17 got some vendetta against Mr. Serva.

18 THE COURT: Let me say I'm going to sustain the
19 objection. Under Rule 401, Mr. Smith, the definition
20 of relevance is having the tendency to make the
21 existence of any fact of consequence to the
22 determination of the fact is probable or less probable
23 without the evidence. This is a case of possession
24 with intent to distribute methamphetamine. Nothing
25 about whether or not the defendant was stabbed and the

1 lack of any action allegedly by the sheriff's
2 department has any tendency to make the existence of
3 whether or not defendant had drugs on him at the time
4 of his arrest more or less probable, so I'm going to
5 sustain the objection.

6 All right. Ready to proceed?

7 MR. FULMER: Yes, sir.

8 THE COURT: Would you bring the jury back.

9 For the record, Officer Foster requested and I
10 granted his right to secure the drugs that were
11 scattered on the witness stand before him.

12 (WHEREUPON, the jury entered open court at
13 10:26 a.m.)

14 THE COURT: Mr. Smith.

15 MR. SMITH: May it please the court.

16 THE COURT: Yes, sir.

17 BY MR. SMITH:

18 Q You asked for a no-knock search of Mr. Serva's
19 property, right?

20 A Yes.

21 Q And you based that on a preservation of evidence
22 argument?

23 A That's correct.

24 Q Yet you didn't have any information for at least
25 48 hours prior to the execution of your search warrant,

1 right?

2 A I'm not sure I understand the question. We didn't
3 have any information on what.

4 Q You had no evidence that there was any evidence to
5 preserve from the last 48 hours, right?

6 A We did have, during the controlled purchase, talk
7 of a handgun, though, so that also.

8 Q Is that what I asked you?

9 A No, that's not what you asked me, but you did ask
10 about the no-knock.

11 Q Right.

12 A I testified yesterday that guns and drugs
13 correlate to violence, so generally we do a no-knock.

14 Q Yeah. Is that the way -- you understood that you
15 weren't supposed to get into that, right?

16 A I wasn't supposed to get into what we discussed
17 not getting into yesterday, not about the reason for
18 the no-knock.

19 Q Since you brought it up, did you give marked money
20 to your source?

21 A It's not marked money, but it is documented funds.

22 Q Funds that you know of?

23 A That's correct.

24 Q And you do that so when you execute a search
25 warrant, you find money on the person, you can say,

1 "Oh, that's the money we gave the person for this buy"?

2 A That's correct.

3 Q How many days prior to your execution did you give
4 the marked money?

5 A It would have been within 72 hours of executing
6 the search warrant.

7 Q Did you even look at any money that day?

8 A We didn't find any of the marked money that we
9 utilized in this controlled purchase.

10 Q So it was already gone?

11 A That's correct.

12 Q We should believe it, right?

13 A Should believe what?

14 Q Well, what you're sharing with us. Did you video
15 the source when you sent that person with money?

16 A No, I did not video the source.

17 Q Did you take pictures of the money that you sent
18 with the source?

19 A Yes; that money has been documented.

20 Q But you didn't do anything about it, so that
21 becomes irrelevant, right?

22 A We didn't find any, so the fact that it wasn't
23 there is irrelevant, yes, sir.

24 Q Didn't do any fingerprinting because you assumed
25 that because it's in that room, a place where six

1 people are, it's got to be his?

2 A I don't believe that six people share a bedroom,
3 but I believed it was his based on him saying it's his
4 bedroom, yes, sir.

5 Q Well, we just talked about how Ms. Hankins has
6 individual bags of methamphetamine?

7 A That's correct.

8 Q And you would use that scale in order to make it
9 just right in those bags, right?

10 A You can dip in with that spoon scale, yes, sir.

11 Q Or put it on top of that plastic thing on the
12 scale?

13 A Yes, sir, that's correct.

14 Q Mr. Serva's fingerprints on anything?

15 A Not that we recovered, no, sir.

16 Q The fact of the matter is you didn't want to find
17 out that it was Ms. Hankins' stuff because you already
18 had her, right, she had stuff on her?

19 A That's correct. She had meth on her, yes, sir.

20 Q Mr. Serva didn't have anything on him, did he?

21 A Not in his pockets, no, sir.

22 Q We don't know if he ever touched that stuff, do
23 we?

24 A No, sir, we don't.

25 MR. SMITH: I have nothing further, Your Honor.

1 THE COURT: Redirect.

2 MR. FULMER: Thank you, Judge.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. FULMER:

6 Q Deputy, Mr. Smith mentioned a couple other people
7 that were there, a Mr. Clinkscales and a Ms. Hankins?

8 A Yes, sir.

9 Q Were they both charged?

10 A Yes, sir.

11 Q The basis of their charge, what was that?

12 A Because they were both found in possession of a
13 quantity of methamphetamine during the execution of the
14 search warrant.

15 Q And was that methamphetamine found on each of
16 their persons?

17 A Yes, sir.

18 Q And is that methamphetamine separate from the
19 8.8 grams approximately that Justin Serva was charged
20 with?

21 A Yes, sir.

22 Q So three people that day were actually charged?

23 A That's correct.

24 Q At the time you executed a search warrant, was Ms.
25 Hankins or Mr. Clinkscales in the house?

1 A No, sir. They were on the back deck.

2 Q Did you ever see them in the bedroom?

3 A No, sir, I didn't.

4 Q Do you know if Ms. Hankins lived at this
5 residence?

6 A I'm unsure if she lived there or not.

7 Q Mr. Smith indicated that maybe Ms. Hankins was
8 selling drugs at that location. Would it be equally
9 plausible that Mr. Serva was selling drugs from that
10 location?

11 A Yes, sir.

12 Q Since the digital scales were found in his room?

13 A Yes, sir.

14 Q Thank you.

15 MR. FULMER: No further questions, Your Honor.

16 MR. SMITH: May it please the court.

17 THE COURT: Yes, sir.

18 RECROSS-EXAMINATION

19 BY MR. SMITH:

20 Q The scales were found in that bedroom. If
21 Ms. Hankins was Mr. Serva's girlfriend, that's where
22 she would be staying presumably, right?

23 A Yes, presumably.

24 Q No doubt she had smaller bags?

25 A That's correct.

1 MR. SMITH: I have nothing further, Your Honor.

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

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Call your next witness, please.

5 MR. FULMER: Your Honor, the State calls Rusty

6 Scogins.

7 ROGER SCOGINS,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS: ✓

9 THE CLERK: If you will take the witness stand and
10 state your name and spell your last name for the
11 reporter, please.

12 THE WITNESS: Name is Roger Scogins,
13 S-c-o-g-i-n-s. I go by Rusty.

14 DIRECT EXAMINATION

15 BY MR. FULMER:

16 Q Deputy Scogins, where do you work?

17 A I work for the Anderson County Sheriff's Office.

18 Q How long have you worked there?

19 A Approximately 17 years.

20 Q What are your duties there?

21 A Presently I'm staff sergeant over special
22 investigations, which includes narcotics and a fugitive
23 investigative unit.

24 Q Were you on duty back on April 27th of 2016?

25 A Yes, sir, I was.

1 Q And were you involved in the execution of a search
2 warrant at [REDACTED] Pioneer Lane?

3 A Yes, sir.

4 Q Do you know whose residence [REDACTED] Pioneer Lane is?

5 A Yes, sir. It was determined during our
6 investigation to be Justin Serva's residence.

7 Q Can you tell the jury about what you saw during
8 the execution of that search warrant.

9 A Yes, sir. When we initially executed the search
10 warrant, we encountered multiple people in the house,
11 including Mr. Serva, who was in a back right bedroom,
12 which he indicated to be his bedroom once we began the
13 investigation, once we got there. There was, like I
14 said, three or four other people inside the house as
15 well in a common area or on the back porch once we
16 initially secured the house.

17 MR. FULMER: May I approach the witness, Your
18 Honor?

19 THE COURT: Yes, sir.

20 BY MR. FULMER:

21 Q I'm going to show you what's been marked State's
22 Exhibit 7, 1, 5, 6, and 2 and ask you to take a look at
23 those and see if you can identify those.

24 A Yes, sir. The first is the actual picture of the
25 entire residence from the front side. And then the

1 second is a close-up of the door which shows the
2 residence number being [REDACTED]. This is an arrest warrant
3 that was for Mr. Serva. The other photographs are of
4 things that we collected out of this back right bedroom
5 during the search of the residence including a bag of
6 what tested positive then for methamphetamine, some
7 digital scales, and several other things which were --
8 they were on a TV stand in the bedroom when we found
9 them in Mr. Serva's bedroom.

10 Q So the crystal substance that's depicted in the
11 photo, that was found in the room that Mr. Serva says
12 was his?

13 A That's correct.

14 Q And the digital scale was in that same room?

15 A That's right. This is an accurate picture of
16 where we located it initially together.

17 Q Thank you. Were you present when the white
18 substance that was found in Mr. Serva's bedroom was
19 collected?

20 A Yes, sir, I was.

21 Q Was it placed into a BEST bag?

22 A It was.

23 Q And was it sealed?

24 A It was.

25 Q Were you in the courtroom yesterday?

1 A I was.

2 Q Did you see Mr. Serva?

3 A I did.

4 Q Is that the same person that we're referring to as
5 Mr. Serva that was at the house on the day this was
6 executed?

7 A Yes, sir, that's correct.

8 Q Thank you. Please answer any questions Mr. Smith
9 may have for you.

10 THE COURT: Cross-examination.

11 MR. SMITH: May it please the court.

12 CROSS-EXAMINATION

13 BY MR. SMITH:

14 Q Could you tell me your title again.

15 A Staff sergeant.

16 Q And what are your responsibilities?

17 A Presently, I am over the narcotics investigations
18 unit as well as a street narcotics unit and fugitive
19 investigative unit.

20 Q On that particular date, what position were you
21 in?

22 A I was a detective in the narcotics investigations
23 unit.

24 Q What were your responsibilities?

25 A I was working drug investigations.

1 Q How long have you been an investigator?

2 A Approximately 13 and a half years.

3 Q What are some of the things you utilize to
4 investigate?

5 A Well, we utilize sources of information that we
6 determine to be -- excuse me, sources of information
7 that we gather stuff from, information from in
8 reference to ongoing cases. We use technical
9 equipment. We use cameras, pole cameras, trackers on
10 cars, a lot of different things, sir.

11 Q A lot of forensic investigating you do?

12 A We don't do a lot of forensic investigation
13 ourselves. Most of our stuff is more direct toward the
14 targets.

15 Q What is your objective in an investigation?

16 A Our objective is to alleviate as much of the drug
17 problem that we can that's inside Anderson County.

18 Q What about alleviating doubt in the charges that
19 you bring?

20 A I don't understand what you're asking me.

21 Q Well, if there is a way to further prove your
22 case, wouldn't you agree with me that's in your best
23 interest, societies's best interest?

24 A Sure. We speak to every one of these people when
25 they are arrested, if they would like to talk to us,

1 which we with did Mr. Serva on this day about this
2 specifically.

3 Q Right. (And he didn't say they were his drugs?

4 A He did say they were his drugs -- well, he said
5 that he was purchasing drugs presently from somebody
6 that was at the house, so...

7 Q That's funny. Deputy Foster didn't have that
8 recollection. Who did it now?

9 A Okay. So during the process of our investigation,
10 when we were at the house that day, we spoke with
11 Mr. Serva. He indicated that he would like to speak
12 with us on his own behalf, which is very common for us
13 in narcotics investigations. So we spoke with him.
14 During that time, he indicated that he was presently
15 buying methamphetamine from several different people,
16 one of which was a subject that was at the residence
17 during the execution of the search warrant. He was
18 arrested. He was in a different room at the time, but
19 he said that was one of his sources of supply of
20 methamphetamine. And then there was an additional
21 source of supply of methamphetamine that lives inside
22 Anderson County that was not there at the time.

23 Q That's a lot of information. Didn't see that in
24 any of your reports.

25 A Okay.

1 Q Why?

2 A We put them in debriefs.

3 Q Oh, so I didn't get that?

4 A I don't know if there was a debrief done on this
5 one specifically. He indicated that day that he wished
6 to work for us and would like to do some stuff. So
7 that initial conversation, when we sit down after the
8 fact, if we determine that they will work for us, then
9 we'll sit down and do a written debrief. This was an
10 on-site speaking with him sort of impromptu interview.

11 Q You shared with us a great number of ways you go
12 about investigating?

13 A Uh-huh.

14 Q And surveillance and videoing things, that was
15 part of it, right?

16 A That's part of some of the investigations that we
17 do.

18 Q What does your button camera show of the execution
19 of the search warrant?

20 A I don't have a button cam that I have executing a
21 search warrant.

22 Q So we don't really know what happened there, do
23 we?

24 A What I'm telling you is what happened and what the
25 other officers are telling.

1 Q Of course. But you said that Serva was in the
2 bedroom, didn't you?

3 A When we executed the search warrant, he was in the
4 back right bedroom, I believe.

5 Q He was in the living room, wasn't he?

6 A I don't remember. He may have came out of the
7 bedroom when we first come in then.

8 Q Did you go in the front or the back?

9 A He indicated to us that he had just come out of
10 the bedroom.

11 Q Did you go in the front or the back?

12 A The front door.

13 Q Is that the place that Deputy Foster came through?

14 A It's the same picture of the front door, so yes,
15 sir, I believe he came in with us.

16 Q Was he first or were you first?

17 A I don't recall.

18 Q But you do remember Mr. Serva offering up -- well,
19 a lot of information?

20 A Some information that day.

21 Q And did you have him sign anything?

22 A I didn't.

23 Q The nightstand, the drugs were in the nightstand,
24 right?

25 A It was a TV stand.

1 Q TV stand, which is not next to the bed, right?

2 A It's a small bedroom, so it was a TV stand there
3 we found a lot of the stuff in.

4 Q Inside the --

5 A In the bedroom.

6 Q Inside the TV stand?

7 A It was sitting on a shelf in the TV stand, yes.

8 Q Ms. Hankins had drugs on her?

9 A One of the ladies there had drugs on her, yes.

10 Q And it was in individual baggies?

11 A Yes, sir.

12 Q Several?

13 A I don't recall what she had on her.

14 Q If I said at least three, would you --

15 A I don't recall. I'm specifically trying to speak
16 on Mr. Serva's stuff today.

17 Q Who's in charge of fingerprints when you execute a
18 search warrant?

19 A We don't generally do fingerprints on the scene.
20 Oftentimes we'll send them back to our lab and have
21 things fingerprinted there.

22 Q And you do that why?

23 A Just depends on the circumstances. But in this
24 circumstance, I'm not sure that we done fingerprints
25 because of his self-admittance to us.

1 Q No, no, no. You said he did not admit to the
2 drugs.

3 A I explained what I told you just a minute ago. I
4 can explain it again, as to how that conversation took
5 place.

6 Q No. Thank you. So do you believe that you're the
7 judge and the jury?

8 A No, sir.

9 Q So why, then, wouldn't you fingerprint the items
10 found in that bedroom?

11 A Sometimes we fingerprint things, sometimes we
12 don't.

13 Q And you do that to find out whose items they are,
14 right?

15 A That's right.

16 Q But you didn't this time?

17 A Not that I recall.

18 Q Why not?

19 A I just explained to you. Sometimes we do,
20 sometimes we don't. I can't tell you specifically why
21 we did not this time, but we felt as though we had
22 enough evidence from what we were talking to him on and
23 what was on scene that day to not do it, if we didn't
24 do it.

25 Q Right. According to you, he's guilty?

1 A That's not what I said.

2 Q Okay. These items here could have been
3 fingerprinted, no question?

4 A Possibly.

5 Q And then we would have known for sure?

6 A No, not necessarily. We fingerprint things all
7 the time that we get no fingerprints off of but
8 somebody has obviously touched.

9 Q But you didn't do that here?

10 A Not that I recall.

11 Q Because you didn't want to find out Beverly
12 Hankins' was the only fingerprints on there?

13 A No, sir. That's not the case.

14 Q What would have happened if that would have
15 happened, you would have found --

16 A We didn't do it so I can't speculate on what would
17 have happened.

18 Q You knew Ms. Hankins had drugs on her, right?

19 A A female there did. I think her name was Hankins.

20 Q Mr. Clinkscales had drugs on him?

21 A That's right.

22 Q No getting around that, right? Right?

23 A Okay.

24 Q Mr. Serva, however, no fingerprints whatsoever.

25 You're going on the assumption, gosh, if it was in his

1 room, clearly it was his, right?

2 A There was more to it than just the assumption that
3 it was in his room.

4 Q What do you think about the constitution?

5 A I uphold it every day.

6 Q But you don't feel the need to prove your case by
7 fingerprinting and --

8 A I feel as though we did prove our case.

9 Q Did anybody in that house tell you that the drugs
10 you found were Justin Serva's?

11 A No.

12 Q So then all you have is the fact that they were in
13 his bedroom, right?

14 A And the fact of his statement about the fact he
15 was purchasing methamphetamine presently.

16 Q The statement that's not on paper, not -- no,
17 signature, no video, no audio, nothing, right?

18 A Right.

19 Q Thank you.

20 MR. SMITH: I have nothing further.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MR. FULMER:

24 Q When you say that Mr. Serva offered to work for
25 you, what does that mean?

1 A Generally, a lot of times when we have people in
2 this situation, they indicate their want to assist us
3 in investigations related to narcotics in our county.
4 And that's kind of what he wanted to do. He wanted to
5 work for us in the future for trying to purchase
6 methamphetamine for us in helping to get rid of the
7 charges that he was looking at.

8 Q Thank you.

9 MR. FULMER: That's all I have, Judge.

10 THE COURT: May this officer be excused?

11 MR. FULMER: Yes, sir.

12 MR. SMITH: Without objection.

13 THE COURT: Thank you, sir.

14 Call your next witness, please.

15 MR. FULMER: Judge, the State calls Ms. Belinda
16 Lee.

17 BELINDA LEE,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: If you would take the witness stand,
20 please, ma'am, and state your name and spell your last
21 name for the reporter, please.

22 THE WITNESS: My name is Belinda Lee. Last name
23 is L-e-e.

24 DIRECT EXAMINATION

25 BY MR. FULMER:

1 Q Ms. Lee, where do you work?

2 A I'm retired.

3 Q Back on April 27, 2016, where were you working?

4 A Anderson County Sheriff's Office.

5 Q And what was your responsibilities and duties
6 there?

7 A Evidence technician.

8 Q Were you on duty back on April the 27th, 2016?

9 A I was.

10 Q Did you receive into evidence a BEST bag?

11 A Did I what?

12 Q Did you receive into evidence some items, some
13 narcotics, from [REDACTED] Pioneer Lane?

14 A I did.

15 Q What date did you receive that into evidence?

16 A On April 28th, 2016.

17 Q What did you do with that?

18 A I logged it in to the evidence department.

19 Q And at some point did you take that evidence
20 somewhere else?

21 A I did. On June 8th I took it to the Anderson
22 Oconee forensic lab for it to be analyzed.

23 Q During the time it was in your custody, did you
24 alter that evidence in any way?

25 A No, I did not.

- 1 Q Did you amend it in any way?
- 2 A No, sir.
- 3 Q Did it appear to have been tampered with?
- 4 A No.
- 5 Q Did you deliver it to the lab intact?
- 6 A Yes, sir, in a sealed bag.
- 7 Q And do you know who submitted this evidence to
- 8 you?
- 9 A The officer?
- 10 Q Yes.
- 11 A J.T. Foster.
- 12 Q Yes, ma'am. And that was narcotic evidence from
- 13 [REDACTED] Pioneer Lane?
- 14 A Yes, sir.
- 15 Q At some point did you pick it up from the lab
- 16 after it was tested?
- 17 A I did, on November 30th, 2016.
- 18 Q And what did you do with it?
- 19 A I filed it back into the evidence division into
- 20 the vault.
- 21 Q And at any time when it was in your possession, at
- 22 that point in time, did you alter or amend it in any
- 23 way?
- 24 A No, sir.
- 25 Q Did you tamper with it?

1 A No, sir.

2 MR. FULMER: Thank you. Please answer any
3 questions Mr. Smith may have for you.

4 THE COURT: Cross-examination.

5 MR. SMITH: May it please the court. I have no
6 questions, sir.

7 THE COURT: Thank you, ma'am. You may be excused.
8 Call your next witness.

9 MR. FULMER: Your Honor, the State calls
10 Ms. Meredith Lanford.

11 MEREDITH LANFORD,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 THE CLERK: If you would take the witness stand,
14 please, ma'am, and state your name and spell your last
15 name for the reporter, please.

16 THE WITNESS: Meredith Lanford, L-a-n-f-o-r-d.

17 DIRECT EXAMINATION

18 BY MR. FULMER:

19 Q Ms. Lanford, where do you work?

20 A I work with the Anderson/Oconee Regional Forensics
21 Laboratory.

22 Q And how long have you worked there?

23 A I have worked there for almost 13 years.

24 Q What are your duties there?

25 A My primary job function is to analyze evidence

1 that's brought to our laboratory for controlled
2 substances.

3 Q What kind of education do you have?

4 A I graduated from Clemson University with a
5 Bachelor's of Science degree in chemistry. I then went
6 on to complete the forensic science certificate program
7 at Greenville Technical College. I was trained and
8 certified as a forensic chemist with my previous lab
9 employer, which was the Charleston City Police Lab. I
10 then received some training from the Drug Enforcement
11 Administration in the area of forensic drug chemistry.

12 I'm a member of the American Chemical Society and
13 the Clandestine Laboratory Investigating Chemists, and
14 each year I have to perform a proficiency test and do
15 about 40 hours of continuing education in forensics.

16 Q How many samples do you think you have tested?

17 A I have probably tested over 5,000 samples.

18 Q Have you been qualified as an expert in forensic
19 chemistry in court before?

20 A Yes, I have.

21 Q How many times have you been qualified?

22 A 25.

23 MR. FULMER: Judge, I move this witness be
24 qualified as an expert in forensic chemistry.

25 MR. SMITH: Without objection.

1 THE COURT: What is the area again?

2 MR. FULMER: Forensic chemistry.

3 THE COURT: All right. Ladies and gentlemen,
4 normally a witness is not allowed to give their
5 opinion. They are limited to testifying to what they
6 saw, they heard, they smelled, they felt. However, a
7 person, because of their education or experience,
8 becomes an expert in an area, and it's helpful for you,
9 the jury, they're allowed to give their opinion in the
10 area of their expertise. We have stipulated in this
11 case that this witness is an expert in forensic
12 analysis -- forensic chemistry, and she will be allowed
13 to give her opinion in that area.

14 I'll tell you that expert opinion testimony is
15 like any other testimony you will hear in this case.
16 You may accept it, you may reject it, or give it as
17 much weight as you think it deserves.

18 All right, sir.

19 BY MR. FULMER:

20 Q Did your lab receive a bag from the Anderson
21 County Sheriff's Office from Ms. Belinda Lee on June 8,
22 2016?

23 A Yes, I did.

24 Q Was it sealed?

25 A Yes, it was.

1 Q Did it appear to have been tampered with in any
2 way?

3 A No, it was not.

4 Q At some point did you have an opportunity to test
5 the contents of the bag?

6 A I did.

7 Q What was inside of that bag?

8 A There were several items in that bag. Do you want
9 me to go through each?

10 Q Well, let's do it this way. I'm going to hand up
11 to you what we've opened but was a sealed plastic bag.
12 Tell me if you recognize that.

13 A Yes, I do.

14 Q Are those the drugs that you tested?

15 A Yes, it is.

16 Q And how do you know that?

17 A This is our BEST kit that we ask all of our
18 agencies to put their drug evidence in for us. And it
19 comes sealed to the lab, and I have placed my
20 laboratory sticker on this, and I initial it when I
21 receive it with the date as well.

22 Q Were there several drug samples inside of that
23 kit?

24 A Yes, there were.

25 Q And were some of those drug samples labeled

1 "Justin Serva"?

2 A Yes.

3 Q Can you tell me the results or tell the jury the
4 results of the samples that were labeled "Justin
5 Serva"?

6 A Okay. In the first bag, I found that it contained
7 8.72 grams of methamphetamine. And then in a second
8 bag, I found that it contained 0.16 grams of
9 methamphetamine.

10 Q And what type of testing do you do to determine
11 that?

12 A The first thing I do is remove any of the
13 packaging that the substance is in to get a weight of
14 just the substance itself. I then perform two
15 screening tests to narrow down what kind of controlled
16 substance may be present. And then I performed two
17 confirmatory tests on our instruments in the lab in
18 order to say what controlled substance, if any, is
19 present.

20 Q And in this case you were able to confirm that it
21 was methamphetamine?

22 A Yes, I did.

23 Q And do you produce a report after you do testing?

24 A We do.

25 Q I'm going to hand you what's been marked as

1 State's Exhibit 10 and ask you if you recognize that.

2 A Yes, I do.

3 Q Is that the report you produced in this case?

4 A It is.

5 Q That report has results on it that apply to Justin
6 Serva as well as others; is that right?

7 A That's correct.

8 Q Would you circle the results that apply to Justin
9 Serva and initial those.

10 MR. SMITH: Objection, Your Honor.

11 THE COURT: What is your objection?

12 MR. SMITH: May we approach?

13 THE COURT: Yes, sir.

14 (WHEREUPON, a bench conference was held off the
15 record in the presence of the jury, but out of the
16 hearing of the jury.)

17 BY MR. FULMER:

18 Q Would you circle the results that apply to Justin
19 Serva and initial those.

20 MR. SMITH: I object, Your Honor, based on the
21 fact that we don't know if that, in fact, was Justin
22 Serva's.

23 THE COURT: Overruled.

24 A (Witness complies.)

25 MR. FULMER: Judge, at this time I'd move State's

1 Exhibit 10 into evidence.

2 MR. SMITH: I would object based on the fact --

3 THE COURT: What was your question, please, sir?

4 MR. FULMER: I'd like to move State's Exhibit 10,
5 which is the report, into evidence.

6 THE COURT: Overruled. It's admitted.

7 MR. SMITH: My objection relates to coloring on
8 the exhibit.

9 THE COURT: Let me see it.

10 I'm going to overrule your objection. I'm going
11 to note that the witness has circled and put her
12 initials next to the items that were tested labeled
13 "Justin Serva." All right.

14 (WHEREUPON, State's Exhibit Number 10 was admitted
15 into evidence.)

16 BY MR. FULMER:

17 Q What did you do with the samples you tested after
18 the testing?

19 A Once I'm done with testing everything in the case,
20 I put them back in the bag and seal it in this what's
21 called K pack and put it back into my evidence locker
22 until the agency comes to pick it up.

23 Q Could you take from the packet the items that were
24 tested for Justin Serva.

25 A Yes.

1 Q Can you remove those from the package.

2 A Yes. And this is the outer bag that those were
3 in.

4 (WHEREUPON, State's Exhibit Number 11 was marked
5 for identification.)

6 MR. FULMER: Judge, I'd like to move State's
7 Exhibit 11, which is the sample that was tested for
8 Justin Serva, into evidence.

9 THE COURT: Subject to prior objection, any
10 further objection?

11 MR. SMITH: No, sir.

12 THE COURT: Admitted.

13 (WHEREUPON, State's Exhibit Number 11 was admitted
14 into evidence.)

15 THE COURT: Is that a sample or samples?

16 MR. FULMER: There are two samples inside of a
17 larger plastic bag.

18 THE COURT: All right. Thank you, sir.

19 MR. FULMER: Please answer any questions Mr. Smith
20 may have for you.

21 THE COURT: Cross-examination.

22 MR. SMITH: May it please the court.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. SMITH:

1 Q So you did testing on the drugs that you found or
2 were given to you?

3 A I did.

4 Q And there was no difference in any of the
5 methamphetamine, was there?

6 A Correct.

7 Q So it all came from the same batch, right?

8 A I can't say that it all came from the same batch,
9 but methamphetamine is methamphetamine.

10 Q Justin Serva, is there anything that you could do
11 to tell us whether Justin Serva had anything to do with
12 this other than the label provided by your -- by the
13 police?

14 A That's correct. I do not know who had what drugs.
15 I got that from the bag that it was sealed in.

16 Q So who labeled them "Justin Serva"?

17 A I don't know who labeled the bags.

18 MR. SMITH: I have nothing further.

19 THE COURT: Redirect?

20 MR. FULMER: Nothing, Your Honor.

21 THE COURT: May this witness be excused?

22 MR. FULMER: Yes, sir.

23 THE COURT: Let me see the attorneys here real
24 quick.

25 MR. FULMER: Your Honor, the State rests.

1 THE COURT: All right.

2 Mr. Smith, does the defense have any witnesses?

3 MR. SMITH: We do not.

4 THE COURT: Does the defense rest?

5 MR. SMITH: Yes, sir.

6 THE COURT: All right.

7 Madam Forelady, ladies and gentlemen of the jury,
8 the State has indicated it has rested, so it's
9 presented its case. The defense indicated that it
10 rests, in other words, they're not going to present any
11 evidence in this case, which is their option.

12 I have some administrative to take up at this
13 point. I'm going to go ahead and excuse the jury until
14 1:00 o'clock. At that point we'll come back and we'll
15 do closing arguments in the case. But if you would,
16 the note-takers, leave your pads in the jury room.

17 I remind you, don't speak amongst yourselves or
18 with anyone else about the case, and we'll be back at
19 1:00 o'clock to have closing arguments. Thank you very
20 much. You are excused.

21 (WHEREUPON, the jury exited open court at
22 11:03 a.m.)

23 THE COURT: Several things for the record.

24 First, Mr. Smith, I didn't give you an opportunity
25 to make your motions, and I'm going to let you do that.

1 But Mr. Smith objected. I asked Mr. Fulmer and
2 Mr. Smith to come up to the bench. The objection was
3 based on the forensic lab expert identifying Jason
4 [sic] Serva. And I ruled that because it was under the
5 label "Jason Serva," that's what she was identifying,
6 not necessarily identifying him as having the drugs.
7 Subject to his objection, that was admitted, and that
8 was the ruling. I just wanted to put that on the
9 record.

10 All right. Mr. Smith, any motions?

11 MR. SMITH: May it please the court.

12 THE COURT: Yes, sir.

13 MR. SMITH: We move for a dismissal with prejudice
14 based on the fact there's been no evidence other than
15 it being in a room that he was not located in. And
16 that's the basis of the claim. Based on the fact that
17 Ms. Hankins had the materials in her pocket, seemingly
18 they were her materials. So with that in mind, I don't
19 believe they have reached beyond a reasonable doubt and
20 it should be dismissed.

21 THE COURT: Thank you, sir. That's overruled. I
22 think it's a question of fact for the jury.

23 All right. If you guys will stay put for a
24 minute, I'm going to go over my charge with you. I'll
25 be right back. Okay?

1 (WHEREUPON, a recess was taken from 11:05 a.m. to
2 11:34 a.m.)

3 THE COURT: Mr. Smith, I know you have done
4 multiple trials with me, so you know the general
5 structure of my charge.

6 Mr. Fulmer, you have watched, but I haven't had
7 one with you yet. If you want me to go over the
8 general structure of my charge, I will. Otherwise,
9 it's my intent just to go over the substantive law that
10 I will charge.

11 MR. FULMER: That would be fine, Judge.

12 THE COURT: Are you going to ask for a lesser
13 included of possession of methamphetamine?

14 MR. SMITH: I guess that would be good for my
15 client.

16 THE COURT: I know that puts you in a bind. I
17 think you're entitled to it under the facts of this
18 trial.

19 MR. SMITH: Yes, sir. All right. Well, that's
20 what we'll do, then.

21 THE COURT: Sir?

22 MR. SMITH: I'll accept that or allow it, the
23 lesser included.

24 THE COURT: Okay. What I was going to do, if
25 requested -- I will unless you don't want me to, I'll

1 charge it. Charge is possession with intent to
2 distribute. Defendant is charged with possession with
3 intent to distribute methamphetamine. The State must
4 prove beyond a reasonable doubt that the defendant
5 possessed methamphetamine with the intent to distribute
6 it.

7 To prove possession, the State must prove beyond a
8 reasonable doubt that the defendant had both the power
9 and intent to control the disposition or use of the
10 methamphetamine. Possession may be either actual or
11 constructive. Actual possession means that the
12 methamphetamine was in actual physical custody of the
13 defendant. Constructive possession means that the
14 defendant had dominion and control or the right to
15 exercise the dominion or control over either the
16 methamphetamine itself or the property on which the
17 methamphetamine was found.

18 Mere presence at the scene where the drugs were
19 found is not enough to prove possession. Actual
20 knowledge of the presence of the methamphetamine is
21 evidence of the defendant's intent to control its
22 disposition and use. The defendant's knowledge and
23 possession may be inferred when a substance is found on
24 the property under the defendant's control; however,
25 this inference is simply an evidentiary fact to be

1 taken into consideration by you along with the other
2 evidence in the case and to be given the weight you
3 decide it should have.

4 Two or more persons may have joint possession of a
5 drug. The State must also prove beyond a reasonable
6 doubt the defendant intended to distribute the
7 methamphetamine. Distribute means to deliver other
8 than by administering or dispensing the drug. Intent
9 may be shown by acts and conduct of the defendant and
10 of the circumstances from which you may naturally and
11 reasonably infer intent.

12 In determining whether the defendant had the
13 intent to distribute methamphetamine, you may consider
14 the circumstances surrounding the defendant's alleged
15 possession. You may consider the amount of the
16 substance alleged to have been possessed, the manner in
17 which it was allegedly possessed, the place where it
18 was allegedly possessed, and other factors which you
19 consider to be important. You must find that the
20 defendant did not intend to have the methamphetamine
21 solely for his own use. Possession of more than one or
22 more grams of methamphetamine creates an inference that
23 the defendant possessed the methamphetamine with intent
24 to distribute.

25 Now, I changed it. It said grams of crack cocaine

1 or ice, but it's under the same provision, is it not?

2 You agree with that?

3 MR. SMITH: Yes, sir. And back to that lesser
4 included, I don't want lesser included.

5 THE COURT: Sir?

6 MR. SMITH: I don't want lesser included.

7 THE COURT: You do not want lesser included?

8 MR. SMITH: I don't.

9 THE COURT: Okay.

10 Possession of more than -- one or more grams of
11 methamphetamine creates the inference that the
12 defendant possessed the methamphetamine with the intent
13 to distribute it. This inference does not relieve the
14 State from proving beyond a reasonable doubt that the
15 defendant had the intent to distribute. It is simply
16 an evidentiary fact to be taken into consideration by
17 you along with the other evidence in the case and to be
18 given the weight you decide it should have.

19 So without the lesser included, that would be the
20 substantive charge. I would then go to the statement
21 by the defendant, which you've heard a million times.
22 If you want me to do it again, I'd be glad to.

23 Do you need it?

24 MR. SMITH: No, sir.

25 THE COURT: Do you want me to do it, Mr. Fulmer?

1 MR. FULMER: No, sir.

2 THE COURT: So the verdict form will be -- and I
3 had her working on the lesser included, so I just
4 changed that back. The verdict will be as to the
5 charge of possession with intent to distribute
6 methamphetamine under indictment so-and-so and
7 so-and-so, we, the jury, unanimously find, A, not
8 guilty; B, guilty. Signed by the foreman. That will
9 be the verdict form. I'll give it to you to look at.

10 Any additions or exceptions from the State?

11 MR. FULMER: No, Judge. I think I was thinking
12 about constructive possession, but I think I heard that
13 in your charge.

14 THE COURT: I think I did have constructive
15 possession.

16 MR. SMITH: You did, talking about the property.

17 MR. FULMER: Yes, sir.

18 THE COURT: Here you go.

19 Do you have any requested charges, Mr. Smith?

20 MR. SMITH: No, sir.

21 (WHEREUPON, Mr. Fulmer reviewing the charge.)

22 MR. FULMER: Yes, sir.

23 THE COURT: You good?

24 MR. FULMER: Yes, sir.

25 THE COURT: Do you have any requested charge,

1 Mr. Fulmer.

2 MR. FULMER: No, sir.

3 THE COURT: Guys, anything further before we break
4 for lunch?

5 MR. SMITH: No, sir.

6 MR. FULMER: No, sir.

7 THE COURT: You agree that there's no evidence
8 presented by the defendant, so Mr. Smith gets last
9 argument?

10 MR. FULMER: Yes, sir.

11 THE COURT: All right, guys. See y'all at
12 1:00 o'clock.

13 (Lunch recess taken from 11:41 a.m. to 1:03 p.m.)

14 THE COURT: Mr. Fulmer, State ready to proceed?

15 MR. FULMER: I do have one issue about the charge,
16 Judge, I'd like to address. I did a little bit of
17 research while I was eating. I think, based on the
18 facts, that the court's required to give a lesser
19 included charge on that possession offense, Judge. I
20 think it can be a reversible --

21 THE COURT: I don't know if I'm required unless
22 you ask me to and I didn't. Now, if you ask me to, I
23 will.

24 MR. FULMER: I'd like for the jury to get that
25 charge, Judge.

1 THE COURT: Well, I appreciate you sending me word
2 down. It's kind of the way this case has been tried,
3 and now I have to go back and change my verdict form,
4 which I'll do.

5 Anything further?

6 MR. FULMER: No, sir.

7 THE COURT: All right.

8 Mr. Smith, anything further?

9 MR. SMITH: No, sir.

10 THE COURT: All right. Bring the jury in.

11 (WHEREUPON, the jury entered open court at
12 1:04 p.m.)

13 THE COURT: Good afternoon, ladies and gentlemen.
14 I hope you had a nice lunch. Since we have finished
15 the presentation of the evidence aspect of this case,
16 we will next go to the closing arguments. The State
17 will go first. Since the defendant did not present any
18 evidence, then the defense will go last. Then I will
19 charge you on the law.

20 Mr. Fulmer, are you ready to proceed?

21 MR. FULMER: Yes, sir.

22 THE COURT: Very good.

23 MR. FULMER: Ladies and gentlemen, the defendant,
24 Mr. Serva, in this case is charged with possession with
25 intent to distribute methamphetamines. That charge can

1 be broken down into three elements. Was there
2 methamphetamine? I think that was pretty clearly
3 convincingly shown that there was methamphetamine at
4 that location. It was preserved as evidence. It was
5 taken to a lab, it was tested, and you heard from an
6 expert that she found it to be approximately 8.8 grams
7 of methamphetamine.

8 The second element of that charge is possession.
9 Did he possess that methamphetamine? Possession can be
10 broken really into two forms, actual possession, in
11 which case it's just what it sounds like. Your car key
12 is in your pocket. You're in actual possession of
13 them. The clothes that you're wearing, you're in
14 actual possession of.

15 There is another form of possession under the law,
16 and that's called constructive possession. That's when
17 you're in dominion and control over something, even
18 though you may not physical possess it. Or you could
19 be in dominion and control over it. You have the right
20 to exercise dominion and control. The way you think of
21 that is your car in the parking lot. That's in your
22 constructive possession. The clothes that are hanging
23 in the closet, although they're not in your actual
24 possession at this moment, they're in your constructive
25 possession. That's an example of what construction

1 possession might be.

2 In this case, these drugs were found in what the
3 defendant admitted to officers was his bedroom within
4 his residence, really the most private personal space
5 you could think of. Also in that room was paperwork
6 with his name on it indicating further that this was
7 his bedroom. When he was confronted, he immediately
8 gave a willing negotiation for the officer to call in
9 work with officers to try to get himself out of
10 something. I would submit to you that that's another
11 indication of his possession of that drug.

12 The third element of possession with intent to
13 distribute is that intent to distribute element. Did
14 he intend to distribute? Under our law, possession of
15 more than one ounce or, excuse me, one gram of
16 methamphetamine raises an inference that you intend to
17 do something with that methamphetamine other than your
18 personal use.

19 In this case he's got 8.8, 8.9 grams of this meth.
20 You can, as a jury, base nothing on more than weight
21 alone conclude that he had an intent to distribute that
22 meth. But in this case there are other indicators of
23 what his intention might be. Right beside the meth on
24 his TV table were digital scales, which I would submit
25 to you indicates he's dividing that drug up, he's

1 transacting with that drug, he's distributing that
2 drug.

3 His ability, when he tells the officers, "Hey, I
4 can work for you," he knows people who are buying and
5 selling drugs, which is a further indication that this
6 is not just for his personal use. You heard from the
7 officers, you heard from the chemist. I ask that you
8 use your common sense, use your good judgment, use your
9 life experience. You know when someone is in
10 possession of something.

11 I'd ask that you render a verdict in this case of
12 guilty of possession with intent to distribute because
13 that's what the evidence in this case requires. Thank
14 you.

15 THE COURT: Mr. Smith.

16 MR. SMITH: May it please the court.

17 THE COURT: Yes, sir.

18 MR. SMITH: Ladies and gentlemen, I appreciate
19 your attention to this quick case. Not much in regard
20 to evidence to take into account, not much to take care
21 of, to take into account witness-wise. That's because
22 there wasn't any.

23 I talked to you to begin with. I told you the
24 need to prove beyond a reasonable doubt. That's just
25 not a catchphrase. That's the way it is, and what

1 we've seen today is excuses as to why things weren't
2 done and then ultimately an assumption because there's
3 no other definition of what happened here.

4 When they went in that house, he was in the living
5 room with his grandparents, apparently, but Deputy
6 Scogins says, of course, he was in his bedroom. Now,
7 if he's in his bedroom and there's stuff out on the TV
8 stand or whatever, makes it a lot easier to say that
9 it's his, doesn't it? Well, that's why -- that's what
10 he remembered.

11 Deputy Foster didn't remember that. He was in the
12 living room. Now, there are two things we know for
13 sure. Clinkscates and Hankins, who were there,
14 possessed the drugs they found. Mr. Serva didn't have
15 it on him. They went into the bedroom, they found
16 stuff, and they found the scales which you see. That's
17 a smooth surface capable of fingerprints. The spoon is
18 relatively large, capable of being fingerprinted. And
19 while I recognize that sometimes fingerprints are tough
20 to get, they didn't even try. That case was over that
21 day. They did nothing. They didn't try to get
22 fingerprints. They have no witnesses. Clinkscates
23 didn't say, "hey, all that stuff is mine," or, "All
24 that stuff is his." Ms. Hankins had individual
25 packets. That's distribution. She doesn't have three

1 packs if it's for her. But we didn't charge her with
2 possession with intent to distribute. We did that to
3 Mr. Serva though. Why is that?

4 As a citizen of the United States -- we talked
5 about that, too -- seemingly, we deserve the right to
6 defend ourselves. I don't know how you can defend
7 yourself if they're not going to get the fingerprints.
8 They didn't try. They don't want the fingerprints. If
9 they get the fingerprints back and it's Beverly
10 Hankins' fingerprints, darn, now we only got two out of
11 three. But by doing it this way, they're trying to get
12 three out of three.

13 It was in his mother's house in his bedroom, but
14 other than that, there's nothing more. I asked him
15 questions about the fingerprints or other items
16 related. The video. They're going to execute a search
17 warrant. The idea of them putting on a camera so they
18 can see what happens, see what goes on and protect
19 themselves as well as the defendant, that seems like it
20 would be a forgone conclusion. Once again, what do we
21 have here? All we have is what was offered by the
22 police. The police, who they both went in the same
23 door, but one of them says he was in the bedroom; one
24 of them says he was in the living room. How is that
25 possible? They're saying what needs to be said to get

1 a conviction. They're not showing us anything.

2 Mr. Serva deserves the right to defend himself,
3 but by them not having an audio clip of the nonsense he
4 allegedly offered them, it doesn't exist for our
5 purposes. He didn't show me any. Why, if he doesn't
6 admit they're his drugs, why is he going to work for
7 them? But he didn't admit to having the drugs. But by
8 saying that, something that cannot be proven, how can I
9 do anything about that? There's no recording of it.
10 Oh, here. This is what happened. No, they didn't do
11 that because what are they counting on, they're
12 counting on the fact that they're the police, and
13 they're above reproach when it comes to having to prove
14 anything because they said it. Therefore, that's the
15 law of the case. Assumption. That's all this is.

16 I mean, the stuff is out on the TV tray, wherever.
17 Deputy Foster told us that he had no idea when Serva
18 had been in the bedroom. He had no idea whether
19 Hankins had been in the bedroom or when. Suspicion.
20 Is it suspicious? Granted, suspicion doesn't get
21 beyond a reasonable doubt. As I said, if he would have
22 admitted to possession and then said, "You know what,
23 you got me. Let me work for you," maybe that sounds
24 all right. But he didn't have anything on him, he
25 wasn't in the room where constructive possession

1 usually, usually means if it's within your reach
2 because you have the control and dominion over it.

3 In this particular sense, it was in his bedroom,
4 so that was helpful to get the notion of constructive
5 possession, but at the same time, he's nowhere near it.
6 We have no proof that he was ever near it. Who's to
7 say that that wasn't put out while he was at the store.
8 And he hasn't been in there until this police get
9 there. We don't know that.

10 I asked about Hankins having a prior drug charge
11 which, of course, is public record, but the officer
12 didn't remember that. But he did say, when I told him,
13 you know, 15 years ago, "Well, that's greater than ten
14 years." Well it might be greater than ten years, but
15 it's the same individual, same charge. And she got
16 bags broke out of her pocket. They didn't tell you
17 about the pink purse either. I told you about the pink
18 purse. And they had to admit it. Why? Not
19 Mr. Serva's pink purse with drugs in it.

20 In order to convict, it requires more than mere
21 presence. He was in the house, but he wasn't in the
22 presence of the drugs. Did he have the ability to do
23 anything with them when the police came? No. Did he
24 have anything in his pocket? No. No question the
25 others did. They pled guilty. So we know that for a

1 fact. Anything else has to be proven. And based on
2 the swiftness in taking care of this case today, they
3 haven't brought anything to the table.

4 The State must show the defendant had dominion and
5 control. Dominion and control. That means the ability
6 to do something with it. He didn't have the ability to
7 do anything with anything when they came. He's in the
8 living room, goes back to the bedroom. Okay? But he
9 didn't admit to anything. They have -- he has no duty.
10 That's the biggest point in this whole thing. He has
11 no duty to do anything. They have a duty to prove
12 their -- whatever they're trying to charge him with.

13 You heard Deputy Foster get up here and say, "Oh,
14 we're trying to clear the community of drugs." Who
15 can't appreciate that fact? However, the bigger
16 picture is having the ability to trust in the
17 constitution and believe that they're actually going to
18 do an investigation instead of saying Justin Serva,
19 Justin Serva. The drugs that went to the chemist are
20 labeled "Justin Serva." Did anybody tell them that?
21 No. They assumed that.

22 Beyond a reasonable doubt is a big hump to get
23 over. Inferences are great. Inference was that it was
24 in his room. Other than that, what do we have?
25 Nothing. Nothing. And we got some gibberish about the

1 fact that he was offering to help them despite the fact
2 he didn't admit to doing anything. And that's all we
3 have, but we don't see that. They had the opportunity
4 to have a recording of that. Why wouldn't you have
5 recording devices so you could prove that you didn't
6 beat up a defendant, you didn't do this, you didn't do
7 that, or that the defendant tried to do something while
8 you were there? They don't want that because then we
9 could see what happens. They create doubt. They
10 didn't have to create doubt. They could have proven
11 everything. They didn't. They didn't take the time to
12 do fingerprints. "We don't do that." In other words,
13 "We didn't need to do that. We know the truth." Well,
14 unfortunately for my client, that puts us in a bad
15 position. Puts you in a bad position, too.

16 What are you offering me to take back to the jury
17 room? That's Mr. Serva's mom's house, and he slept in
18 that room. It's understood that Ms. Hankins stayed
19 there, too. With her record. And with her stuff split
20 up into 3s.

21 Ladies and gentlemen, I implore you to look at the
22 evidence or lack thereof and then recognize what
23 reasonable doubt is. Reasonable doubt is something
24 that was created by the State in this situation. All
25 they had to do was get fingerprints. Now it shows,

1 Gosh, those are his scales. Now we understand. I'd
2 feel better with that. But right now we just know it's
3 his bedroom. That's it.

4 Ladies and gentlemen, when you weigh the evidence
5 or lack thereof, we're certain that there's reasonable
6 doubt at the very least. Thank you very much.

7 THE COURT: Madam Forelady, ladies and gentlemen
8 of the jury, that concludes the closing arguments
9 aspect of this case. I next have to charge you on the
10 law. That will probably take in the neighborhood of 25
11 to 30 minutes.

12 Madam Forelady, if you want me to proceed with
13 that, I will. If you want to have a quick break, I'll
14 be more than glad to give it to you. Would you check
15 with your jury to see which way they would like to
16 proceed.

17 JURY FOREPERSON: Keep going.

18 THE COURT: I knew you were going to say that.

19 All right. All right. Ladies and gentlemen of
20 the jury, now that you've heard all the evidence in
21 this case, it's my duty to instruct you on the law that
22 you must apply. Quite frankly, these are very
23 important rules of law, and I'm not smart enough to
24 just recite them off the top of my head, so I'll
25 apologize in advance that some of it will be read to

Jury Charge

State of South Carolina vs. Justin A. Serva

2017-GS-04-00797 & 798

March 20, 2018

1 you. I'll try to minimize that.

2 My charge is going to be in three different
3 sections or parts. First, I'm going to instruct you on
4 the general rules that define and control your duties
5 as jurors. Next, I'm going to give you the laws that
6 apply in this case, the substantive law. That would be
7 the law of possession with intent to distribute
8 methamphetamine as well as the lesser included charge
9 of possession of methamphetamine. And, finally, I will
10 go over some considerations for your deliberations.

11 Madam Forelady, I will then go over the verdict
12 form with you, and I have to make some modifications to
13 it before I send it in to you, but that will be done
14 before you receive it.

15 So, ladies and gentlemen, as I've told you at the
16 beginning of the case, you're the judges of the facts
17 in this case. And you will determine what those facts
18 are or what your verdict is going to be based on the
19 testimony and the evidence that you heard in this case
20 and nowhere else. To the facts as you find them to be,
21 you must apply the law as I give it to you, give it to
22 you now, and you must follow it as I give it to you
23 now. You may not and you shall not be concerned with
24 what you think the law should be but only what it is.

25 Also, ladies and gentlemen, you must not be

1 influenced by any personal likes or dislikes, opinions,
2 prejudice, or undue sympathy that you may have for one
3 side of this case or the other. What that means is
4 you'll decide this case solely based on the testimony
5 and evidence that you heard in the courtroom from this
6 witness stand and the exhibits I have allowed into
7 evidence and according to the law as I give it to you
8 now. And if you will recall, earlier this morning when
9 you took your oath, you swore or affirmed to do just
10 that. And in following these instructions now, you
11 will have to follow all of them. They are all equally
12 important. You can't pick out aspects of my charge
13 that you agree with and apply those and disregard some
14 that you may not agree with. They're all equally
15 important.

16 Also remind you, ladies and gentlemen, if I have
17 done anything throughout the course of this trial that
18 seems to indicate to you how you are to find facts, in
19 other words, the verdict you are to reach, I'm going to
20 ask you and instruct you to disregard that. I do not
21 have an opinion one way or the other in this case. You
22 and you alone are the judges of what the facts are in
23 this case, and you will determine what those facts are
24 by evaluating or weighing the evidence in this case.

25 Now, obviously, there's no way for you to weigh

1 evidence. I can't send you back a set of scales for
2 you to put on them and weigh the evidence. It is
3 entirely a mental process that you will engage in when
4 you begin your deliberations, and when you do so, you
5 are to use your common sense and your sense of logic
6 and your judgment in coming to a conclusion hopefully
7 as to what the facts are in this case.

8 Again, the only evidence in this case that you may
9 consider as evidence is the following: It's the sworn
10 testimony of the witnesses that have appeared before
11 you, whether it be on direct examination,
12 cross-examination, redirect, or recross, and also any
13 of the exhibits that I have allowed into evidence. And
14 that's it.

15 So that leads me to what's not evidence. First,
16 the arguments and statements by these attorneys, fine
17 as they are, in opening statements or closing
18 statements or any other time during the course of this
19 trial is not evidence. They're not witnesses. They
20 have not been sworn in. They have not been put through
21 the crucible of cross-examination. Therefore, if your
22 collective memory differs from what either or both of
23 these attorneys tell you at any time during the course
24 of their case, your collective memory of that fact will
25 control.

1 Also, ladies and gentlemen, the questions by the
2 attorneys are not evidence. The responses, obviously,
3 is evidence, but their questions is not evidence.
4 Objections. I'll remind you, it's a lawyers duty to
5 object any time he or she sees something they feel like
6 is inappropriate in a case. The fact that an objection
7 is raised and, to the extent I let you stay in the
8 courtroom and hear my rulings on those objections, may
9 not be considered by you in your deliberations. And
10 Madam Forelady, if somebody tries to raise that issue,
11 it will be up to you to make sure that is not a topic
12 of your deliberations. Also, ladies and gentlemen,
13 anything that you may have heard or seen while court is
14 not in session is not evidence.

15 So that leads me to the two types of evidence that
16 we recognize in South Carolina as evidence. There are
17 two types of evidence which are generally presented
18 during a criminal trial. That is direct evidence and
19 circumstantial evidence. Direct evidence directly
20 proves the existence of a fact and does not require
21 deduction or inference. For example, if the issue in a
22 case was whether or not I ran a stop sign, and the
23 court reporter testified that she saw me run that stop
24 sign, that would directly prove that issue. That's
25 direct evidence. You don't have to infer anything from

1 it.

2 Also we recognize circumstantial evidence.

3 Circumstantial evidence is a proof of a chain of facts
4 and circumstances indicating the existence of a fact.

5 In other words, you infer or deduce a fact from the
6 facts that you hear about. For example, if each of you
7 were to go to bed at night and have a fresh sheet of
8 snow in your front yard, if you were to wake up in the
9 morning and see tracks in that snow, you may reasonably
10 infer or deduce that someone or something walked
11 through your yard at night while you were asleep
12 although you didn't see it.

13 Now, the law makes -- crimes, ladies and
14 gentlemen, may be proven by circumstantial evidence
15 just like with direct evidence. The law makes no
16 distinction between the weight or value to be given to
17 either direct or circumstantial evidence. However, to
18 the extent the State relies on circumstantial evidence,
19 all the circumstances must be consistent with each
20 other, and when taken together, point conclusively to
21 the guilt of the accused beyond a reasonable doubt. If
22 these circumstances merely portray a defendant's
23 behavior as suspicious, then the proof has failed.

24 The State has the burden of proving the defendant
25 guilty by proof beyond a reasonable doubt whether or

1 not it uses direct evidence, circumstantial evidence,
2 or a combination of both -- of two of the same. Ladies
3 and gentlemen, in deciding what the facts are or what
4 your verdict is going to be in this case, you have to
5 consider all the evidence and all the testimony and do
6 so in a thorough and courteous manner with one another.
7 But in doing this, you have to decide which testimony
8 you wish to believe and whether or not there's any
9 testimony you wish not to believe. You collectively
10 have a right to disbelieve all or part of any witness'
11 testimony. You have a right to believe all of any
12 witness' testimony or all of the witnesses' testimony.
13 In making this decision, what we call or refer to as
14 the credibility of the evidence, you may take into
15 account the following factors, which is not a
16 conclusive list, but it's just some things for your
17 consideration.

18 First, you may ask yourself, was the witness able
19 to see, hear, or know about the things which they
20 testified about; how well were they able to recall and
21 describe the things that are the subject of their
22 testimony; what was their manner or demeanor while they
23 were on the witness stand. You may ask yourself if
24 there is a reason that a witness would want to help or
25 hurt one side or the other; whether or not they had a

1 bias or interest in the outcome of the case or a bias
2 or prejudice towards any party or issue involved in the
3 case. You can ask yourself how reasonable the witness'
4 testimony was in light of all the evidence in the case,
5 and whether that witness' testimony had been
6 contradicted by what that witness had said at another
7 point in time or by the other testimony or evidence
8 presented in the case.

9 Now, ladies and gentlemen, those are just some of
10 the factors you may consider in determining the
11 credibility or the believability of the evidence
12 presented to you. And, of course, when you're sworn in
13 as jurors, you do not hang up your common sense, and
14 you shouldn't in this case. You should use those
15 things in your day-to-day lives that you find
16 indicative of truthfulness or indicative of lack of
17 truthfulness in determining the credibility or
18 believability of the testimony. In deciding the
19 credibility or believability, one thing you may not do
20 is add up the number of witnesses that have appeared on
21 one side of this case in making this determination.

22 Ladies and gentlemen, you have heard testimony
23 from people who have been stipulated and qualified as
24 experts. As I told you, normally people are limited to
25 testifying to what they heard, they saw, they felt, or

1 they smelt. However, if a person's qualified, they may
2 give their opinion in the area of their expertise.
3 I'll charge you and remind you that expert testimony is
4 just like any other testimony you may hear in this case
5 or you heard in this case. You may accept it, you may
6 reject it or give it as much weight as you think it
7 deserves.

8 Ladies and gentlemen, I'll also remind you that
9 this indictment does not raise evidence of the
10 defendant's guilt. It is not evidence of his guilt.
11 It does not raise an inference or presumption of his
12 guilt. It is simply the mechanism by which the State
13 has brought him before you and this court for a
14 determination of guilt or innocence.

15 Now, in this case, the defendant has pled not
16 guilty to the indictment. And that puts the burden on
17 the State to prove his guilt by proof beyond a
18 reasonable doubt. I'll charge you that a person
19 charged with committing a criminal offense in South
20 Carolina is never required to prove himself innocent.
21 I'll charge you that it is an important rule of law in
22 the state that in a criminal trial, no matter what the
23 seriousness of the charge may be, that a person will
24 always be presumed to be innocent of the crime for
25 which they have been indicted unless there has been

*Jury Charge**State of South Carolina vs. Justin A. Serva*

2017-GS-04-00797 & 798

March 20, 2018

1 guilt established by proof satisfying you of guilt
2 beyond a reasonable doubt.

3 Ladies and gentlemen, this presumption of
4 innocence does not end when you begin your
5 deliberations, but it accompanies the defendant
6 throughout this trial until you, the jury, are
7 convinced of his guilt beyond a reasonable doubt. It
8 is said the presumption of innocence is like a robe of
9 righteousness about the defendant's shoulders where it
10 remains until it has been stripped by evidence
11 satisfying you of guilt beyond a reasonable doubt. The
12 presumption of innocence is not just a mere legal
13 phrase. It's not just a nice legal theory. It is a
14 substantial right which every defendant is entitled to
15 unless you, the jury, are satisfied of guilt by proof
16 beyond a reasonable doubt.

17 I'll also remind you, ladies and gentlemen, that
18 in South Carolina, the laws of this state, the
19 defendant may be tried even though he may not be
20 present at trial and doesn't attend trial. But the
21 fact that the defendant is not present may not be
22 considered against the defendant in any manner
23 whatsoever because the burden remains on the State of
24 South Carolina.

25 Madam Forelady, if someone tries to raise that

*Jury Charge**State of South Carolina vs. Justin A. Serva**2017-GS-04-00797 & 798**March 20, 2018*

1 issue in your deliberations, that would be another
2 issue that it is your job to keep from becoming part of
3 the jury focus. Okay?

4 So that leads me to what is a reasonable doubt. A
5 reasonable doubt is the kind of doubt that would cause
6 a reasonable, sincere, honest, and conscientious person
7 to hesitate to act on an important matter in their own
8 affairs. Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the defendant's guilt.
10 As I told you earlier, there are very few things in
11 this world that we know with absolute certainty, and in
12 criminal cases, the law does not require the State to
13 overcome every possible doubt. If, based on your
14 consideration of the evidence, you are firmly convinced
15 that the defendant is guilty of the crime for which he
16 has been indicted, then you must find him guilty. If,
17 on the other hand, you think there is a real
18 possibility that the defendant is not guilty, then you
19 must give him the benefit of the doubt and find him not
20 guilty.

21 Ladies and gentlemen, a reasonable doubt may arise
22 from the evidence or from a lack of evidence, and I
23 further instruct you that a defendant is entitled to
24 every reasonable doubt that may arise in a case. And
25 what that simply means is this: That if upon any issue

1 of fact essential to a conviction in a verdict of guilt
2 for which he has been -- for the charge which he's been
3 indicted, if you have any reasonable doubt as to how
4 that issue should be resolved, it is your duty to
5 resolve that issue in favor of the defendant.

6 In order, ladies and gentlemen, to establish
7 criminal liability, criminal intent is required to be
8 proven. For example, the mental state required to be
9 proven by the state for a particular crime might be
10 purpose, intent, knowledge, recklessness, or criminal
11 negligence. Criminal intent must be proven by the
12 State by proof beyond a reasonable doubt.

13 Ladies and gentlemen, criminal intent is always a
14 matter that must be determined by you, the jury, from
15 the circumstances surrounding the situation shown
16 during trial. Now, there's no way to prove intent to a
17 mathematical certainty, and there's no way that medical
18 science can dissect a person's brain to determine what
19 they had in mind and what they were determined to do.
20 So the law says that criminal intent may be inferred
21 from the circumstances shown to have existed at the
22 time. And that is how you make a determination of
23 whether or not the element requiring intent is present.
24 It is not necessary to establish intent by direct and
25 positive evidence, but intent may be established by

1 inference in the same way as any other fact, by taking
2 into consideration the acts of the parties and all the
3 facts and circumstances of the case.

4 Criminal intent is a mental state. It is a
5 conscious wrongdoing. It is up to you to determine
6 what the defendant intended to do based on the
7 circumstances shown to have existed. Criminal intent
8 can arise from action or a failure to act. It may
9 arise from negligence, recklessness, or an indifference
10 to duty, or to the consequences that are considered by
11 the law to be the equivalent of criminal intent.

12 And, finally, ladies and gentlemen and Madam
13 Forelady, I instruct you that the fact that the
14 defendant did not testify may not be a factor
15 considered by you in any way during your deliberations.
16 That is his right, and the State is required to prove
17 his guilt by proof beyond a reasonable doubt.

18 If somebody tries to raise that issue, Madam
19 Forelady, it will be your job to make sure that is also
20 not a focus of the jury. Okay?

21 Ladies and gentlemen, those are the first aspects
22 of my charge to you. And, fortunately for you, it is
23 quite the longest. I am now going to move to the
24 substantive law that applies in this case. That would
25 be the law of possession with intent to distribute and

*Jury Charge**State of South Carolina vs. Justin A. Serva*

2017-GS-04-00797 & 798

March 20, 2018

1 also the law on the lesser included charge of
2 possession of methamphetamine, and also I'll give you
3 some consideration about testimony about a statement by
4 the defendant.

5 Now, ladies and gentlemen, the defendant is
6 charged with possession with intent to distribute
7 methamphetamine. The State must prove beyond a
8 reasonable doubt that the defendant possessed
9 methamphetamine with intent to distribute it.

10 To prove possession, the State must prove beyond a
11 reasonable doubt that the defendant had both the power
12 and the intent to control the disposition or use of the
13 methamphetamine. Possession may be either actual or
14 constructive. Actual possession means that the
15 methamphetamine was in the actual physical custody of
16 the defendant.

17 Constructive possession means that the defendant
18 had dominion and control or the right to exercise
19 dominion and control over either the methamphetamine
20 itself or the property on which the methamphetamine was
21 found. Mere presence at the scene where the drugs were
22 found is not enough to prove possession. Actual
23 knowledge of the presence of the methamphetamine is
24 evidence of the defendant's intent to control its
25 disposition or use.

1 The defendant's knowledge and possession may be
2 inferred when a substance is found on the property
3 under the defendant's control. However, this inference
4 is simply an evidentiary fact to be taken into
5 consideration by you along with the other evidence in
6 this case and to be given the weight you decide it
7 should have.

8 I'll charge you, ladies and gentlemen, that two or
9 more people may have joint possession of a drug. The
10 State must also prove beyond a reasonable doubt that
11 the defendant intended to distribute the
12 methamphetamine. Distribute means to deliver other
13 than by administering or dispensing a drug. Intent may
14 be shown by acts and conduct of the defendant and other
15 circumstances which you may naturally and reasonably
16 infer intent.

17 In determining whether the defendant had the
18 intent to distribute the methamphetamine, you may
19 consider the circumstances surrounding the defendant's
20 alleged possession. You may consider the amount of the
21 substance alleged to have been possessed. You may
22 consider the manner in which it was allegedly
23 possessed, the place where it was allegedly possessed,
24 and other factors which you consider to be important.
25 You must find, however, that the defendant did not

*Jury Charge**State of South Carolina vs. Justin A. Serva**2017-GS-04-00797 & 798**March 20, 2018*

1 intend to have the methamphetamine solely for his own
2 use.

3 I charge you, ladies and gentlemen, that
4 possession of more than one gram of methamphetamine
5 creates an inference that the defendant possessed the
6 methamphetamine with intent to distribute it. This
7 inference does not relieve the State from proving
8 beyond a reasonable doubt that the defendant had the
9 intent to distribute. It is simply an evidentiary fact
10 to be taken into consideration by you, the jury, along
11 with other evidence in this case and to be given the
12 weight that you feel like it should have.

13 Now, ladies and gentlemen, if you find that the
14 State has failed to prove beyond a reasonable doubt
15 that the defendant is guilty of possession with intent
16 to distribute methamphetamine, you may consider whether
17 the State has proved the lesser included charge by a
18 reasonable doubt of simple possession of
19 methamphetamine. Simple possession of methamphetamine
20 is the same as possession with intent with the absence
21 of the intent to distribute the methamphetamine.

22 Ladies and gentlemen, a statement alleged to have
23 been made by the defendant has been admitted into
24 evidence in this case. Now, while the court has
25 determined that the statement is admissible, I instruct

1 you that you make the ultimate decision of whether or
2 not the defendant made the statement. If the defendant
3 did make the statement, you must determine whether the
4 statement was made by the defendant voluntarily and of
5 his own free will. This means that the statement was
6 not caused by pressure, force, fear, threats, coercion,
7 or intimidation or by hope or a promise of leniency or
8 a reward of any kind.

9 In determining whether the statement was
10 voluntary, you should consider both the characteristics
11 of the defendant and the details of the questioning.
12 Some of the factors you must consider are: The age of
13 the defendant, the defendant's education or the lack of
14 education, the defendant's mental ability or capacity,
15 the defendant's IQ or intelligence, the defendant's
16 background and environment, the place and length of
17 detention, the nature of the questioning and the advice
18 or lack thereof to the defendant of his constitutional
19 rights which would include but not be limited to the
20 right to remain silent, that any statement could be
21 used against him in a court of law, the right to have a
22 lawyer present, that if he could not afford a lawyer, a
23 lawyer would be appointed to represent him at no cost,
24 and that he could stop making a statement at any time.
25 You must carefully consider all the surrounding

*Jury Charge**State of South Carolina vs. Justin A. Serva*

2017-GS-04-00797 & 798

March 20, 2018

1 circumstances before you give any weight to the alleged
2 statement by the defendant.

3 The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement was
5 voluntary. If you determine that it was voluntary, you
6 may give the statement any further consideration that
7 you deem proper. You must decide what weight, if any,
8 should be given to the alleged statement. If you
9 determine the alleged statement was not the free and
10 voluntary statement of the defendant, you should not
11 consider the statement at all.

12 Now, ladies and gentlemen, that is the substantive
13 law that you must apply in this case. So that leads me
14 to the final aspect of my charge to you, and that is
15 some considerations for your deliberations.

16 First, if you recall during jury qualification,
17 you represented yourselves by your express words or by
18 your silence that you could be fair and impartial to
19 both sides in this case. Now, you don't serve as
20 jurors to be partisans or advocates for one side or the
21 other. Both sides of this case believed that you could
22 be fair and impartial and decide this case solely on
23 the evidence that's been presented and according to the
24 law as I give it to you. When you're asked to begin
25 your deliberations, you should use your experiences in

1 life, your good common sense, and your sense of logic
2 and reasoning in hopefully coming up to hopefully a
3 unanimous decision in this case.

4 Let me say a little bit about deliberations.
5 Deliberation is defined as this: It is a careful
6 consideration, weighing up to a view to a decision. A
7 careful consideration, weighing up with a view to a
8 decision.

9 Now, regardless of what any of you may believe
10 about our jury system, I would submit to you that the
11 genius of the system is that it allows 12 men and women
12 like yourselves who come from different backgrounds,
13 who have different experiences and come from different
14 walks of life to listen to the testimony, to listen to
15 the evidence, to listen to the law, and to go back and
16 engage in thorough and courteous deliberations and
17 hopefully reach a unanimous verdict.

18 Now, you should not be in a hurry today. This
19 case is very important to both the State and to the
20 defendant. I also tell you that they do not get a
21 second bite at the apple. This is their only day in
22 court. So when you go back, I'm going to ask you to
23 listen to everybody's views and their points of views,
24 let your fellow jurors tell you why they think a way
25 and then give you the reasons they feel that way, and

*Jury Charge**State of South Carolina vs. Justin A. Serva*

2017-GS-04-00797 & 798

March 20, 2018

1 you do the same thing. Don't rush to a decision in
2 this matter. Take time to listen to and think about
3 all the evidence that you must go through in this case.

4 Now, with that being said, in order for your
5 verdict to stand, it has to be unanimous, but each of
6 you must decide this case for yourself. And you should
7 only do so -- you should not make a decision about what
8 you think the verdict should be until after you have
9 listened to everybody's points and their points of view
10 impartially, you have walked through and discussed all
11 the evidence, and you have gone through and you feel
12 like you have deliberated on a thorough basis. Do not
13 be afraid to change your opinion as to the weight of
14 the evidence if your deliberations with your fellow
15 jurors convinces you that is the right thing to do. On
16 the other hand, don't change a firmly held belief as to
17 the weight of the evidence simply to appease your
18 fellow jurors.

19 Now, Madam Forelady, I will give you a verdict
20 form in just a few minutes that has the options here.
21 The order in which they appear, they have to come in
22 some order, so it doesn't necessarily mean anything.
23 But the first charge that you must consider first is
24 the charge of possession with intent to distribute
25 methamphetamine. If you, the jury, your options under

*Jury Charge**State of South Carolina vs. Justin A. Serva**2017-GS-04-00797 & 798**March 20, 2018*

1 that is as to the charge of possession with intent to
2 distribute methamphetamine, under indictment
3 2016-04-98, we, the jury, unanimously find the
4 defendant not guilty. If that's your charge, you will
5 check by that option, then you will sign as the
6 Forelady. You will get your verdict form, crease it,
7 knock on the door, we will receive it in open court.

8 Your other option would be as to the charge of
9 possession with intent to distribute methamphetamine,
10 we, the jury, find the defendant guilty. If that is
11 your charge, then you will check that and sign it and
12 knock on the door. I misstated. If you find the
13 defendant not guilty as to possession with intent to
14 distribute methamphetamine, then you may consider
15 whether or not the defendant is guilty of the lesser
16 included charge of possession of methamphetamine. And,
17 again, your options under that will be not guilty or
18 guilty.

19 Once you have considered all the options in this
20 case, sign your name to the form, knock on the door,
21 and we'll receive it back in evidence.

22 Now, Madam Forelady, doing that again. Under
23 possession with intent to distribute, if you find the
24 defendant not guilty, then you would consider the
25 lesser included charge of simple possession of

Jury Charge

State of South Carolina vs. Justin A. Serva

2017-GS-04-00797 & 798

March 20, 2018

1 methamphetamine. If, on the other hand, you find him
2 guilty of possession with intent to distribute
3 methamphetamine, you stop, you sign the verdict form,
4 and you will knock on the door.

5 Do you have that? All right.

6 Ladies and gentlemen, let me double-check with
7 these attorneys in just a moment to see if there are
8 any objections to my charge or if I have to correct
9 anything that I have given to you. Do not begin your
10 deliberations at this point. We'll send word back
11 along with the evidence for you to begin your
12 deliberations.

13 Now, Madam Forelady, if you need anything at any
14 time, write a question out for me, sign it, I will
15 receive it here in the courtroom. However, never ever
16 tell us where the jury stands numerically as to what
17 its verdicts is going to be. It is absolutely nobody's
18 business except for the jury's. Okay? Once you reach
19 a unanimous verdict, you will sign it, crease that
20 form, knock on the door, and we'll receive your verdict
21 here in the courtroom. All right?

22 Our alternate, when we send word back and the
23 evidence back to the jury, I'm going to ask that you
24 get your things and come back out here to the
25 courtroom, okay? Okay.

1 Thank you. If you would step back to the jury
2 room, please.

3 (WHEREUPON, the jury exited open court at
4 1:50 p.m.)

5 THE COURT: Any additions or exceptions from the
6 State?

7 MR. FULMER: No, sir.

8 THE COURT: From the defense?

9 MR. SMITH: No, sir, but may I reiterate my
10 objection to the circling of the drugs that are Justin
11 Serva's?

12 THE COURT: By the expert?

13 MR. SMITH: Yeah, just to send back the plain
14 piece of paper. To me, that's extremely prejudicial.

15 THE COURT: I understand. I'll note your
16 objection. Any other matters you feel like you need to
17 put on the record?

18 MR. SMITH: No, sir.

19 THE COURT: All right. Gentlemen, thank you. I
20 appreciate it. Let me get this charge -- I mean this
21 verdict form figured back out, and once I do, we'll
22 send it back.

23 How about y'all check the exhibits in the
24 meantime, then don't send them back yet until I bring
25 this out. Okay?

1 (WHEREUPON, a recess was taken from 1:52 p.m. to
2 2:08 p.m.)

3 (WHEREUPON, the judge returned to the courtroom
4 with the verdict form.)

5 (WHEREUPON, court in recess, pending verdict, from
6 2:08 p.m. until 2:44 p.m.)

7 THE COURT: We have a verdict.

8 Mr. Fulmer, you ready?

9 MR. FULMER: Yes, sir.

10 THE COURT: Mr. Smith, you ready?

11 MR. SMITH: Yes, sir.

12 THE COURT: Would you bring the jury in, please.

13 (WHEREUPON, the jury entered open court at
14 2:53 p.m.)

15 THE COURT: All right. Madam Forelady, my
16 understanding is the jury has reached a verdict; is
17 that correct?

18 JURY FOREPERSON: We have, Your Honor.

19 THE COURT: Will you pass the verdict forward.

20 JURY FOREPERSON: Yes, sir.

21 THE COURT: Is it unanimous?

22 JURY FOREPERSON: Yes, sir.

23 THE CLERK: If it pleases the court.

24 THE COURT: Yes, sir.

25 THE CLERK: This is the State of South Carolina,

1 County of Anderson, in the Court of General Sessions,
2 Tenth Judicial Circuit, Indictment Number
3 2017-GS-04-00798. This is the verdict form in the case
4 of State of South Carolina versus Justin Serva,
5 defendant.

6 Question one: Possession with intent to
7 distribute methamphetamine. A, as to the charge of
8 possession with intent to distribute methamphetamine,
9 Indictment Number 2016-GS-04-00798, we, the jury,
10 unanimously find the defendant not guilty.

11 Possession of methamphetamine. If you find the
12 defendant is not guilty of possession with intent to
13 distribute methamphetamine, you may consider whether
14 the defendant is guilty of the lesser included charge
15 of possession of methamphetamine. D, as to the lesser
16 included charge of possession of methamphetamine, under
17 Indictment Number 2016-GS-04-00798, we, the jury,
18 unanimously find the defendant guilty. And that is
19 signed by our foreperson and dated today, March the
20 20th, 2018, in Anderson, South Carolina.

21 THE COURT: All right. Madam Forelady, ladies and
22 gentlemen of the jury, if that was your verdict in the
23 jury room and if that is your verdict in the courtroom,
24 would you raise your right hand.

25 Let the record reflect that all 12 jurors raised

1 their hand.

2 All right. Ladies and gentlemen, I want to thank
3 you for your service. Not for your verdict but for
4 your service. The court is never concerned with what
5 your verdict is but that you paid attention during the
6 course of the trial, and you did and listened to the
7 instructions and performed your civic duty.

8 I would like to be able to tell you we are done
9 for the week, but we have a trial starting in the
10 morning. So if you would, if would you report back to
11 the jury room -- not jury room, to the courtroom at
12 9:30, you may or may not get selected on the second
13 trial. But thank you for your service. You are
14 excused for the day.

15 Madam Forelady, may I see you for a second.

16 Mr. Fulmer, can you prepare me a sentencing sheet.

17 MR. FULMER: Yes, sir, Judge. I have amended this
18 sentencing sheet. If you're okay with that, I can hand
19 it up now.

20 THE COURT: Is that sheet okay with you,
21 Mr. Smith, as prepared?

22 MR. SMITH: Yes, sir.

23 THE COURT: Do you have Mr. Serva's record?

24 MR. FULMER: I do, Judge.

25 THE COURT: Would you give it to me, please, sir.

1 MR. FULMER: He does not have convictions from
2 South Carolina. He's currently on probation for
3 burglary out of Florida. It also shows that he's
4 wanted out of Florida as well as the West Columbia
5 Police Department. His record is: 2009 possession of
6 drug paraphernalia; 2011 manufacturing cannabis; 2015
7 possession of methamphetamine, possession of marijuana,
8 possession of drug paraphernalia, resisting arrest, and
9 domestic battery.

10 THE COURT: All right. Thank you.

11 All right, Mr. Smith. Anything you want to add
12 for the record?

13 MR. SMITH: Your Honor, I would say that finding
14 guilty in one and not the other is a conflict;
15 therefore, I don't think it was based on the evidence,
16 that it was based on the jury wanting to give both
17 sides a win, so to speak, and I would like ten days to
18 file a motion.

19 THE COURT: Yes, sir. You can have ten days.

20 All right. I'm going to put this sentence under
21 seal and ask that Mr. Serva be picked up, and he'll be
22 brought before the court and sentenced by whoever is
23 presiding.

24 Thank you, gentlemen. Appreciate it.

25 (WHEREUPON, proceedings concluded at 2:59 p.m.)

State of South Carolina vs. Justin A. Serva

2017-GS-04-00797 & 798

March 20, 2018

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END OF REQUESTED TRANSCRIPT OF RECORD

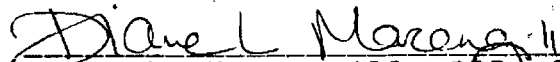
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 29th & 30th day of March 2018.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

August 14, 2018


Diane L. Marcengill, RRR, CRR, CRC
Circuit Court Reporter

STATE OF SOUTH CAROLINA .	)	
	)	GENERAL SESSIONS COURT
COUNTY OF ANDERSON	)	2017-GS-04-00798
-----	)	

THE STATE OF S.C.	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
JUSTIN ANDREW SERVA,	)	
DEFENDANT	)	
-----	)	

APRIL 19, 2018
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

DANNY NELSON FULMER, JR, ESQUIRE
ASSISTANT SOLICITOR

DONALD LOREN SMITH, ESQUIRE
ATTORNEY FOR DEFENDANT

VIVIAN CROSS,
CIRCUIT COURT REPORTER

I N D E X

Motion Hearing 3

* * * APRIL 19, 2018 * * *

MR. FULMER: May it please the court?

THE COURT: Yes.

MR. FULMER: Judge, before you is Justin Serva. Judge, you presided over Mr. Serva's trial last month. He's here today with his attorney, Mr. Don Smith, with a motion for a new trial.

THE COURT: All right. Mr. Smith, I'll be glad to hear from you.

MR. SMITH: May it please the court. Your Honor, this is a case in which the Anderson County Sheriff's Department executed a search warrant. And when they went in the home, Mr. Serva was in the living room and there were two individuals on a porch or outside the backdoor, who had 14 -- 14 ounces or 14 grams of methamphetamine on one person; the other person had three individual packets illustrating that she may have been conducting sales.

There was seven grams of methamphetamines located in -- on a night stand in Mr. Serva's room, or what we believe to be Mr. Serva's room. And the testimony was that no one knew the last person to go in that room. Mr. Serva did not have any drugs on him whatsoever. No fingerprints were lifted. More

1 importantly, no fingerprints were attempted to be
2 lifted. The State was relying, in essence, on the
3 inference of his bedroom.

4 Well, --

5 THE COURT: Relying on the of what?

6 MR. SMITH: The inference that it was his bedroom.

7 THE COURT: Okay.

8 MR. SMITH: The chemist tested the -- the
9 materials found on that night stand, and she said that
10 they were methamphetamine. The Anderson County Sheriff
11 labeled the drugs found on that night stand as those of
12 Justin Serva.

13 Unfortunately, for Mr. Serva, the State then put
14 their expert witness, the chemist on the stand, and had
15 him -- had her circle Justin Serva's name on the drugs
16 that she tested. She testified that she had no ID --
17 no idea of the identification of the person who
18 possessed the drugs or touched the drugs or anything
19 else. However, she circled Mr. Serva's name on the
20 exhibit, the exhibit that went back to the jury -- with
21 the jury.

22 We believe that that was highly prejudicial
23 based on the fact that she testified she had no idea
24 whose drugs they were, and the State -- they testified
25 that they have no idea who the last person was in that

1 room. So by allowing the chemist to validate that this
2 was Justin Serva's by circling his name provided unfair
3 prejudice and deprived him of a fair trial. And,
4 therefore, we ask for a new trial based on the
5 situation where the chemist circling his -- in essence,
6 the same as the ringing of a bell, once it's been rung,
7 you can't -- you can't turn it back and that's exactly
8 what happened here. He got found not guilty of
9 possession with intent, and the jury found guilty of
10 possession. We believe that that possession stems from
11 the circling of his name by the expert witness.

12 THE COURT: Mr. Fulmer.

13 MR. FULMER: Judge, the reason that I asked the
14 forensic chemist to circle the result that she was
15 testifying to is because that drug report contained the
16 results for three different defendants, and I wanted to
17 make it clear to the jury that she was testifying with
18 regard to the drugs that were assigned to Mr. Serva at
19 that house, Judge. I don't believe it created any
20 improper inference to the jury or invaded their
21 province for her to simply acknowledge which drugs she
22 was testifying with regard to.

23 THE COURT: Well, let me ask you, Mr. Smith,
24 because I think you said it and you certainly said it
25 in the brief if I understand it -- what you said -- I

1 mean, you cross examined the State's chemist, their
2 expert, you asked her, you don't know whose drugs they
3 were, you don't know who had them, you don't know
4 anything about whose they were, you just know what they
5 were -- along those lines; isn't that correct?

6 MR. SMITH: Yes, sir. And -- and, Your Honor,
7 when he -- he talks about allowing her to circle it,
8 it's what the State assigned -- they named those drugs
9 "Justin Serva" despite the fact he did not possess
10 those. The other drugs were possessed by those
11 individuals. They were on those people. So --

12 THE COURT: Right. Well, that's -- I mean, that's
13 -- I mean do you agree -- well, in your brief you say
14 this was his room. They are out in the open in his
15 room, so it could have been actual or constructive
16 possession, or even possessed by more than one person;
17 right? That's what the law is.

18 MR. SMITH: They could have -- they could have
19 been possessed by any person. There were six people in
20 that -- on that property.

21 THE COURT: Well, what I'm thinking about if it's
22 his room -- I think was not challenged, then it becomes
23 a question for the jury to make a call where there is
24 or not. But the -- but I understand your argument is,
25 is that the identification of your client by the

1 State's expert caused him undue prejudice because it
2 seemed to have singled him out for some reason. And
3 that -- that's essentially the -- the basis of your
4 argument; right?

5 MR. SMITH: My argument is that he didn't have
6 anything, and that circle of his name is what gave them
7 the opportunity to find him guilty. Because they --
8 they did not have -- there was no possession on him,
9 there was no fingerprints of his on anything. They are
10 out in the open as if the people who had the other
11 drugs were the ones that were dealing with it.

12 But, Your Honor, I understand the inference, but
13 that's all they have. But by allowing the chemist to
14 circle something she had no idea and they didn't know
15 because they didn't test anything. They had nothing
16 that identified the drugs as his other the fact that
17 they found it on a night stand in his room.

18 THE COURT: That's not -- that's not small
19 evidence, other than -- the fact that it's on the night
20 stand in his room, it's very substantial circumstantial
21 evidence it's under his control.

22 MR. SMITH: His girlfriend lived there, the one
23 that had the three packets in her pocket, so.

24 THE COURT: Well, again, let me just say this --
25 to me, it was and still is a question for the jury as

1 to whether or not it was his drugs. He certainly
2 didn't have the actual possession, but whether or it
3 was constructive possession, and the fact that you were
4 able to cross examine the expert to clarify, she didn't
5 know whose drugs they were, she only knew what it was.
6 And that the circling of her (sic) name by the expert,
7 doesn't do anything but it's just -- a tag on him,
8 that's -- you know, I don't see any -- the prejudice to
9 him beyond him being on trial.

10 MR. SMITH: She said, I don't know whose drugs
11 they are, yet she's circling an exhibit. And so that's
12 what goes back with the jury, so the jury only knows
13 that circling his name. That's it.

14 THE COURT: That's not true, Mr. Smith. They
15 understand what her testimony was in your cross
16 examination. That's just part and parcel of all the
17 evidence the jury is entitled to listen to.

18 MR. SMITH: Yes, sir, but that was not evidence.
19 Her circling -- she -- she did not have any knowledge
20 to be doing that. She knew that there was
21 methamphetamine there, period.

22 THE COURT: All right.

23 MR. SMITH: The idea of her --

24 THE COURT: I understand what your argument is,
25 I'm denying your motion. I think you cleared it up in

1 your cross examination through her, and it's a question
2 of fact whether it was constructive possessed by this
3 client. Now, you have ten days to appeal. All right.
4 Good luck to you.

5 MR. SMITH: Thank you, sir.

6 MR. FULMER: Judge, he's not been sentenced yet.

7 THE CLERK: He hasn't been sentenced.

8 THE COURT: Oh, he hasn't been sentenced?

9 THE CLERK: No, sir.

10 THE COURT: All right. This was in absence?

11 THE CLERK: Yes, sir.

12 THE COURT: Okay. I am sorry. All right. The
13 sentence will be three years. Now, you have ten days
14 to appeal.

15 MR. SMITH: Thank you, Judge.

16 THE COURT: You're welcome.

17 THE DEFENDANT: May I say something, Judge? Your
18 Honor? Your Honor, may I say something?

19 THE COURT: No, sir.

20 MR. SMITH: Let's go.

21 (Whereupon, the hearing adjourned.)

22

23 * * * END OF TRANSCRIPT * * *

24

25

CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
GENERAL SESSION FOR ANDERSON COUNTY ON THE 18TH OF
APRIL, 2018.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

8/8/2018

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER
MY COMMISSION EXPIRES 9.22.2024

WITNESSES

Anderson Co. Sheriff's Office

James T. Foster

ARREST WARRANT NUMBER

2016A0410100456

ACTION OF GRAND JURY**TRUE BILL**Foreperson of Grand Jury
Date: MAR 21 2017

Foreperson

VERDICTForeperson of Grand Jury
Date: 3-20-18

DOCKET NO. 2017-GS-04-00798

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

MAR 21 2017

TERM

THE STATE

VS.

JUSTIN ANDREW SERVA

INDICTMENT FOR**POSSESSION WITH INTENT TO
DISTRIBUTE METHAMPHETAMINE**SC Code: § 44-53-375(B)
CDR Code: 3198**A TRUE COPY**

JUN - 6 2018

Clerk of Court

COMMITMENTGuilty of Simple Possession
X of MethamphetamineForeperson of Grand Jury
Date: 3-20-18
X Andrea Maurer

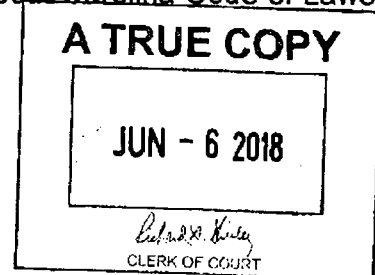
STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

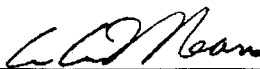
At a Court of General Sessions, convened on MAR 21 2017, the Grand Jurors of Anderson County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE

The defendant, Justin Andrew Serva, did on or about April 27, 2016, in Anderson County, South Carolina, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to distribute, dispense, deliver, or purchase, or possess with the intent to distribute, dispense, deliver, or purchase Methamphetamine, a Schedule II controlled substance under provisions of Section 44-53-110, et seq., Code of Laws of South Carolina (1976), as amended. All in violation of 44-53-375(B) of the South Carolina Code of Laws (1976) as amended.



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

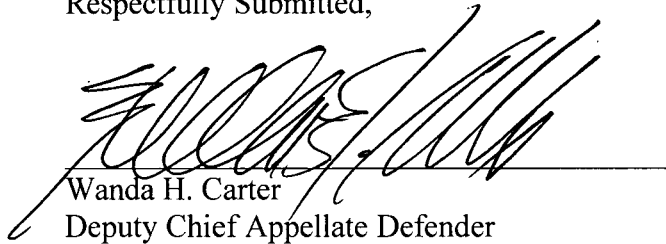


AUSTIN MCLAIN
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of December, 2018.

RECEIVED
DEC 17 2018
SC Court of Appeals

RECEIVED
DEC 17 2018
SC Court of Appeals