

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Honorable R. Markley Dennis, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

THERRON RENARD RICHARDSON,

APPELLANT

RECEIVED

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SC Court of Appeals

APPELLATE CASE NO 2019-000114

RECORD ON APPEAL

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT NO. 3 (911 CALL)**

STATE OF SOUTH CAROLINA.	)	COURT OF GENERAL SESSIONS.
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
State of South Carolina,	)	CASE NO. 2011-GS-10-02320
	)	2011-GS-10-02321
	)	2019-GS-10-00879
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
Therron Renard Richardson,	)	
	)	
DEFENDANT.	)	

January 10, 2019

Charleston, South Carolina

B E F O R E:

The Honorable Roger M. Young

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

John Whitney Sowards, Assistant Solicitor
 Lauren Mulkey Frierson, Assistant Solicitor
 For the State

Rodney Davis, Esquire
 Philip Daniel Summa, Esquire
 For the Defense

Certified Transcript Provided For: SCCID

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I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

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If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

S T A T E ' S E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Probable Cause Affidavit	05	135
2	911 call	05	10
3	CD - Dispatch Audio	05	12
4	CAD Report	05	14
5	Photograph	05	30
6	Photograph	05	28
7	Photograph	05	35
8	Photograph	05	35
9	Photograph	05	35

D E F E N D A N T ' S E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Report - 4 pages	82	---
2	Adm. Investigation - 4 pages	106	---
3	Event History Report - Alarm	141	143
4	CD - ADT audio Recording	141	144

1 (WHEREUPON, State's Exhibit Number 1, search
2 warrant, pre-marked for identification.)

3 (WHEREUPON, State's Exhibit Number 2, 911 call,
4 pre-marked for identification.)

5 (WHEREUPON, State's Exhibit Number 3, dispatch
6 recording, pre-marked for identification.)

7 (WHEREUPON, State's Exhibit Number 4, computer aided
8 dispatch log, pre-marked for identification.)

9 (WHEREUPON, State's Exhibit Number 5, photo,
10 pre-marked for identification.)

11 (WHEREUPON, State's Exhibit Number 6, photo,
12 pre-marked for identification.)

13 THE COURT: Okay.

14 MR. DAVIS: So we're ready.

15 THE COURT: All right. Well, let's go forward with
16 the motion to suppress then. What's first?

17 MR. SOWARDS: Yes, Your Honor, the State has four
18 witnesses.

19 MS. FRIERSON: The State would call Tonia Mallette.

20 (WHEREUPON, the witness comes forward)

21 (WHEREUPON, the witness is duly sworn)

22 CLERK OF COURT: State your first and last name and
23 spell your last name loudly and clearly into the
24 microphone.

25 THE WITNESS: Sure. Tonia Mallette, M-A-L-L-E-T-T-E.

1 MS. FRIERSON: Thank you, Ms. Mallette.

2 May it please the Court, Your Honor?

3 THE COURT: Go right ahead.

4 TONIA MALLETTE, being first duly sworn, testified as
5 follows:

6 **DIRECT EXAMINATION BY MS. FRIERSON OF TONIA MALLETTE:**

7 Q. Ms. Mallette, would you please tell the Court what
8 your current occupation is?

9 A. My occupation is an analyst with the Charleston
10 County Consolidated 9-1-1 Center.

11 Q. And how long have you been working there?

12 A. Twenty-eight years.

13 Q. Could you tell us a little bit about your duties?

14 A. Sure. My duties are as an analyst. Primarily I
15 serve as records custodian that involve the -- making
16 sure within a timely fashion that recordings, CAD
17 reports, are distributed upon request based upon
18 subpoenas, internal requests. I also handle our QA,
19 quality assurance, and also a complaints compliance
20 officer.

21 Q. Thank you. Now, prior to working as a records
22 custodian, had you ever worked as a dispatcher?

23 A. Yes, I did.

24 Q. And how long did you do that?

25 A. I did that for roughly, about ten years.

1 Q. And given your experience as a dispatcher, could you
2 just tell us generally what the duties of a dispatcher
3 are?

4 A. Sure. The duties of a dispatcher include -- there's
5 several parts. There's a call taking part. Call taker
6 involves speaking with the caller, someone that calls
7 9-1-1 or the admin line for assistance. There's also the
8 dispatching portion of it; whereas, I would send officers
9 to certain locations depending upon the request of a
10 call.

11 Q. Could you explain the process of call taking, when
12 someone were to call in from a 9-1-1 line?

13 A. Sure. Once a call is received from 9-1-1, that
14 information, the address is obtained, the caller's
15 information is obtained. That information is loaded into
16 what we consider a CAD system. It's loaded into the
17 computer and that information is ultimately transferred
18 over to the dispatcher, sent to the dispatcher.

19 Q. And do different types of calls require different
20 dispatch responses?

21 A. Yes, they do.

22 Q. Could you explain that?

23 A. Sure. There is a high priority obviously and
24 there's a lower priority. High priority obviously would
25 result in an immediate dispatch.

1 And some examples of high priorities would be a
2 shooting, a breaking -- breaking and entering,
3 threatening or loss of life; those type calls.

4 A lower priority call would be a theft that occurred
5 over a substantial period of time, something that does
6 not need the immediate attention of the officer.

7 Q. And what is your goal as a dispatcher?

8 A. The goal of the dispatcher is basically to
9 disseminate the information to the officer so he can
10 assist in handling that incident, to preserve life and
11 preserve property.

12 Q. And generally speaking, if you're disconnected from
13 someone during a 9-1-1 call what would you attempt to
14 do?

15 A. We make an attempt to actually call the number back.

16 Q. Is there any significance to you as a dispatcher if
17 you're unable to get that person back on line?

18 A. That information is entered into the CAD and an
19 officer is sent out to that location expeditiously.

20 Q. Would you relay that information to responding
21 deputies?

22 A. Yes.

23 Q. And is there information that you as the call taker
24 may have or be able to view that is not relayed to
25 deputies?

1 A. There are certain situations where -- in most cases
2 most of the information is relayed to an officer.

3 Q. Now, after that, after the call is done, down the
4 road you get to court. Is there a way to tell what
5 information was relayed to the deputy or responding
6 officer?

7 A. We would refer to the CAD report.

8 Q. And can you please tell us what the CAD report is?

9 A. It's an acronym for Computer Aided Dispatch.
10 Basically, it's a transcript of information relayed from
11 the call taker -- between the caller and the call taker
12 and the dispatcher and the officer, responding officer.

13 Q. And is that a written memorialization?

14 A. Yes.

15 Q. And is that -- is the call and the dispatch also
16 audio recorded?

17 A. It is audio recorded.

18 Q. And earlier you discussed that you were the
19 custodian of records. In your current job duties does it
20 include making copies of these CAD and audio recordings
21 to provide them to the court?

22 A. Yes, it does.

23 Q. Are these records kept in the normal course of
24 business at Charleston County Consolidated Dispatch?

25 A. Yes, it is.

1 MS. FRIERSON: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 Q. Ms. Mallette, if you could take a look at these
5 three items?

6 A. Sure.

7 Q. Beginning with State's Exhibit Number 2. Could you
8 tell me what -- tell me if you recognize State's Exhibit
9 Number 2?

10 A. Sure. It's a 9-1-1 call.

11 Q. And how do you recognize that?

12 A. I recognize my initials that's been placed on the
13 CD.

14 Q. And would that be a fair and accurate depiction of
15 the 9-1-1 call that was received in this case and copied
16 for court?

17 A. Yes, it is.

18 MS. FRIERSON: The State request to submit State's
19 Exhibit Number 2 and produce it for the Court, publish it
20 to the Court.

21 MR. DAVIS: No objection.

22 THE COURT: Admitted.

23 (WHEREUPON, State's Exhibit Number 2, 9-1-1 call,
24 admitted into evidence)

25 MS. FRIERSON: And just for clarification, Your

1 Honor, there are multiple grids on this disk. We are
2 only publishing Track 1, which is the 9-1-1 recording.

3 THE COURT: Okay.

4 MS. FRIERSON: I apologize, Your Honor; it's playing
5 but not loud enough for anybody to hear it.

6 (WHEREUPON, pause for audio setup)

7 (WHEREUPON, State's Exhibit Number 2, 9-1-1 call,
8 published for the Court)

9 (Not taken down)

10 Q. Now, Ms. Mallette, I have handed you what's been
11 marked as State's Exhibit Number 3. Could you take a
12 look and tell me if you recognize that?

13 A. Yes, I do.

14 Q. And what is it?

15 A. This is the dispatch audio of the incident.

16 Q. And how do you recognize that CD?

17 A. By my initials that were placed on the CD.

18 Q. And would it be a fair and accurate depiction of the
19 call that was dispatched to [REDACTED] Old Fort Avenue and
20 copied for court?

21 A. Yes, it would.

22 Q. And while we're letting this load ---

23 MS. FRIERSON: Your Honor, I would ask to put in
24 State's Exhibit 3, a copy of the dispatch call and
25 publish it to the Court.

1 MR. DAVIS: No objection to this exhibit.

2 THE COURT: Okay.

3 (WHEREUPON, State's Exhibit Number 3, dispatch
4 recording, is admitted into evidence)

5 (WHEREUPON, State's Exhibit Number 3, dispatch
6 recording is published to the Court)

7 (Not taken down)

8 Q. All right. Ms. Mallette, do you -- when you're
9 making these recordings for court like today, do you
10 personally alter or manipulate the recording in any way?

11 A. No.

12 Q. Is there anything that's done to the copy that's
13 different from the original call?

14 A. No.

15 Q. Could you explain the beeps that we heard on the
16 call?

17 A. Sure. The beeps are an indicator to let other
18 officers know that that channel is at what we call an
19 emergency status, that channel is closed to any other
20 radio traffic with the exception of that particular
21 incident. That beep would occur every ten seconds.

22 Q. And what is the rationale behind that?

23 A. Basically, the rationale behind that is to -- for
24 the safety of that officer that is on scene and to let
25 the others know who just may be checking on, that that

1 channel is closed.

2 Q. And when we just heard it, it didn't sound like
3 there were ten seconds in between each beep?

4 A. There was not. No, we did not hear ten seconds
5 between because that audio was condensed.

6 Q. And so it's -- when a copy is made for court, the
7 beeps are condensed. And what is the rationale behind
8 that?

9 A. It's just that when you're doing an incident, it's
10 just the playback. It's just how the recorder actually
11 operates.

12 Q. So the beeps that we heard that were very brief and
13 back to back, is it fair to say that the channel was
14 closed for longer than those beeps reflect?

15 A. Absolutely.

16 Q. And you said it's ten seconds per beep?

17 A. Ten seconds per beep -- in between beeps, yes.

18 Q. So if there were five beeps or ten beeps, you would
19 just multiply that by ten seconds to determine the amount
20 of time the channel is closed?

21 A. Yes.

22 Q. And you could also find that on the CAD report; is
23 that correct?

24 A. That is correct.

25 Q. Now, I have given you what's been marked State's

1 Exhibit Number 4. Could you look at that and tell me if
2 you recognize it?

3 A. Sure. This is a CAD report.

4 Q. And what does a CAD report memorialize?

5 A. A CAD report is a written documentation that
6 signifies information relayed between the caller and the
7 call taker, the dispatcher and the officer.

8 Q. So it's just the written version of the audio that
9 we just heard?

10 A. Correct. Correct.

11 Q. And is that record kept and maintained in Charleston
12 County Consolidated Dispatch?

13 A. Yes, it is.

14 MS. FRIERSON: At this time, Your Honor, I'd like to
15 request to admit State's Exhibit Number 4 into evidence.

16 MR. DAVIS: Your Honor, if I can just take a quick
17 look at it? I just want to make sure it covers what I
18 have. May I approach the witness?

19 THE COURT: Uh-huh.

20 (WHEREUPON, Mr. Davis reviews State's Exhibit 4)

21 MR. DAVIS: No objection, Your Honor.

22 (WHEREUPON, State's Exhibit Number 4, CAD report,
23 admitted into evidence)

24 Q. Now, I'd like to go through some of the information
25 we discussed in reference to that report. Does it show

1 how long the channel was closed for emergency purposes?

2 A. It looks like -- hold on. Let me make sure. Four
3 minutes and fourteen seconds.

4 Q. Thank you. And who requested that the channel be
5 closed?

6 A. It was the deputy on scene.

7 Q. Based on the notes and information you have in front
8 of you, as well as what we heard, can you tell why it was
9 requested for the channel to be closed?

10 A. It was an officer safety -- I do believe it was an
11 open door, which is an officer safety issue. Just to
12 make sure that no one else communicated on that channel
13 while he was trying to -- just in case he had information
14 that he needed to relay to the dispatcher.

15 MS. FRIERSON: Court's indulgence, Your Honor.

16 Q. I don't have any further questions at this time.
17 Please answer any the Defense may have.

18 A. Sure.

19 THE COURT: Cross.

20 **CROSS-EXAMINATION BY MR. DAVIS OF TONIA MALLETTE:**

21 Q. We'll, start with the document you have, the CAD
22 report and ---

23 A. I don't have it.

24 Q. Oh -- okay.

25 MR. DAVIS: May I approach the witness, Your Honor?

1 THE COURT: Uh-huh.

2 Q. That's State's Exhibit Number 4 that you have now.
3 Six pages, correct?

4 A. It is; that is correct.

5 Q. And when you were able to tell Judge Young a moment
6 ago how long that space was, were you referring to
7 Page 4?

8 A. I am missing Page 4.

9 Q. Bottom right.

10 A. (Reviews State's Exhibit Number 4)

11 Q. While I am grabbing a document, how -- can you tell
12 Judge Young how you were able to determine that four
13 minutes and a matter of seconds?

14 A. Oh, I viewed the CAD report prior to this incident,
15 that there was a Page 4 that I reviewed.

16 MR. DAVIS: Your Honor, I have conferred with the
17 Solicitor's; and I apologize for not catching it. Mine
18 is on double-sided. Theirs is single-sided.

19 I have what is marked four. It is the missing
20 Page 4. I have another copy we'd like to substitute with
21 the State's consent.

22 MS. FRIERSON: The State has no objection.

23 (WHEREUPON, State's Exhibit Number 4 substituted
24 with complete CAD report)

25 Q. All right. We're going to show you the new

1 Number 4. And, I believe on Page 4; is that right?

2 A. Correct. Correct.

3 Q. Okay. And, in fact, someone has put marks by the
4 two items that correspond to your testimony; is that
5 accurate?

6 A. Uh-huh.

7 Q. That's a yes?

8 A. Yes.

9 Q. Okay. So, again at 11:29 and :15 seconds, correct?

10 A. Correct.

11 Q. And ending at 11:33 and :33 seconds -- or, I'm
12 sorry, 11:33 and :29 seconds?

13 A. Correct.

14 Q. Okay. While we're looking at that page, do you see
15 at the top the initials MJC?

16 A. Yes.

17 Q. Would that -- do you recall an employee, a current
18 employee, I believe it's Miriam -- is it Cousino?

19 A. Cousino, yes.

20 Q. Okay. And so she's a 9-1-1 operator, a dispatch
21 operator?

22 A. Correct.

23 Q. And that would have been her initials?

24 A. Yes.

25 Q. The MJC?

- 1 A. Yes.
- 2 Q. Okay. And you also see the PES at the bottom?
- 3 A. Yes.
- 4 Q. That would be Patricia Stanley?
- 5 A. Patricia, yes.
- 6 Q. And she's still employed as a 9-1-1 operator and
- 7 dispatch operator?
- 8 A. Yes.
- 9 Q. Okay. Now, those are the only initials we see -- I
- 10 will take a second. I don't want to misstate. But those
- 11 are the only two operators that are involved in this
- 12 report; is that accurate?
- 13 A. Well, I would like to mention Patricia -- there was
- 14 two dispatchers. There was Patricia who -- Patricia was
- 15 not -- did not dispatch the call; however, I did hear
- 16 Patricia's voice during the call.
- 17 Q. She's got the heavy accent; is that fair?
- 18 A. The heavier -- yes, yes.
- 19 Q. Okay. Fair enough. And so I may have used the
- 20 wrong terms for them, but those are the only two -- the
- 21 only other initial we see is SYS on Page 3?
- 22 A. That's the system.
- 23 Q. Where is automatic ---
- 24 A. That's not an individual. That's the system, yes.
- 25 Q. So those lines are automatically populated by the

1 system; is that fair?

2 A. That is correct.

3 Q. Okay. So there's some things on this report that
4 are auto populated by your computer system; is that
5 correct?

6 A. Correct.

7 Q. And there are other things that are being put in --
8 that the operator must input by keystrokes?

9 A. That is correct.

10 Q. Okay. You were not involved in this report or the
11 call we heard?

12 A. That is correct.

13 Q. On the dispatch call, the second disk that we
14 listened to, in addition to this incident there were
15 calls about other incidents going on?

16 A. That is correct.

17 Q. Okay. Turning to Page 2, the top portion, does that
18 indicate on the left-hand side where it says vehicles
19 assigned and then the radio name and it has a list of
20 things there; is it accurate that the SO is Sheriff's
21 Office?

22 A. That is correct.

23 Q. And then the numbers following corresponds to the
24 unit number of that particular Sheriff's Office patrol
25 unit or the officer?

1 A. The officer. The deputy.

2 Q. Okay. And ---

3 A. Or supervisor.

4 Q. Correct. And so the folks that were involved in
5 this particular incident are listed there; is that
6 accurate?

7 A. That is correct.

8 Q. This report and the audio recording that you
9 provided -- the dispatch recording that you provided, ---

10 A. Yes.

11 Q. --- that records radio traffic; correct?

12 A. That is correct.

13 Q. We heard on multiple occasions different parties
14 asking for a phone call. Let me go through them
15 individually. If an officer makes a phone call to
16 another officer, is that recorded by dispatch?

17 A. That is not recorded by dispatch.

18 Q. If an officer calls into the dispatch operator, hey,
19 give me a call - we heard that on there, give me a call -
20 is that recorded?

21 A. That is recorded.

22 Q. Okay. If an officer calls from a residence 9-1-1 to
23 test the landline, would that be recorded?

24 A. That would be recorded.

25 Q. If dispatch during the course of an incident would

1 call a third party - we had heard on there a request to
2 call a particular phone number - if dispatch makes that
3 call, is that recorded?

4 A. That is recorded.

5 Q. And similar to this report that you provided and the
6 two audio files that you provided to the Solicitor's
7 Office, any other recordings you could provide as well?

8 A. Yes.

9 Q. That is in the custody of Consolidated ---

10 A. Of Charleston ---

11 Q. --- Dispatch?

12 A. Yes.

13 Q. Okay.

14 MR. DAVIS: Your Honor, if I could have a moment.

15 Q. In your capacity now or previously, have you been
16 involved in yourself training other dispatcher 9-1-1
17 operators?

18 A. Yes.

19 Q. And among many other things would it be important to
20 train them to share all pertinent information, whether it
21 be consistent or inconsistent with previous information
22 they receive; is that fair?

23 A. Yes.

24 Q. So, specifically if a call is made that directs law
25 enforcement to one location, one address, but then

1 information comes in that might put that in dispute and
2 the dispatcher operator knows that, it would be important
3 for them to share that with law enforcement; correct?

4 A. Correct.

5 Q. And they'd be trained to do that, correct?

6 A. Correct.

7 Q. And so I think you testified on direct that - you
8 know, we are human - most information is relayed to the
9 officers from the operators?

10 A. Dispatcher, yes.

11 Q. Dispatcher?

12 A. That is correct.

13 Q. And if it were relayed, it'd either be on that audio
14 recording and/or on this CAD report?

15 A. I'm sorry. Restate the question again.

16 Q. If it was relayed would it be either in the audio
17 recording or on this CAD report?

18 A. Correct.

19 Q. Thank you, ma'am.

20 MR. DAVIS: No further questions.

21 THE COURT: Redirect.

22 MS. FRIERSON: Brief redirect, Your Honor.

23 **REDIRECT EXAMINATION BY MS. FRIERSON OF TONIA MALLETTE:**

24 Q. Regarding that location, Ms. Mallette, the location
25 that pops up, what is that location in reference to; do

1 you know?

2 A. Which location?

3 Q. When he was questioning you just now about a
4 location that pops up that may be conflicting with the
5 address that somebody the caller is reporting, that
6 location, how is that location popping up?

7 A. We have a -- obviously there's a Annie and an Allie
8 screen. The Annie is the automatic number indicator.
9 The Allie is the automatic location indicator. On the
10 screen, depending -- let's say if there is a call made
11 from a cell phone the cell phone would populate the tower
12 information on a 9-1-1 call.

13 Q. So the location is actually the tower location?

14 A. The location that populates on the Alley screen
15 would be the tower information from a cell phone.

16 Q. From the cell phone?

17 A. Yes.

18 Q. And that's not the actual physical location of the
19 caller necessarily?

20 A. That is correct.

21 Q. And do you have any personal knowledge of all the
22 cell towers in the Charleston area in 2010?

23 A. No.

24 Q. So can you tell us based on information where a
25 tower's at looking at a CAD record that the actual caller

1 is at that location?

2 A. In 2010, no.

3 Q. Thank you.

4 THE COURT: Recross?

5 **RECROSS EXAMINATION BY MR. DAVIS OF TONIA MALLETT:**

6 Q. Consolidated Dispatch, is that part of Charleston
7 County Law Enforcement?

8 A. Yes.

9 Q. Okay. Thank you.

10 MR. DAVIS: No other questions.

11 THE COURT: You may step down.

12 (WHEREUPON, the witness steps down)

13 THE COURT: Next witness.

14 MR. SOWARDS: The State calls Jason Bowen.

15 MR. DAVIS: Your Honor, may I approach to give you a
16 copy since the reports -- one of the items of evidence we
17 are going to be using that a lot.

18 (WHEREUPON, Mr. Davis hands documents up to the
19 Court)

20 (WHEREUPON, the witness comes forward)

21 (WHEREUPON, the witness is duly sworn)

22 CLERK OF COURT: Please state your first and last
23 name and spell your last name loudly and clearly into the
24 microphone.

25 THE WITNESS: Jason Bowen, B-O-W-E-N.

1 JASON BOWEN, being first duly sworn, testified as
2 follows:

3 **DIRECT EXAMINATION BY MR. SOWARDS OF JASON BOWEN:**

4 Q. Good morning, ---

5 A. Good morning.

6 Q. --- Detective Bowen. Do you work at the Charleston
7 County Sheriff's Department?

8 A. I do.

9 Q. And what do you do there currently?

10 A. I am currently a detective for the internet crimes
11 against children unit.

12 Q. And were you with the Sheriff's Department in
13 October of 2010?

14 A. Yes, I was.

15 Q. And what were you doing for the Sheriff's Department
16 at that point in time?

17 A. I was assigned to the patrol division.

18 Q. And did you have the occasion to respond to an
19 incident at [REDACTED] Old Fort Avenue on October 17th, 2010?

20 A. Yes, I did.

21 Q. And why did you respond there?

22 A. We were dispatched to an in-progress domestic call.

23 Q. So you were dispatched by whom?

24 A. Our 9-1-1 dispatch center.

25 Q. So at that time, you testified you were a deputy.

1 What does that mean? What does it mean to be a road
2 deputy?

3 A. We answer any calls for service that come out in our
4 districts as well as proactively patrol.

5 Q. What was the nature of the call? I know you said a
6 domestic; but, you know, what all did you know about the
7 nature of the call when you arrived at Old Fort Avenue?

8 A. So we had been given information that there was an
9 in-progress call that was a domestic violence type call
10 and that the caller, a female, had locked herself in a
11 bathroom and that a male subject was trying to get to
12 her.

13 Q. And in your experience as a deputy had you responded
14 to calls like that before?

15 A. Yes.

16 Q. And so what was on your mind as you respond to that
17 residence?

18 A. We were trying to gain as much information as we
19 could, but to get there quickly and make sure anybody on
20 the scene was safe and if there were any offenders to
21 make sure they didn't leave.

22 Q. Do you recall whether you had blue lights on when
23 you responded to the home?

24 A. I don't recall that particularly one.

25 Q. Now, when you responded did you know the name of a

- 1 victim?
- 2 A. No.
- 3 Q. Did you know the name of a potential suspect?
- 4 A. No.
- 5 Q. Did you know beyond boyfriend/girlfriend, whether
- 6 they were cohabitating at the time?
- 7 A. We did not.
- 8 Q. So what happened when you approached that residence,
- 9 [REDACTED] Old Fort Avenue?
- 10 A. When we got there we initially went to the front
- 11 door and tried to make contact, and we were not able to
- 12 get any response or make contact with anyone.
- 13 Q. And when you say we, was someone else there with
- 14 you?
- 15 A. Yes. Myself and now Detective Alexander.
- 16 Q. And did y'all arrive together in the same car?
- 17 A. Not in the same car.
- 18 Q. So you arrived separately, around the same time?
- 19 A. That's correct. On domestics we usually ---
- 20 Q. So said -- or you testified you didn't get an answer
- 21 or weren't able to make contact with the front door. Did
- 22 you knock on the door?
- 23 A. We did.
- 24 Q. Do you recall how many times?
- 25 A. I don't.

1 Q. Was it more than once?

2 A. Yes, it would have been more than once.

3 Q. Was there anything about the door that drew your
4 attention on that day?

5 A. There was. Instead of having a door knob it had a
6 deadbolt.

7 MR. SOWARDS: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 Q. I'm handing you what's been marked for I.D. as
11 State's 6. Could you take a look at that and tell me if
12 you recognize it?

13 A. I do. It's how I remember the front door of that
14 residence that day.

15 Q. And is that an accurate depiction of what you saw
16 that day?

17 A. It is.

18 MR. SOWARDS: Your Honor, at this time the State
19 would seek to move -- to admit Exhibit 6 into evidence
20 for pretrial purposes and publish it.

21 MR. DAVIS: No objection.

22 THE COURT: Admitted.

23 (WHEREUPON, State's Exhibit Number 6, photograph,
24 admitted into evidence and published)

25 Q. So just briefly, this is how the door appeared when

1 you arrived that day?

2 A. Yes, it is.

3 Q. And, again, just for the record, what did you notice
4 about the door that seemed strange?

5 A. That where a doorknob would normally be, there was a
6 keyed deadbolt.

7 Q. What did you do after you received no response at
8 the front door?

9 A. We began to basically go around the house to try to
10 make any type of contact.

11 Q. When you say you received no contact at the front
12 door, did you hear anything from the inside of the house?

13 A. No, we didn't.

14 Q. And what did that tell you in that moment, if
15 anything?

16 A. It didn't really tell us anything.

17 Q. So you approached around the rear. What did you
18 find when you approached the rear of the home?

19 A. When we met up at the rear of the home there was a
20 door that was not secure, the sliding glass door.

21 Q. And, again, at that point had you made contact with
22 anyone inside the home?

23 A. We had not.

24 Q. Had you received any information from dispatch
25 regarding the call out? Other than what you were

1 initially told?

2 A. No, we didn't have any additional information at
3 that time.

4 Q. And you testified that when you approached the rear
5 of the home you noticed the sliding glass rear door. Did
6 y'all notice anything about that door?

7 A. It was slightly ajar. It was open somewhat.

8 MR. SOWARDS: May I approach the witness, Your
9 Honor?

10 THE COURT: Yes.

11 Q. I will hand you now what's been marked for I.D. as
12 State's 5 and ask you if you recognize that?

13 A. I do. That was the sliding glass door that we found
14 at the rear.

15 Q. And that's a fair and accurate depiction of the door
16 as you remembered it from that day?

17 A. From that day, yes.

18 MR. SOWARDS: Your Honor, at this time the State
19 would seek to admit Exhibit 5 for pretrial purposes and
20 publish it.

21 THE COURT: Any objection?

22 MR. DAVIS: No objection, Your Honor.

23 THE COURT: All right.

24 (WHEREUPON, State's Exhibit Number 5, photograph,
25 entered and published)

1 Q. And Detective Bowen, is this the door that you
2 approached at the rear of the home?

3 A. It is.

4 Q. And you testified that it was slightly ajar. What
5 do you mean by that? How wide open? How open was it?

6 A. Right. So it wasn't open wide like it is there in
7 the picture. It was slightly open. I believe it was a
8 few inches.

9 Q. And did you make entry into the home at that point?

10 A. We did.

11 Q. And did you do anything prior to making entry?

12 A. Yeah. We announced that we were the Sheriff's
13 Office and tried to call anyone out before making entry.

14 Q. And did you notify dispatch that you were making
15 entry?

16 A. We did.

17 Q. And why did you do that?

18 A. To let dispatch know and as well as our supervisor
19 kind of how the scene was unfolding and make notification
20 we were about to enter a residence.

21 Q. So you notified dispatch and then you announced
22 yourself as a Charleston County Sheriff's Department law
23 enforcement officer and you entered the home. What
24 happened after you entered the home?

25 A. Well, as we entered the home we began to immediately

1 sweep the home and clear the home to look for any people.

2 Q. And you said look for any people. I think that
3 answers the question, but maybe in greater detail you
4 could -- can tell the judge why did you feel it necessary
5 to enter the home at that point?

6 A. With a domestic situation, particularly in an
7 in-progress on-going situation, the information that we
8 had that a woman was fearful enough to have locked
9 herself in the bathroom, we didn't know if there might be
10 a person harmed in the residence that needed aid or some
11 type of harm actively occurring that we needed to put a
12 stop to.

13 Q. So you were looking for a potential victim?

14 A. We were.

15 Q. And would it be fair to say that while that was your
16 goal, you were also looking for any potential suspects as
17 well?

18 A. Yes, absolutely.

19 Q. Did you locate anyone inside the home?

20 A. We did not.

21 Q. Did you look in the bedrooms?

22 A. Yes, we did.

23 Q. Did you look in the closets?

24 A. Yes.

25 Q. Did you look in the bathrooms?

- 1 A. Yes.
- 2 Q. And did you search the common areas in the home?
- 3 A. We did.
- 4 Q. Did you open any drawers?
- 5 A. No.
- 6 Q. Did you open any cabinets?
- 7 A. No.
- 8 Q. Why not?
- 9 A. Those aren't places that a person can be or fit, at
- 10 least easily.
- 11 Q. To the best of your recollection, how long were you
- 12 inside the home?
- 13 A. It was several minutes.
- 14 Q. And after you cleared the house what did you do?
- 15 A. We notified dispatch that we hadn't located anybody
- 16 to that point.
- 17 Q. Now, your testimony is that you did not locate
- 18 anyone while you were in the home. Did you locate
- 19 anything else of interest?
- 20 A. We did. In one of the bathrooms we observed a
- 21 scale that we knew from our experience to be basically a
- 22 drug-type scale that had some white residue on it.
- 23 We noticed that there was a safe in the closet with
- 24 money strewn out on the floor in front of it. We noticed
- 25 a bank bag in that same bedroom that was open that had

1 what appeared to be a large number of cash bills in it.
2 We noticed guns laid out in a very particular fashion
3 under the bed.

4 Q. And in that moment what did those things tell you?

5 A. That there might have been some type of drug
6 activity that had occurred or was occurring at that
7 residence.

8 Q. And you noted those items, but did you continue
9 searching for occupants or, you know, any victim or
10 suspect in the home?

11 A. We did, yes.

12 Q. Did you stop your search for a person ---

13 A. No.

14 Q. --- to look at this other stuff?

15 A. No.

16 MR. SOWARDS: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes.

19 Q. Detective Bowen, I'll hand you now what has been
20 marked as State's 7, 8 and 9 and ask you to take a look
21 at those and tell me whether you recognize them?

22 A. Yes, I do.

23 Q. And are they fair and accurate depictions of what
24 you saw on that day?

25 A. They are.

1 MR. SOWARDS: Your Honor, at this time the State
2 would seek to admit 7, 8, and 9 for pretrial purposes and
3 publish them.

4 MR. DAVIS: No objection.

5 (WHEREUPON, State's Exhibit Numbers 7, 8, and 9,
6 photographs, admitted into evidence and published)

7 Q. I apologize that it's not the sharpest picture, but
8 what are we looking at here?

9 A. That was a safe that was inside the closet of what I
10 would describe as the master bedroom. And that's the
11 money that we saw laying on the floor in front of the
12 safe.

13 Q. And tell us what you see in State's 8?

14 A. State's 8, this is what I would describe as the
15 master bathroom. It was attached to the bedroom. You
16 can see on the sink that's, to the right in the picture,
17 the open scale that had the white residue on it.

18 Q. And that is a touch screen, so you can mark on it.

19 A. So right there. (Indicating)

20 Q. And this is how the bathroom appeared when you
21 observed the scale?

22 A. Yes. Yes, it is.

23 Q. And then finally, State's 9, what do you -- what do
24 we see in State's 9?

25 A. Those are the guns that we observed under the bed.

1 Q. And do you recall which room that bed was in?

2 A. Yeah, that would have been what I would, again,
3 describe as the master bedroom, the one that was attached
4 to the closet where the safe was and the bathroom where
5 the scale was.

6 Q. So in your search you noted drugs, guns, and money?

7 A. That's correct.

8 Q. And Detective Bowen, you've been with the Sheriff's
9 Department continuously from 2010; prior to 2010, but
10 2010 until today?

11 A. That's correct.

12 Q. And in your time with the Sheriff's Department have
13 you ever had an issue or any issues with what I would
14 characterize as garrity or untruthfulness?

15 A. Yes, I have.

16 Q. And what happened?

17 A. There was an incident, and I forget the exact year.
18 I think it was around 2013; 2012 or 2013. Previous --
19 prior to that in about 2008, 2009, I was a school
20 resource officer. As part of that assignment I had been
21 given a master key to all the schools in Charleston
22 County.

23 When I was moved from a school resource officer,
24 because they discontinued part of our unit, back to
25 patrol, no one ever came and got all of our equipment or

1 the keys, in particular. And I held onto it and kept it
2 with my Sheriff's Office keys with the intent that if we
3 ever had to respond to an emergency situation at a school
4 we would be able to enter without having to do any type
5 of forced entry.

6 When my son was at school one afternoon I went to
7 pick him up and he had forgotten his homework. And the
8 school was locked, so I used the key to enter the school
9 and go to his classroom and try to locate his homework so
10 that he could get it done.

11 And I later had a meeting with the school principal,
12 that wasn't directly related to that; but that came up in
13 the meeting.

14 And initially I told the principal -- they asked me
15 about the entry to the school. And because there was a,
16 I think, a cleaning person that had seen me in the school
17 and was kind of surprised.

18 I initially told him that I had used what I -- an
19 open door. And before I left that meeting I corrected it
20 and told him that that was not the correct information;
21 that I had, in fact, used a master key to go in and look
22 for the homework.

23 And so they asked -- I don't remember if they asked
24 for the key back as school officials, but as soon as I
25 left that meeting I reported it to my supervisor that I

1 had initially given them incorrect information but
2 corrected it prior to ending the meeting. And my
3 supervisor opened an internal affairs investigation.

4 Q. I just have a few more questions about this
5 particular incident. When you exited the house and
6 realized no one was inside the home, what did you do with
7 the information that you'd gained regarding the scale
8 that you'd seen, the money and the drugs?

9 A. We immediately coordinated that with our supervisor
10 at the time, our sergeant, to let her know what we had
11 found.

12 Q. And did you stay on the scene?

13 A. We did.

14 Q. And why did you stay on scene?

15 A. She thought that that information was pertinent and
16 was going to coordinate with the metro narcotics unit.
17 And we stayed on the scene to keep the scene secure until
18 she could get there and we could further assess the next
19 steps basically.

20 MR. SOWARDS: Beg the court's indulgence.

21 Q. Just a few more brief questions. That address, [REDACTED]
22 Old Fort Avenue, is that in Charleston County?

23 A. It is in Charleston County.

24 Q. And how would you describe your primary purpose in
25 entering the house that day?

1 A. To -- the primary purpose was to attempt to render
2 aid to any possible victims, stop any ongoing assault or
3 crime, and apprehend any suspects if there had been a
4 suspect for a domestic.

5 Q. And, finally, on that date did you have the
6 opportunity to speak with the defendant, Mr. Richardson?

7 A. I did.

8 Q. And how did that come to pass?

9 A. While we were standing by and keeping the residence
10 secure and waiting for the sergeant and then later on
11 metro, the phone to the residence rang. And I answered
12 it hoping to gain some additional information about the
13 residence or who was supposed to be there.

14 And initially the person who called I think gave me
15 a name of Mark. And I explained to them that we were in
16 the residence and we needed to speak to the resident.

17 And we got a call back from a blocked number that --
18 because the phone at the house had caller I.D. And at
19 that time that caller identified themselves as Mr.
20 Richardson.

21 And I explained to them that we were in the house.
22 And I told him that we were there for a burglary.
23 Because I didn't want him to be alarmed at why we might
24 actually be there. And I wanted him to come back to the
25 residence. And he refused to.

1 Q. And just -- just to clarify this conversation that
2 you had with the defendant, did this occur before or
3 after you entered the home and swept it for occupants?

4 A. After.

5 MR. SOWARDS: No further questions from the State at
6 this time.

7 THE COURT: Let's take a 10-minute break here.

8 You can step down and use the restroom. Just don't
9 talk to anybody.

10 THE WITNESS: Thank you, Your Honor.

11 (WHEREUPON, short break)

12 (WHEREUPON, resume)

13 THE COURT: Are you ready for cross?

14 MR. DAVIS: Judge, before we get started on that, if
15 I may, a couple of housekeeping matters. We have the
16 issue with the 9-1-1 call that wouldn't play at the
17 beginning. I have one. We tried it in both. And so I
18 think there is -- that we have substituted. And just to
19 keep things clean like we did with the other report I
20 would like to change the sticker to the one that was
21 actually played, with the State's consent.

22 THE COURT: All right.

23 (WHEREUPON, court reporter relabeled 911 call,
24 Plaintiff's Exhibit Number 2.)

25 MR. DAVIS: And then finally, Your Honor, there was

1 an issue, a statutory issue, in some of the old warrants
2 from the first trial. The State has made the decision to
3 replace three with one and correct a statute. We have
4 that. It was true billed yesterday. Just to put that in
5 play would you be willing to do the arraignment on that
6 right now?

7 THE COURT: To do what?

8 MR. DAVIS: To do the arraignment so he can be
9 booked in, fingerprinted, all that. We just got that
10 from yesterday's grand jury.

11 THE COURT: So they just indicted him on possession
12 of a firearm by a person convicted of a violent offense?

13 MR. DAVIS: They had indictment previously under
14 16-23-30. This one is under 16-23-500.

15 THE COURT: Okay.

16 MR. DAVIS: Factually that is correct and the other
17 ones were not. And so they submitted one instead of
18 three. I have explained that to him. But last night
19 they showed him the actual document. But he has not been
20 formally arraigned so therefore I don't think the jail
21 has started that process.

22 THE COURT: Was he under a plea of not guilty?

23 MR. DAVIS: That is correct, Your Honor.

24 THE COURT: All right. Same bond.

25 MR. DAVIS: Thank you very much, Your Honor.

1 THE COURT: All right.

2 **CROSS-EXAMINATION BY MR. DAVIS OF JASON BOWEN:**

3 Q. Is it Detective Bowen now; is that right?

4 A. Yes, sir. That's correct.

5 Q. Okay. Now back then you were Unit 133. Are you
6 still Unit 133?

7 A. I am, yes.

8 Q. Okay. Had you a -- have you had the opportunity
9 recently to review the audio of the dispatch recording
10 involved in this case?

11 A. Not recently, no.

12 Q. Okay. Is it fair to say that if your recollection
13 on the incident back in 2010 is different than the actual
14 audio recording we should trust the recording?

15 A. I'm sorry, I don't understand.

16 Q. Sure. You are testifying January 10th, 2019, about
17 an incident that happened October 17th, 2010; right?

18 A. Correct.

19 Q. Okay. And if your recollection is inconsistent with
20 an actually audio recording, we should trust the audio
21 recording; is that accurate?

22 A. That depends. I remember previously with the audio
23 recording there being an issue with how it was edited and
24 it didn't match what happened on the scene.

25 Q. Let's deal with that specifically. You are talking

1 about -- you testified at a previous trial and a previous
2 hearing, right?

3 A. Yes, I did.

4 Q. And there was a miscalculation by the defense at
5 that time that the beeps that we heard on the actual
6 audio recording were real-time as opposed to condensed?

7 A. That is correct, yes.

8 Q. Okay. So if that has been testified and cleared up
9 to Judge Young by a private -- or not a private -- by a
10 previous witness that would deal with that issue, right?

11 A. I haven't heard that testimony so I can't ---

12 Q. Fair enough.

13 A. I'm sorry, I can't confirm that it would.

14 Q. Other than the condensing of the time which would
15 have -- may have been an error -- or was an error last
16 time, the actual State's -- the actual voice recordings
17 you believe those to be true and accurate; right?

18 A. Yes, I do. Yes.

19 Q. Okay. At some point you have listened to that
20 dispatch recording, or no?

21 A. Yes, in previous.

22 Q. And it's fair to say that when a lengthy period of
23 dispatch calls are recorded you are going to get from
24 multiple incidents; is that fair enough?

25 A. I don't know how their recording system works. And

1 I would think that they would isolate our incidents from
2 another incident.

3 Q. But if there's traffic from other calls, that
4 wouldn't surprise you?

5 A. Do you mean on the recording?

6 Q. Yes.

7 A. I don't know. I don't know how their system works.
8 And I haven't had to listen to one actually in quite some
9 time.

10 Q. You don't recall?

11 A. Right.

12 Q. Okay. Fair enough.

13 MR. DAVIS: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 A. I am going to show you what has been marked as
16 State's Exhibit Number 4. It has already been admitted
17 for the purposes of this hearing today.

18 I am turning to Page 2. But take a second to look
19 at the entire document. And I will have some questions
20 for you.

21 (WHEREUPON, pause for review by witness)

22 Q. You have had a chance to look. And it is six pages?

23 A. I'm sorry, I didn't count.

24 Q. That is all right.

25 A. Yes, I count six.

1 Q. Okay. Directing your attention to Page Number 2, up
2 at the top left it says vehicles assigned. And just
3 below that, radio name. And then just below that in the
4 descending column are some letters and numbers. Is that
5 right?

6 A. That's correct.

7 Q. They all begin with SO, correct?

8 A. Yes.

9 Q. That would be Sheriff's Office?

10 A. Yes, I believe that is their designation.

11 Q. And then the numbers after it would be unit numbers?

12 A. Yes.

13 Q. For example, the top one, 133, that is you?

14 A. That is me.

15 Q. Okay. Do you happen to know back in 2010 or
16 currently who 207 is?

17 A. In 2010 that would have been Fletcher or Scott
18 Ferguson.

19 Q. Okay. Do you know 254?

20 A. Yes, this is now Detective Julius Alexander.

21 Q. 273?

22 A. The next two numbers, 273 and 78, I know one was
23 Jason Riley. And we in -- we weren't sure in 2010 who
24 the other one was. But I -- and I -- and I don't
25 remember which one was Jason's.

1 Q. Okay. If I told you it was 273 would that surprise
2 you?

3 A. No, not at all.

4 Q. Okay. And 72, that is York, now ---

5 A. Now Monese, correct.

6 Q. And while we are right there, she is -- she would
7 have been the supervisor back then?

8 A. She was our sergeant at the time. That's right.

9 Q. I am going to preface this, that at any time hearing
10 the dispatch recording would help refresh your
11 recollection you let me know.

12 A. Okay.

13 Q. Okay. Do you recall when you were initially
14 dispatched to the location on Old Fort Avenue the
15 dispatch indicated that it was a heated domestic, that
16 those were the words used?

17 A. I don't recall specifically what they used -- they
18 would not typically use the word heated.

19 Q. Okay.

20 MR. DAVIS: Your Honor, to speed this along if I
21 could -- it has already been admitted. I would like to
22 just play the dispatch for the officer. Because I am
23 going to have several questions for him about that.

24 THE COURT: Okay.

25 MR. DAVIS: Which would be State's Number 3.

1 (WHEREUPON, portion of exhibit published.)

2 Q. All right. Now we have it on the loud speaker, so
3 you can hear it all right?

4 A. Yes, I can. Thank you.

5 Q. All right. We are going to begin the call.

6 (WHEREUPON, portion of exhibit published.)

7 Q. Do you recognize that voice?

8 A. No. It was the dispatcher. I don't ---

9 Q. Okay. So even with that heavy accent you are not
10 sure who that is; you just know it is a call from
11 dispatch?

12 A. Correct.

13 Q. Okay. You heard 133 and 154 -- or 254, right?

14 A. Yes.

15 Q. That is you and -- at the time Deputy Alexander?

16 A. That is correct.

17 Q. And you heard the operator say heated domestic,
18 right?

19 A. I did, yes.

20 Q. Okay.

21 (WHEREUPON, portion of exhibit published.)

22 Q. Okay. I think you testified on direct that it was
23 that she had locked herself in the bathroom. In fact it
24 was bedroom?

25 A. That is correct.

1 Q. Okay.

2 A. I was mistaken.

3 Q. And again this is almost -- certainly eight years
4 ago? Eight plus years ago?

5 A. Yes.

6 Q. Right -- okay. Okay. Play it a little further.

7 (WHEREUPON, portion of exhibit published.)

8 Q. Is that you asking about whether you had a call
9 there the day before?

10 A. Yeah, it was me.

11 Q. Okay. Incorrect about that too, right?

12 A. I was.

13 (WHEREUPON, portion of exhibit published.)

14 Q. That is a different call; it is a different address;
15 right?

16 A. Correct.

17 Q. Okay. So this is where I was asking earlier. And I
18 know it has been a while, but this is where we have got a
19 dispatch record but it is not all pertaining to your
20 incident; right?

21 A. That is right. That is correct.

22 Q. Okay. Okay.

23 (WHEREUPON, portion of exhibit published.)

24 Q. Do you recognize that voice; not the dispatch
25 operator but the other voice?

1 A. That was now Lieutenant York at the time -- or
2 Lieutenant Monese now. At the time Sergeant York.

3 Q. Right.

4 A. Yes.

5 Q. She has changed rank and names, right?

6 A. That is correct. Yes.

7 Q. And she is Unit 72?

8 A. Yes.

9 Q. Okay. She is asking about the call to the Old Fort
10 Avenue address, right?

11 A. I heard her say the address. I couldn't quite make
12 out what she said before. But it sounded like she was
13 asking about it.

14 Q. You heard the dispatch give the address that you
15 were dispatched to; is that right?

16 A. Yes.

17 Q. Okay.

18 (WHEREUPON, portion of exhibit published.)

19 Q. Again York says heated domestic, right?

20 A. Correct.

21 Q. Now did you also pick up there it was 273, real
22 quick; Riley was on there for just a second?

23 A. I did.

24 (WHEREUPON, portion of exhibit published.)

25 Q. And again not your incident?

1 A. Correct.

2 Q. It is a little confusion; we have got all this
3 chatter about multiple incidents, right?

4 A. No, not when you are in the moment. We -- there are
5 several of us on the same channel.

6 Q. I mean you can track it because you know who is
7 talking and you know the different incidents. But for
8 Judge Young or someone else to listen to it we have got
9 cross traffic; is that fair enough?

10 A. Yes.

11 Q. Okay.

12 (WHEREUPON, portion of exhibit published.)

13 Q. That is you -- that is you arriving on the scene --
14 trying to locate him?

15 A. Yes, on the street trying to locate the specific
16 residence.

17 Q. You are driving us looking at the address markers?

18 A. Yes.

19 Q. All right. And it is going to -- I paused it
20 slightly in error. I believe - you tell me if I am
21 wrong - we are going to hear 254 next which would be
22 Alexander, okay.

23 (WHEREUPON, portion of exhibit published.)

24 Q. Okay. That is you again?

25 A. Uh-huh.

1 THE COURT REPORTER: I'm sorry?

2 Q. Is that a yes?

3 A. Yes. I apologize.

4 Q. And I apologize. I asked you what was playing.

5 That was Deputy Alexander just a second ago again kind of
6 arriving looking for the scene as well ---

7 A. Yes.

8 Q. --- just a moment ago?

9 A. Yes.

10 Q. You -- the last recording we heard was unable to
11 make contact, I need you to try that number; or something
12 to that effect?

13 A. That is correct.

14 Q. But that recording was -- the recording was what you
15 said, ---

16 A. Yes.

17 Q. --- right?

18 A. Yes.

19 Q. This would be after you have knocked repeatedly on
20 the door, as you testified in direct?

21 A. Yes.

22 Q. Okay. In previous testimony you had talked about a
23 tactic called contact and cover. Are you familiar with
24 that?

25 A. Yes.

1 Q. Been trained in that?

2 A. Correct.

3 Q. Really quickly, for Judge Young, contact and cover
4 is talking about at least two officers responding to an
5 incident location?

6 A. That is right.

7 Q. First in the contact it is focused on engagement
8 with whomever, while -- whether it be a complainant, a
9 suspect, they are trying to make contact with someone?

10 A. That is correct.

11 Q. Second -- and so their focus is specific on whatever
12 destination they are at?

13 A. Yes, typically contact and cover when you -- when
14 you use it as -- you are already in contact. But, yes.

15 Q. And the second, the cover, stays back at a distance,
16 has a more global view of things; correct?

17 A. That is correct.

18 Q. Watching for people exiting their residence?

19 A. Potentially.

20 Q. Watching for people coming onto the scene?

21 A. Yes.

22 Q. It is a security measure?

23 A. It is.

24 Q. It began because some officers were killed
25 responding either by themselves or not having a global

1 view and then officers came up with this technique; is
2 that right?

3 A. I don't know when the technique was written. What
4 we are trained in.

5 Q. And I believe you testified previously especially in
6 domestic cases because of the violent nature and
7 emotional nature of them?

8 A. Yes, that is correct.

9 Q. You were the contact officer and Detective Alexander
10 was the cover officer?

11 A. Initially, yes.

12 Q. Do you recall the front of this residence from eight
13 years ago?

14 A. Roughly, yes.

15 Q. Do you recall that it's set off the street -- there
16 was a relatively big front yard?

17 A. Large front yard.

18 Q. Driveway down the side, right-hand side?

19 A. Correct.

20 Q. That space could cause you concern as you approach?

21 A. Yes, it could.

22 Q. You have got a distance to travel and if there is
23 someone in there watching they can see you coming?

24 A. That's right.

25 Q. So that also -- in addition to everything else that

1 would heighten your senses; you would be very aware?

2 A. Yes.

3 Q. You saw the ADT sign planted in the front yard?

4 A. I don't recall specifically. But I probably would
5 have, yeah.

6 Q. Do you remember a truck, kind of a wrap truck, a
7 business pickup truck being in the driveway?

8 A. I do.

9 Q. And then I think you have already testified you went
10 to the front door, not only knocked on it multiple times
11 but you noticed there was no door knob -- door handle?

12 A. That is correct.

13 Q. No response to the knocks; nobody came to the door?

14 A. Correct.

15 Q. You didn't hear any screams inside of the house?

16 A. We did not.

17 Q. Any hush talking inside of the house?

18 A. No.

19 Q. Any pitter patter feet walking or running around
20 inside of the house?

21 A. No.

22 Q. No windows seemed to be broken out?

23 A. No.

24 Q. The front door was secured?

25 A. It was.

1 Q. I have expanded that out. But that is what
2 basically you went through right before we heard the no
3 response from the house and he dispatched to call that
4 number, ---

5 A. Yes.

6 Q. --- correct?

7 A. Yes.

8 Q. So what you are hoping there is they are going to
9 call the number that started this whole thing, whoever,
10 called in to 9-1-1 and started this whole thing you are
11 asking dispatch to try to reach out to them; right?

12 A. Yes, I am.

13 Q. While they are working on that - let me see if I
14 have got this right - at that point Deputy Alexander goes
15 around the left side of the house and you go toward the
16 truck side?

17 A. Correct.

18 Q. Okay. And in fact when you go to the truck side
19 again, senses heightened, you see that there -- the truck
20 is wrapped and it has got some business markings on
21 there, the name of a business, a phone number on the
22 truck; right?

23 A. Yes, I do.

24 Q. Okay. And you notice on that side of the house
25 there is a side door?

1 A. Yes.

2 Q. Similar to the front door?

3 A. Yes.

4 Q. In composition and in how it is secured?

5 A. Yes.

6 Q. There is no door knob?

7 A. Not that I remember. I think it was the same as the
8 front.

9 Q. Deadbolt?

10 A. Deadbolt.

11 Q. But it was secured?

12 A. Yes.

13 Q. There was also a crate or cage with a dog there?

14 A. I don't remember at that time noticing that
15 specifically. We tend to just look for dogs that might
16 be loose.

17 Q. Gotcha. While you were there, that door secure,
18 while you are there the truck is parked right there with
19 this business name and number on it, you make a note of
20 that number; correct?

21 A. Yes.

22 Q. Okay. And I think -- I am going to hope to pick up
23 right about there. I am going to play a little bit and
24 then ask you some more questions.

25 (WHEREUPON, portion of exhibit published.)

1 Q. You give the number that is on the truck, the
2 637-3486; right?

3 A. Yep. Yes.

4 Q. You give them the tag number, the personalized tag;
5 correct?

6 A. Yes.

7 Q. And they have told you, look, we can't make contact
8 with the original call, it is disconnected?

9 A. That is correct.

10 Q. Okay. And to be honest, in the heat of the moment
11 you don't know what that means, right, the disconnected
12 phone that they can't call back; that could mean several
13 things?

14 A. Correct.

15 Q. Maybe someone is in the house and they are in
16 trouble; it could mean that, right?

17 A. It could.

18 Q. It could mean that whoever is calling the battery
19 ran out of power?

20 A. It could.

21 Q. It could mean this is a prank?

22 A. It could. It could also mean that there is a cell
23 phone even if it doesn't have service will be able to
24 dial 9-1-1 but you can't call it back.

25 Q. Fair enough. I apologize. That is another option.

1 Okay. Let's pick up there.

2 (WHEREUPON, portion of exhibit published.)

3 Q. That is not this case?

4 A. Not our case.

5 (WHEREUPON, portion of exhibit published.)

6 Q. That is Deputy Alexander?

7 A. It is.

8 Q. And he tells you -- he says his number first, 254;
9 133 come around back, I have got an open sliding glass
10 door; right?

11 A. That's right.

12 Q. If he is calling you from the back of his house it
13 is fair to assume you are still on the side of the house
14 where you are getting the number off of the truck and
15 where that secured door is?

16 A. Working my way around to him.

17 Q. Right. You are going around the right to the back,
18 he has already gotten there; right?

19 A. Yeah.

20 Q. Okay. Because he tells you, hey, come back here; he
21 calls you by a number, right?

22 A. That is correct.

23 Q. Okay. So he found the back sliding door open?

24 A. He did.

25 Q. He didn't arrive there at the same time?

1 A. I am not -- based on what we hear, no.

2 Q. And there is no doubt to the accuracy of that? He
3 wouldn't call for you if you are standing right beside
4 him?

5 A. No.

6 (WHEREUPON, portion of exhibit published.)

7 Q. Did you hear that?

8 A. I did.

9 Q. See you guys in just a minute. That is York?

10 A. Well, she said I will be to you guys in just a
11 minute.

12 Q. Be to you guys in just a minute.

13 A. Indicating to us that she is on the way and close.

14 Q. Because at the time she is uniformed sergeant
15 supervisor over you and Alexander?

16 A. Correct.

17 (WHEREUPON, portion of exhibit published.)

18 Q. You are making sure that anybody that can hear on
19 the radio and to make a record of it that doors have no
20 knobs, there are deadbolts; right?

21 A. That stood out as unusual to me. So, yeah, I wanted
22 it in the dispatch record.

23 Q. A couple of things here. If you recall.

24 A. I'm sorry?

25 Q. If you recall.

1 A. Okay.

2 Q. We have had Alexander telling you, hey, man, come
3 back here, I've got an open door all the way in the back.
4 We have got York saying I will be to you guys in a
5 minute. We have got you telling dispatch about the doors
6 without knobs. All that happened right there - in a
7 matter of seconds - but all of that happened right
8 there; ---

9 A. Correct.

10 Q. --- is that fair enough? We know you weren't
11 standing at the rear open door when Alexander called for
12 you.

13 A. Correct.

14 Q. Okay. So in that back and forth York and you to
15 dispatch it's - if you recall - you were going from the
16 side of the house where the truck is to the back of the
17 house where the sliding door is; is that fair?

18 A. Yes.

19 Q. Okay.

20 MR. SOWARDS: Your Honor, may I approach the
21 witness?

22 Q. I am going to show you what's been admitted as
23 State's Number 6 and see if you recognize that.

24 A. That is the front door.

25 Q. Okay. I am going to show you what has been admitted

- 1 as State's Number 5.
- 2 A. That is the back door.
- 3 Q. Okay. Not exactly opposite each other. They are a
- 4 little off kilter. But one is the front of the house you
- 5 can see from the street, ---
- 6 A. Yes.
- 7 Q. --- the white door; correct?
- 8 A. Yes.
- 9 Q. And the sliding door is all the way to the back of
- 10 the house; is that correct?
- 11 A. That is correct.
- 12 Q. Now there is -- oh, real quick, you didn't take any
- 13 of these pictures; this wasn't your job?
- 14 A. No.
- 15 Q. Okay. There is, to your recollection, a door
- 16 similar or identical - you tell me - to Number 6 on the
- 17 side of this house?
- 18 A. I would say similar.
- 19 Q. Okay. So a similar door to that in the sense there
- 20 weren't windows in it?
- 21 A. Right.
- 22 Q. It wasn't a sliding door?
- 23 A. It was not.
- 24 Q. And it had a deadbolt without a knob?
- 25 A. It did.

1 Q. And that was on the side of the house where the
2 truck was, the driveway?

3 A. Yes.

4 Q. The side you went around?

5 A. Yes.

6 Q. Okay. Deputy Bowen, forgive me; did we just hear
7 dispatch also tell you the number on the truck was
8 unsuccessful? Have we played that yet; did you hear
9 that?

10 A. I don't recall hearing that.

11 Q. Let me pick up there.

12 (WHEREUPON, portion of exhibit published.)

13 Q. I am going to pause it there. It is in evidence,
14 but I will not ask you about that. But what we are
15 hearing there -- and I paused it right in some beeping;
16 right?

17 A. That's correct.

18 Q. That is what you were testifying about earlier,
19 right?

20 A. It is.

21 Q. Okay. We heard you ask for emergency clear. What
22 is the phrase for it?

23 A. I thing specifically I said give me the radio.
24 Which is our way of saying give us the channel, put it in
25 emergency status.

1 Q. No other communication like we have been hearing;
2 everybody shut up?

3 A. That is correct?

4 Q. If there is anything -- we are going to be -- you
5 and Alexander are going to talk, so shut up, we are going
6 into a highly -- potentially highly dangerous situation.

7 A. And unknown situation.

8 Q. Unknown situation is a better answer. And that's
9 going in that back door?

10 A. That is correct.

11 Q. When you got there, when you got to where Alexander
12 was, was he inside or outside of the door?

13 A. I don't recall. But I don't believe he was inside.

14 Q. Okay. When you got there did you personally see the
15 door open?

16 A. I don't remember.

17 Q. Okay. Did you hear an alarm going off?

18 A. I don't recall hearing an alarm.

19 Q. Now the door is open, I think you testified a few
20 inches?

21 A. I believe so.

22 Q. Okay.

23 A. Do you mean now or ...?

24 Q. Do you recall? I am not trying to trip you up. Do
25 you remember ---

1 A. No.

2 Q. --- how wide it was ---

3 A. I don't. No, not specifically.

4 Q. Fair enough. But you testified on direct a second
5 ago that y'all announced yourself?

6 A. We did.

7 Q. Is it fair that you weren't announcing through a
8 glass door that is shut; you are announcing through a gap
9 thinking this is going to project better than the front
10 door?

11 A. Yes, that is fair.

12 Q. It is an opening; I can -- they can hear me better
13 now if there is anybody in there?

14 A. Yes. And we would have opened the door just prior
15 to entering the house and continued to announce.

16 Q. We all do this for a living. To the best of your
17 recollection can you give us a real world example of what
18 you mean by we announce ourselves. What would you have
19 been saying out loud?

20 A. Sheriff's Office, come outside. You know, loudly
21 like that.

22 Q. Once, repeatedly?

23 A. No, repeatedly.

24 Q. And you are doing that as you enter; do you give it
25 a second to see if you get a response; do you recall?

- 1 A. We give it a second to see what we can hear.
- 2 Q. You got no response?
- 3 A. Correct.
- 4 Q. Everything you know up until now, that you have
- 5 heard from dispatch, that you have seen with your eyes,
- 6 and now an open door with no response, y'all go in?
- 7 A. That is correct.
- 8 Q. Open it up more than what it was ---
- 9 A. Yes.
- 10 Q. And that is when -- when you are entering: Put it
- 11 on emergency traffic for us, give me the radio?
- 12 A. Yes.
- 13 Q. Okay. Do you still have the CAD report in front of
- 14 you?
- 15 A. I do. Yes.
- 16 Q. Okay. Let's look at -- the numbers are on the
- 17 bottom right, Page 4.
- 18 A. Okay.
- 19 Q. And on the left column where it has the date and the
- 20 time, the first two columns on the left.
- 21 A. Uh-huh.
- 22 Q. And then there is a big gap. If you will go down to
- 23 the second set where it starts up. One, two, three down.
- 24 The third PES.
- 25 A. At 11:29:15?

1 Q. Yes.

2 A. Okay.

3 Q. Emergency traffic only, correct?

4 A. Yes.

5 Q. That is what we just heard start on the recording,
6 right?

7 A. That is.

8 Q. Okay. And then do we see on down, resume normal
9 traffic, at 11:33:29?

10 A. Yes.

11 Q. Okay. So that is real time?

12 A. Those are the times when the dispatcher typed it in.

13 Q. So it could -- right.

14 A. Roughly real time.

15 Q. Could be off -- by the time you radio it and then
16 they type it in. But basically that's -- that is to be
17 believed rather than counting the beeps, ---

18 A. Yes.

19 Q. --- right?

20 A. Yes.

21 Q. Gotcha. And so when it is resume normal traffic
22 that is after the unknown situation becomes known to you
23 and Alexander there's nobody in there?

24 A. That is when we determined that there was nobody in
25 there, yes.

1 Q. Okay.

2 (WHEREUPON, portion of exhibit published.)

3 Q. And that is what you tell dispatch; when you cleared
4 the radio there doesn't appear to be anyone here?

5 A. That is correct.

6 Q. Okay. This house was one-story with a loft; it
7 wasn't a two-story, it was a one-story with a loft; do
8 you recall that?

9 A. I do.

10 Q. Okay. Just like you did a moment ago, you said it
11 the way you would have said it announcing yourself, okay,
12 I would like for you to walk Judge Young through the
13 sweep. And I will help you, okay. So I am going to get
14 you started.

15 Do you recall whether you or Alexander went in
16 first?

17 A. I don't.

18 Q. Okay. You would have entered simultaneously or one
19 after the other then?

20 A. Typically one after the other. But right behind
21 each other.

22 Q. Right. Because this unlike the connect and cover
23 where one stays back, you need to be close together once
24 you are entering in; is that fair?

25 A. We do, yes.

1 Q. Okay. When you went in --

2 MR. SOWARDS: May I approach again, Your Honor?

3 THE COURT: You may.

4 Q. This is State's Number 5 again. When you go in the
5 back sliding glass door is it fair to say that that is in
6 approximately the middle of the width of the back of the
7 house?

8 A. Yes, roughly.

9 Q. Okay. When you went in did you go right or left or
10 straight ahead?

11 A. As best I remember we hooked right.

12 Q. Okay. And the first -- the very first room is a
13 rather open room; is that fair?

14 A. It is.

15 Q. If you go to the right did you continue on to the
16 first open room or would you have gone straight that kind
17 of dining room area; do you recall?

18 A. When you continue -- do you mean the living room
19 that was in front of the dining area?

20 Q. Correct. Did you go to that room or did you hug the
21 wall?

22 A. No, we went to the wall and there was the two -- if
23 I remember correctly the two auxiliary bedrooms and the
24 bathroom in between.

25 Q. Fair enough. So you went right and stayed right?

- 1 A. Yes.
- 2 Q. First room you -- there is a little hallway?
- 3 A. Uh-huh.
- 4 Q. That is a yes?
- 5 A. Yes. That is a yes. Sorry.
- 6 Q. Straight in front of you is a bathroom. Do you
- 7 recall?
- 8 A. I don't specifically. But I -- as best I remember
- 9 there was a bathroom before those two bedrooms.
- 10 Q. Two bedrooms on either side?
- 11 A. Yes. That's correct.
- 12 Q. Short hallway but the bathroom is straight at the
- 13 end of it, and two bedrooms on each side, right?
- 14 A. Not at the end of it per se. When you turn the
- 15 bathroom would have been in front of you with a bedroom
- 16 on either side.
- 17 Q. The door is right there?
- 18 A. That is correct.
- 19 Q. The doors to the bedrooms to your right and left,
- 20 the door to the bathroom in front of you?
- 21 A. That is correct.
- 22 Q. Okay. Went to the first bedroom on the right first?
- 23 A. I don't remember specifically ---
- 24 Q. Okay.
- 25 A. --- which of those bedrooms we cleared first.

1 Q. Would you have done bedrooms then bath? Or again
2 would you have just continued in a right path hitting
3 everything on your right?

4 A. It depends on how doors are. We tend to go towards
5 open doors before closed doors.

6 Q. Okay. And in this particular case, again, eight
7 years ago, whether you went in the bedroom and then the
8 bathroom and then the bedroom, what order you did that
9 one part of the house you don't recall?

10 A. Yeah, no, I don't recall specifically which of those
11 three rooms we did first. But we did that section of the
12 home.

13 Q. You definitely did each room?

14 A. Yes.

15 Q. You would have gone in both bedrooms to see if there
16 is anyone in the bedroom, correct?

17 A. That is correct.

18 Q. You would have checked both closets because someone
19 could be in the closet, correct?

20 A. That is correct.

21 Q. You would have checked under both beds, correct?

22 A. If there was beds in the room.

23 Q. If -- fair enough. Forgive me --

24 A. I believe one of those rooms was fairly empty.

25 Q. And the photos if they are presented would reflect

1 that, right?

2 A. Yes, they should.

3 Q. You would have gone in the bathroom, the what
4 appears to be a guest bathroom?

5 A. Yes

6 Q. You would have checked to see if anyone was standing
7 in the bathroom?

8 A. That's correct.

9 Q. And if there were a shower or tub you would have
10 checked that?

11 A. That is correct.

12 Q. Once that side is cleared is it fair to say you
13 backtracked and then went into the living room area
14 towards the front door?

15 A. That's fair to say. I don't remember though
16 specifically.

17 Q. If that winds around, keep going to the right, you
18 would probably keep going to the right; correct, rather
19 than across the house?

20 A. Neither of us having been on SWAT are tactically
21 trained. I and because that -- I now know that is a
22 tactic that SWAT would use is to follow certain walls.
23 We in that situation would tend to gravitate toward an
24 open area where we might find a victim or a suspect.

25 Q. There was a wall but you could walk on either side

1 that separated the first area you went into ---

2 A. Yes.

3 Q. --- from the front living area; is that accurate?

4 A. Yes, that is correct.

5 Q. Okay. Having walked through that first room off of
6 the sliding glass doors, again would it be fair to say
7 whether you hugged the wall or just walked out into
8 the -- you would have gone to that living room area next?

9 A. It's -- I believe so. It feels a little like
10 speculation, but.

11 Q. Do you remember whether you checked the front door
12 from the inside?

13 A. I don't remember. I don't think I would have
14 focused on it in that moment.

15 Q. Because the goal is you are looking for you a victim
16 or person in trouble ---

17 A. That's correct.

18 Q. -- or a perpetrator, suspect; right?

19 A. Correct.

20 Q. Or anybody that can do you and Alexander harm?

21 A. Correct.

22 Q. No one observed in the living room and other than
23 the furniture not a place to hide in that open area; you
24 didn't see anybody?

25 A. No.

1 Q. Went on, if you recall, that on the -- now we are
2 kind of making a circle. So on the left side of that
3 door do you recall what was on that side?

4 A. I believe that it is pretty immediately to the left
5 was -- once you got in that dining room area it was then
6 the kitchen.

7 Q. And you gestured with your hand. The kitchen to the
8 left?

9 A. To the left.

10 Q. And the bedroom to the right?

11 A. That bedroom hallway section of those two bedrooms;
12 That is correct.

13 Q. And again so to the right would be the front of the
14 house, to the left would be back to the back of the house
15 once you are coming across?

16 A. Coming -- I'm sorry, coming across from where?

17 Q. Coming across the living room from the two bedrooms.

18 A. That would have put me coming across that dining
19 room area.

20 Q. Okay.

21 A. Because you had to come out and turn right to go to
22 the living room.

23 Q. And so -- let's do it this way. Directly across
24 from that bathroom is the master bath?

25 A. No, I don't remember it that way.

1 Q.. Okay. Almost directly across -- forgive me, almost
2 directly across is the side door?

3 A. And the kitchen area.

4 Q. And the kitchen?

5 A. Yes.

6 Q. My fault. Thank you. You went that direction, you
7 checked that -- you checked the kitchen area?

8 A. We would have, yes.

9 Q. Okay. No one standing in the kitchen?

10 A. No.

11 Q. You didn't -- you have already testified you didn't
12 open up cabinets to check and see?

13 A. No.

14 Q. If somebody crouched down and got in there it was
15 unlikely, correct?

16 A. Right. Correct.

17 Q. You didn't hear anything?

18 A. Did not.

19 Q. You went into the third now bedroom, right?

20 A. Yes.

21 Q. And there is a bathroom off of that bedroom?

22 A. Correct.

23 Q. And there is a closet in there?

24 A. That is correct.

25 Q. You would have checked all three places?

- 1 A. We did.
- 2 Q. Okay. You would have checked the bathroom and the
3 shower or tub?
- 4 A. Yes.
- 5 Q. You didn't see anybody standing in any of the rooms
6 or in the shower?
- 7 A. No, we didn't.
- 8 Q. You didn't see anybody in the closet?
- 9 A. We didn't.
- 10 Q. But you saw something under the bed?
- 11 A. We did.
- 12 Q. Okay. I am a guy. I don't know what it is called
13 but like a little frill around the bottom of the bed.
14 Does this have something that would have covered up the
15 gap at the bottom of the bed that you had to move?
- 16 A. Yeah, like the dust ruffle.
- 17 Q. Okay. So there is some piece of fabric that is you
18 are just standing you can't see under it but you can see
19 that the bed is not on the floor?
- 20 A. Yes.
- 21 Q. Okay. You raised that to look and see why?
- 22 A. Because somebody can easily get under the bed.
- 23 Q. Again, heated domestic; maybe somebody is hiding
24 under there, right?
- 25 A. (Nods head.)

1 Q. Yes?

2 A. Yes. Sorry.

3 Q. Or maybe the suspect, the suspect, is hiding under
4 there; correct?

5 A. That's correct.

6 Q. Okay. So you lifted the little fabric?

7 A. That's right.

8 Q. And you observed some weapons?

9 A. We did.

10 Q. Okay. At that point you don't know whose house this
11 belongs to?

12 A. We don't.

13 Q. You have no idea if that is -- if a homeowner is a
14 lawful gun owner or not?

15 A. We don't.

16 Q. If you are entitled to possess a weapon you can keep
17 it under your bed if you want to?

18 A. You can.

19 Q. In the closet of that bedroom that is where you see
20 the safe and some money in front of it?

21 A. Yes.

22 Q. We have got a picture for Judge Young. The safe
23 door was shut ---

24 A. It was.

25 Q. --- when you saw it?

- 1 A. It was.
- 2 Q. You didn't open it?
- 3 A. Did not.
- 4 Q. But there was something laying in front of it, as
- 5 the picture indicates?
- 6 A. Yes.
- 7 Q. Where someone decides to leave money in their home,
- 8 that in and of itself is not suspicious?
- 9 A. In all the home I have been in I don't typically see
- 10 money laying about particularly on the floor.
- 11 Q. Okay. It was right in front of a safe though,
- 12 right?
- 13 A. Yes, it was.
- 14 Q. Okay. In that bathroom is where you indicate you
- 15 see a scale - we mean a weighing scale - and some white
- 16 powder substance?
- 17 A. Yes.
- 18 Q. And there is a picture that corresponds to that?
- 19 A. There is.
- 20 Q. Okay. In your sweep through the house you didn't
- 21 see any broken furniture, did you?
- 22 A. We didn't.
- 23 Q. No blood?
- 24 A. No blood.
- 25 Q. All right. I am going to pick up with the dispatch

1 again, okay?

2 A. Okay.

3 (WHEREUPON, portion of exhibit published.)

4 Q. Again, Sergeant York, right?

5 A. That was her voice. I couldn't quite make out what
6 she was saying.

7 Q. Fair enough. You explained earlier though that one
8 of the reasons you couldn't reconnect with a dropped
9 phone is it could be a cell phone that only has 9-1-1
10 abilities?

11 A. That is correct.

12 Q. And that is something anyone could try to confirm
13 with dispatch who actually made the attempt and would
14 have more information about the phone call than y'all?

15 A. What do you mean try to confirm with dispatch?

16 Q. Dispatch, was that a regular 9-1-1 call, or was that
17 a 9-1-1 call from a phone that doesn't -- that isn't
18 connected?

19 A. Dispatch I don't believe they would have had any way
20 of knowing that.

21 Q. Okay.

22 A. It is not something that is indicated to them.

23 Q. Okay.

24 (WHEREUPON, portion of exhibit published.)

25 Q. That is you and York talking?

- 1 A. It is.
- 2 Q. You ask: Are you still coming over here?
- 3 A. I did.
- 4 Q. Right. Because it took a little while to do that
- 5 protective sweep, you and Alexander, however many minutes
- 6 it took; right?
- 7 A. Right. And I wanted to make sure that she was still
- 8 in route, because we had dropped the emergency status of
- 9 the radio.
- 10 Q. Explain that to me.
- 11 A. She knew how it came out, so it caught her attention
- 12 in that we entered a house in emergency status so she
- 13 would have been in route. Often times once we take it
- 14 out of emergency status ---
- 15 Q. There is no reason for her ---
- 16 A. --- depending on which way the supervisor gets
- 17 pulled.
- 18 Q. So that is not an emergency now, no one at the
- 19 house, maybe I don't need to show up there?
- 20 A. Correct.
- 21 Q. But you are checking: You are coming, aren't you?
- 22 A. That is correct.
- 23 Q. She is dealing with traffic, she is on her way?
- 24 A. Yes.
- 25 Q. You then indicate over the radio: Unsecured door.

1 Someone out in a hurry.

2 And you are talking about the back sliding glass
3 door, right?

4 A. Yes.

5 Q. You tell York I have got some other items I want to
6 discuss with you when you get here?

7 A. I did.

8 Q. You want to discuss the guns under the bed, right?

9 A. The guns in combination with money and what appeared
10 to be drug residue.

11 Q. Right. Now are you still in the house?

12 A. Yes, I believe ---

13 Q. And Alexander is still in the house?

14 A. Yes.

15 Q. When y'all opened that sliding glass door bigger
16 that what it was or cracked open and went in, I think I
17 asked you this, but I want to be clear: Did you hear an
18 alarm go off?

19 A. I don't recall hearing one.

20 Q. Okay. I think I asked you earlier, while you are
21 standing at the open door you didn't hear one actively
22 going off; is that right?

23 A. That is correct.

24 Q. And you also don't recall when you go in hearing
25 one?

- 1 A. That is correct.
- 2 Q. But the landline, the phone, rang while you were in
3 the residence?
- 4 A. It did.
- 5 Q. Okay. You answered a call -- forgive me -- did
6 you -- was -- there was a phone call to the residence
7 that you did not answer, a first call that you did not
8 answer?
- 9 A. I don't recall. I just recall answering the two.
- 10 Q. And when you say two you or talking about a call
11 that the caller indicates Mark, ---
- 12 A. That's correct.
- 13 Q. --- right? Short call?
- 14 A. From what I remember, yes.
- 15 Q. A little bit of gap in time and then they call back
16 from a locked number?
- 17 A. That is correct.
- 18 Q. Let me pause there. Does that mean you know what
19 the first number was?
- 20 A. Yes, it was on the caller ID and I was able to
21 document it.
- 22 Q. Okay. And what was that number?
- 23 A. I would have to look back at the report.
- 24 Q. Okay.
- 25 A. It is in my incident report.

1 MR. SOWARDS: May I have this marked, Your Honor?

2 May I have this marked?

3 THE COURT: Uh-huh.

4 (WHEREUPON, Defendant's Number 1, report, was marked for
5 identification.)

6 MR. SOWARDS: May I approach the witness, Your
7 Honor?

8 THE COURT: You may.

9 Q. I am going to show you what has been marked as
10 Defendant Number 1 for identification purposes only.
11 Take your time. It is two, front and back.

12 I think that is the entirety of your report, but
13 take a look at it and then I will have some questions for
14 you. Let me know when you have reviewed it.

15 A. It is not the entirety of the report. The report is
16 four pages and these are the first two.

17 MR. SOWARDS: Your Honor, if we could have just a
18 moment please..

19 Your Honor, that was the -- the two pages I believe
20 all we had in discovery. We are double checking that
21 now. But there does appear to be Pages 3 and 4 which the
22 State has given me a copy of. With the State's consent I
23 would like to add this to that exhibit. So it is four
24 pages total.

25 (WHEREUPON, additional page added to the exhibit.)

1 Q. When you have a second the first question I have is
2 does that seem to be the entirety of your report?

3 A. Yes. I am making sure the case numbers all matched.
4 Yes.

5 Q. Okay. And in fact up in the top right of the last
6 two pages I gave you it even says three of three and then
7 four of four?

8 A. That's correct.

9 Q. Or three of four and four of four, right?

10 A. Correct.

11 Q. Okay. So where was I? The first call that came in
12 from Mark do you document that number?

13 A. I did. And I remember -- I am looking for it
14 specifically to quote it. That I mentioned that it was
15 the number that we had placed down -- but, yes, we did
16 document the number.

17 Q. Okay. You don't happen to see it on those four
18 pages, but you would have observed it and noted it
19 somehow?

20 A. And I remember. I am looking for it specifically to
21 quote it. Did I mention that it was the number that we
22 had placed down for -- but, yes, we did document the
23 number.

24 Q. Okay. You don't -- haven't seen it on those four
25 pages, but you would have observed it and noted it

1 somehow?

2 A. Yeah, no, it is -- I believe it was the number that
3 I put down for Mr. Richardson as 864-9980. And in review
4 of the report I noted that the rear door was unsecured.
5 And that can mean anything from we realized the door is
6 not locked to it is wide open.

7 Q. Okay. While you have the document in front of you
8 do you recall that you ultimately prepared that, maybe
9 not in the house on the scene; do you recall that?

10 A. The report?

11 Q. Yes.

12 A. I think I did for the most part. I think I had a
13 laptop available?

14 Q. All right. I asked you about a call that was not
15 answered but for the answer machine. You don't recall
16 that, correct?

17 A. I don't. Not ---

18 Q. You do recall a call coming in that you answered
19 from a Mark, and you believe it to be the number that you
20 just read off; correct?

21 A. Yes.

22 Q. Okay. Short call?

23 A. Short call.

24 Q. Soon thereafter you get a second call that you
25 answer from an unknown number, a blocked number?

- 1 A. That is correct.
- 2 Q. And that time the caller uses a name?
- 3 A. According to what I had written they didn't. I
- 4 asked if it was Mr. Richardson and they responded
- 5 affirmatively.
- 6 Q. You have no way to independently refute or confirm
- 7 that while you are on the phone?
- 8 A. Correct.
- 9 Q. The gist of it is, all right, man, but you need to
- 10 get back here because we had an open door; we had a
- 11 burglary; we have some kind of break-in, something; come
- 12 back here?
- 13 A. Yes, we need you back here. That is right.
- 14 Q. You didn't mention we saw your guns?
- 15 A. I did not.
- 16 Q. You didn't mention we saw some money laid out in
- 17 front of your safe?
- 18 A. Did not.
- 19 Q. Didn't mention we saw some white powder residue on
- 20 the scales?
- 21 A. Did not.
- 22 Q. Because you hoped he was going to come back; and if
- 23 you told him that, you didn't think he would?
- 24 A. That is correct.
- 25 Q. You knew that that was a homeowner because you had

1 seen names on some mail in the house?

2 A. I knew that was the name -- that there was mail in
3 the house that indicated a Therron Richardson there, yes.

4 Q. Do you still have the CAD report?

5 A. Yes.

6 Q. Okay. Let's look at on Page 4 where we were for you
7 resumed normal traffic, right?

8 A. Okay.

9 Q. No one at the location has entered, correct?

10 A. Correct.

11 Q. And then we can look over on Page 5. Let's look at
12 the lines with PES.

13 A. On Page 5?

14 Q. Uh-huh. So the third column from the left it gives
15 three initials.

16 A. Yes. I see.

17 Q. Look at the ones that say PES. Okay. Now here is
18 my question for you. Is it noted in there anywhere that
19 you got two calls from an outside third or maybe fourth
20 party that you answered?

21 A. That I answered, not that I see.

22 Q. So the CAD report doesn't indicate any information
23 about those incoming calls, right?

24 A. No. Not that I can find.

25 Q. Okay. We are going to pick up on the dispatch call

1 then.

2 (Publish portion of exhibit.)

3 Q. You are calling dispatch to give them two names you
4 want to check out, right?

5 A. I had them copy them. I don't remember what I asked
6 them to do after that.

7 Q. Okay. Fair enough. But you are giving them Therron
8 Richardson, Charmaine Richardson; right?

9 A. Correct.

10 Q. You got that information from ADT the security
11 system, right?

12 A. From the system? What do you mean from ---

13 Q. From a representative of ADT?

14 A. I don't recall.

15 Q. You don't recall receiving another phone call to the
16 landline and it was ADT?

17 A. No.

18 Q. And again just to be clear, in this entire time you
19 are not hearing an alarm going off in this house?

20 A. I don't remember hearing an alarm. When we have
21 entered houses in situations similar to this sometimes
22 alarms go off. Sometimes they don't.

23 It is kind of like listening to all of that
24 background radio traffic. You kind of have to put it out
25 of your mind and focus on the task at hand. So if there

- 1 was one going off it wouldn't have stood out to me.
- 2 Q. It kind of becomes a constant drone?
- 3 A. Correct.
- 4 Q. If there was an alarm, it was shut off and alarm
- 5 again, would that mean more memorable?
- 6 A. Not particularly. Alarms -- residential and
- 7 business alarms both will reset and go off and reset,
- 8 set, and go off.
- 9 Q. And we are going to pick up with that call again.
- 10 (Publish portion of exhibit.).
- 11 Q. Is that Sergeant York?
- 12 A. Yes.
- 13 Q. She is asking dispatch to check in with the security
- 14 system?
- 15 A. She is.
- 16 Q. So I got ahead of myself there. And I apologize,
- 17 but if you didn't know it from ADT you would have seen it
- 18 on paperwork in the house?
- 19 A. Correct.
- 20 Q. Okay. I am sorry. York is in the house now?
- 21 A. I don't know specifically when she transmitted that
- 22 radio traffic.
- 23 Q. What do you mean by that?
- 24 A. She couldn't -- I don't -- where she -- you said
- 25 York is in the house now. I don't know where -- I don't

1 remember specifically where she was when she transmitted
2 that.

3 Q. When she transmitted that. Fair enough. She did
4 join you and Alexander in the house?

5 A. At some point, yes.

6 Q. Okay. We are just not sure it was contemporaneous
7 with that?

8 A. Correct. You are right.

9 Q. Okay.

10 (Publish portion of exhibit.)

11 Q. York says, hey, we are going to test some things out
12 here. He is going to use this landline and call you
13 guys, call dispatch; right?

14 A. Correct.

15 Q. That is not in your report anywhere right?

16 A. No.

17 Q. But you did that?

18 A. I would think I did, yes.

19 Q. Okay. And when you called do you recall what the
20 operator -- what you told the operator and what the
21 operator told you?

22 A. I -- yeah -- no, I don't recall specifically.

23 Q. Basically to test it, right; is the landline
24 working?

25 A. No, what number shows up, is it working.

1 Q. Fair enough.

2 A. We have had land -- we have had houses that didn't
3 have a landline generate 911 calls simply because the
4 wires got wet.

5 Q. Fair enough. Okay. So today you are testifying you
6 know you made that call even though it is not indicated
7 in your report, right? Or do you remember?

8 A. I don't remember specifically. Only from Sergeant
9 York saying that I was going to make that call. It is a
10 fair assumption that she said make that call. And so I
11 would have followed her instructions.

12 Q. You follow her instructions, unless there is some
13 valid reason not to; right?

14 A. Correct.

15 Q. If you called 911 they'd record it, right?

16 A. They should, yes.

17 (Publish portion of exhibit.)

18 Q. Dispatch telling your sergeant about some other
19 important call made, is that right?

20 A. Correct. Pending calls.

21 Q. Now she is -- York is asking about an incident on
22 Romney Street. Do you hear that?

23 A. I heard her asking about an incident with the City.

24 Q. Right. Okay.

25 (Publish portion of exhibit.)

1 Q. That is 254 Alexander?

2 A. It is.

3 Q. Talking about some alarms and checking the
4 neighborhood. Does that deal with this incident or has
5 he moved onto another?

6 A. That was a different address, so I believe he had
7 moved onto another.

8 Q. So he is no longer in the house?

9 A. Correct.

10 Q. You in your car?

11 A. Yes.

12 Q. Here is something I don't know. We talked about
13 earlier on the CAD report and you went through the unit
14 numbers for me.

15 A. Okay.

16 Q. And it looked that SO-273 Riley. Is he there with
17 you?

18 A. I haven't heard him check on the scene yet.

19 Q. Okay. Do you from memory recall whether he was
20 there with you and Sergeant York?

21 A. I'm sorry, can you ...?

22 Q. Sure. Can you recall from memory -- because we just
23 said -- we just got a radio call that Alexander is onto
24 another incident. Because again there is no emergency at
25 your house, right?

1 A. Right.

2 Q. He has gone on to another incident. Your memory is
3 you and York are in the house?

4 A. Yes.

5 Q. Do you recall whether Riley was there or not? From
6 memory do you recall if Riley was there?

7 A. I think he came up at some point. I don't remember
8 him coming into the house. This was an extended
9 incident. And so oftentimes other deputies will stop by
10 to see what we have, to see if we need anything, to check
11 in with the sergeant, for any number of reasons.

12 Q. Okay. So you don't remember him being in the house;
13 you don't remember active involvement from him in this
14 case?

15 A. No.

16 Q. Okay. Fair enough.

17 (Publish portion of exhibit.)

18 Q. York is confirming the street address of the house
19 you are in?

20 A. Correct.

21 Q. Okay.

22 (Publish portion of exhibit.)

23 Q. A couple of things there. You are putting out a
24 BOLO, be on the lookout; right?

25 A. That is correct.

1 Q. For a vehicle that you think pertains to the
2 incident that you are investigating?

3 A. Yes.

4 Q. And the description speaks for itself. The last
5 thing there is you are asked to call dispatch, right?

6 A. Yes.

7 Q. Did you?

8 A. I would have normally.

9 Q. Not from that landline, right?

10 A. Okay. No, not usually.

11 Q. Personal cell phone?

12 A. Yes.

13 Q. That is not recorded?

14 A. On their end I believe it is.

15 Q. Okay.

16 A. They record everything that comes in.

17 Q. Why is it that dispatch would ask you to call them?
18 Just talk to you on the radio?

19 A. I don't know. Any number of reasons.

20 Q. Like?

21 A. I don't recall specifically to this. They might
22 have additional information. Sometimes there is secure
23 information they don't want to put over the radio.
24 Sometimes the radio is too busy and it is we try to keep
25 radio transmissions short and to the point. Or if they

1 needed additional information that might take too long or
2 get wordy.

3 Q. Okay. There is nothing in your report about calling
4 dispatch?

5 A. No. We don't normally document that. That is
6 routinely that we call them or they ask us to call them.

7 Q. Okay. At this point you don't recall what that
8 conversation was about?

9 A. I don't.

10 (Publish portion of exhibit.)

11 Q. Accident with injuries. York says have somebody
12 else handle it, right?

13 A. I heard her say somebody else handle it. I
14 didn't ---

15 Q. Or asking?

16 A. Right.

17 Q. But either telling them to have someone else or
18 asking if someone is handling it. Because she doesn't
19 leave the residence you are at?

20 A. Correct.

21 Q. Okay.

22 (Publish portion of exhibit.)

23 Q. Again, that is a separate incident?

24 A. Yes.

25 Q. We are not talking about the truck in the driveway

1 or the BOLO you put out?

2 A. No.

3 (Publish portion of exhibit.)

4 Q. Dispatch just gave you a case number?

5 A. Correct.

6 Q. They assign case numbers.

7 A. They do.

8 Q. You don't have a domestic violence because there is
9 nobody in the house?

10 A. We write reports for every domestic violence that
11 come -- call that we respond to.

12 Q. Fair enough. So you needed a number to go with that
13 four-page report to say I went in the house and nobody
14 was there, ---

15 A. Correct.

16 Q. --- right? Okay. And then the numbers the 11:15,
17 11:24, dispatch time, arrival time, in sequence?

18 A. On the report, yes.

19 Q. Okay.

20 A. Oh, and what they said on the radio. That is
21 correct.

22 Q. Thank you.

23 A. Sorry.

24 Q. That is all right. But it matches up with your
25 report?

1 A. It does. We rely on them for those times

2 (Publish portion of exhibit.)

3 Q. That is a serial number from a high point weapon,
4 right?

5 A. That is what it sounded like.

6 Q. There is no high point weapons in this case?

7 A. He was on a traffic stop on Johns Island.

8 Q. So that does not involve this case?

9 A. That is correct.

10 Q. Okay.

11 (Publish portion of exhibit.)

12 Q. Back up a second. On your report the dispatch
13 incident number of course is the year and then 017299; is
14 that right?

15 A. That is -- so there is a difference between an OCA
16 and an incident number as was demonstrated on the radio.
17 An OCA is what we are going to actually write a report
18 for. An incident number we assign to every officer
19 action, say for example a traffic stop.

20 Q. And that goes back a little bit. The part I just
21 stopped at you were identified 133, and then you were
22 asked something. What were you asked?

23 A. To give 313, I believe it was, a phone call.

24 Q. And who was 313?

25 A. I believe at the time that was Plyler.

1 Q. So again, hey, give me a call, don't use the
2 dispatch radio that we are in the traffic, call me
3 directly; ---

4 A. Correct.

5 Q. --- right? For Judge Young who was -- what did
6 Plyler do in 2010; do you recall?

7 A. He was assigned to our metro narcotics unit as an
8 investigator.

9 Q. That is him sitting right here at the table?

10 A. It is.

11 Q. Okay. So he is asking you, give me a call on your
12 personal phone?

13 A. Correct.

14 (Publish portion of exhibit.)

15 Q. I apologize. I let that go a little bit. Did you
16 hear Sergeant York?

17 A. I did.

18 Q. Did you get anything from ADT, and they say they are
19 checking the records?

20 (Pause for coughing in audience.)

21 Q. She asked dispatch did you hear anything from ADT
22 security system, and they say they are checking the
23 records?

24 A. Yes.

25 Q. Okay.

1 (Publish portion of exhibit.)

2 Q. That is Deputy Plyler, right?

3 A. Yes.

4 Q. Talking to you asking if you have an incident number
5 already?

6 A. Yes, case number.

7 Q. A case number. I apologize. Case number. You say,
8 yes; you tell him over dispatch what it is?

9 A. Correct.

10 Q. He is preparing some document that he needs a number
11 for, right?

12 A. A search warrant.

13 (Publish portion of exhibit.)

14 Q. He is asking you to call him a second time?

15 A. Yes.

16 Q. Don't talk about it over dispatch, give me a call
17 from your personal phone; right?

18 A. Again, we try to keep radio traffic to stuff that is
19 very short and concise.

20 Q. He is needing some more information?

21 A. Yes.

22 (Publish portion of exhibit.)

23 Q. We heard earlier that York -- or that dispatch asked
24 you to call them?

25 A. Yes.

1 Q. Is this that call, or do you think this is a second
2 call?

3 A. I don't know.

4 Q. You couldn't call Plyler; hang on a second, buddy;
5 I've got to finish my phone call with dispatch before I
6 call you on the phone?

7 A. Correct.

8 Q. Okay.

9 (Publish portion of exhibit.)

10 Q. That is the end of the recording. That was York,
11 right?

12 A. I couldn't make out what she said.

13 Q. Okay. We are going to try it again. I couldn't
14 either. I was hoping for your help on that.

15 (Publish portion of exhibit.)

16 Q. 133 can I give him a, something on that, you think?

17 A. I don't -- I heard her say 1021 which means a phone
18 call. But beyond that I couldn't make it out.

19 Q. That might be; we are not sure?

20 A. Yeah.

21 Q. Okay. And then that is the end of the recording
22 which is State's Number -- State's Number 3.

23 A few questions and wrap up. I am about done,
24 Detective Bowen. I appreciate your help on this.

25 A. Yes, sir.

1 Q. In this case or any case if it was an emergency like
2 an active heated domestic, if it rose to the level for
3 safety or to arrest someone, you would go in a house even
4 if you didn't have a warrant; right?

5 A. Yes, we would.

6 Q. You would go in a house even if you had to go
7 through something, you had to break something?

8 A. Yes, we would.

9 Q. Now luckily here you didn't have to do that because
10 Deputy Alexander found the sliding glass door?

11 A. Yes. And again that is kind of where it goes back
12 to the report of unsecured. If we have to break
13 something we are definitely going to get a supervisor's
14 at least approval.

15 If the door is unsecured, meaning unlocked, whether
16 it is unlocked or whether it is open we are still going
17 to go in.

18 We just make sure the supervisor signs off before we
19 break stuff.

20 Q. Fair enough. But in this case you didn't have to do
21 that because you had, as your report says, unsecure;
22 Alexander on the dispatch says open, right?

23 A. And we use those terms interchangeably.

24 Q. I will be brief. But again the goals are to find
25 someone and help them; find somebody, stop them; protect

1 you and your partner?

2 A. Correct.

3 Q. That is why you went in?

4 A. Yes.

5 Q. Once you found that there was no one in that
6 residence the goals are done?

7 A. Until we found additional evidence for possible
8 other crimes.

9 Q. Those three goals have been completed?

10 A. Those three goals have been met.

11 Q. Whenever it is that York arrived, okay -- and I
12 don't believe that is in your report, right?

13 A. Right.

14 Q. And I don't believe -- and take as much time as
15 you -- I'm not trying to trick you, but I don't believe
16 we have that on the CAD report?

17 A. We don't. And I know she checked on the scene on
18 the radio. I am looking at the total time of 16 minutes
19 of that recording. It doesn't exactly match up with the
20 time on the report?

21 Q. Fair enough. So like the beeps earlier that were
22 condensed it was probably longer than that. This phone
23 traffic that the actual recording is just over 16 but
24 this covered an ---

25 A. Yeah, because I didn't pull the report number until

1 almost actually -- almost right at an hour after arrival.

2 And we heard that in the 16 minute video recording.

3 Q. Fair enough. Let me go back to my specific question
4 then. We don't know when York arrived though?

5 A. No.

6 Q. Did she ---

7 A. I'm sorry, it might be in the report. Or in the CAD
8 report. Not my report.

9 I don't see it though.

10 Q. Okay. Whenever she arrived you would have shown her
11 what you found?

12 A. Yes.

13 Q. You showed her the three guns under the bed?

14 A. Yes.

15 Q. You showed her the cash thing out by the safe?

16 A. Correct.

17 Q. You showed her the open moneybag with cash in it?

18 A. Yes.

19 Q. And I didn't ask about that before; but that was in
20 not the closet or the bedroom, that was in another room;
21 do you recall?

22 A. It was in the bedroom with the -- the master
23 bedroom.

24 Q. I apologize. So it wasn't in the closet but it was
25 along the wall of that master bedroom?

- 1 A. Right.
- 2 Q. Okay.
- 3 A. That's correct.
- 4 Q. You would have shown her the digital scale and the
- 5 white powder?
- 6 A. Yes.
- 7 Q. You did the swab test to get the presumptive test?
- 8 A. I don't recall if I did that or Sergeant York did
- 9 that. She had experience as a narcotics investigator.
- 10 But I think at the time we wanted to leave the scene as
- 11 it was as we found it and let her advise from there.
- 12 Q. Okay. But I will ask you real specific. Do you
- 13 recall if you were the one that used the wet -- wet
- 14 buccal swab ---
- 15 A. I don't recall.
- 16 Q. Okay. Can we exclude Alexander because he is
- 17 already gone?
- 18 A. I think so.
- 19 Q. Can we exclude Riley because we don't think he came
- 20 in the house?
- 21 A. Yes.
- 22 Q. And Plyler is not on the scene yet?
- 23 A. Correct.
- 24 Q. Because you don't have a search warrant yet?
- 25 A. Correct.

1 Q. The wrapper on the truck said Lazy Man Lawn, right?

2 A. I believe it did, yes.

3 Q. With a phone number?

4 A. Yes.

5 Q. The tag said [REDACTED]?

6 A. Yes.

7 Q. The -- some of the mail inside said Lazy Man?

8 A. I don't recall that part.

9 Q. Okay. There was landscaping equipment - I don't
10 remember exactly if you do - a lawnmower, something like
11 that, between the truck, and the side of the house? Not
12 much but there was something there?

13 A. I think there was, yes.

14 Q. We don't at this point have any audio recording of
15 you and Plyler talking, okay. Is it fair though that on
16 those two phone calls you would have told him about what
17 you found, the guns, the powder, the money?

18 A. Yes. That is his probable cause to obtain a search
19 warrant.

20 Q. I'd asked you who did it, but whoever did it you --
21 you observed that the white powder substance on the
22 scales triggered a positive test on the little wet ---

23 A. A presumptive test on one of the field tests,
24 correct.

25 Q. You gave me some reason before. You gave me some

1 reasons. But you could have radioed Plyler, hey, we
2 found three guns under a bed, found some white powder,
3 look -- test by cocaine, and we found some money; you
4 could have done that over the radio?

5 A. Possibly. But especially having the experience as a
6 detective now writing search warrants, it is much easier
7 to ask those questions in a dynamic phone call versus the
8 radio. Particularly given as busy as the radio traffic
9 was that day.

10 Q. He can ask follow-up questions on the phone that
11 would take longer.

12 A. Correct. And I also had to give him the description
13 of the residence for him to include in the search
14 warrant.

15 Q. You were forthright and direct talking about the
16 entry into the school and gave a false reason to the
17 principal originally, right?

18 A. Correct.

19 Q. You not only fessed up to the principal but you told
20 your supervisor?

21 A. Yes, I made sure I called in.

22 Q. Who would that have been at the time?

23 A. I think it was Sergeant David Owen at the time.

24 Q. Okay. And internal investigations -- an internal
25 investigation was conducted?

1 A. Yes.

2 Q. You were suspended two days for that?

3 A. Yes.

4 Q. There was also in November 18th of 2015 another
5 internal affairs investigation about you, Deputy Hampton,
6 and Deputy Stern; do you recall that?

7 A. No.

8 Q. Okay. If I give you some factual matters would that
9 maybe refresh your recollection?

10 A. It may. It should, yeah.

11 Q. The three of you were responding to a residence
12 about potentially some stolen property, a vehicle. And
13 when confronted by at [REDACTED] Savannah Highway and
14 confronted by the homeowner and his wife you provided
15 them some information that was not accurate; do you
16 recall that?

17 A. No, I don't.

18 MR. DAVIS: May I have this marked, Your Honor.

19 THE COURT: Yes. What is your timeframe on ---

20 MR. DAVIS: This is the last thing.

21 THE COURT: --- when we are going to ever finish
22 with this witness?

23 MR. DAVIS: This is the last thing.

24 THE COURT: Okay.

25 (WHEREUPON, Defendant's Exhibit Number 2, report, was

1 marked for identification.)

2 MR. DAVIS: I have given a copy to the State, Your
3 Honor. May I approach the witness?

4 THE COURT: Sure.

5 Q. This is marked as Defense Exhibit Number 2 for
6 identification purposes. It is four pages. Take your
7 time. Look at everything. But I will refer you to
8 Page 4. The first full paragraph deals with you
9 specifically. Take your time to look at it.

10 (Pause for witness to review exhibit.)

11 A. Okay.

12 Q. All right. To summarize, you and two other deputies
13 are called out to a location about potentially stolen
14 property on that property, right?

15 A. I don't remember how -- and I notice that it says in
16 my statement I said that I was dispatched to a location.
17 When I use the term dispatch it can mean by central
18 dispatch or by a supervisor or often times when I am on
19 call I say I was dispatched to respond because the
20 supervisor is essentially dispatching me. So I don't
21 remember how we were sent to the scene.

22 Q. I am less concerned about how you got there but the
23 reason you were -- what you were investigating was
24 potentially stolen property?

25 A. Yes.

1 Q. You were trying to get an eye ball into the property
2 of the homeowner and to do so y'all don't barge in
3 without a warrant but you are trying to look into his
4 backyard basically; is that the gist of it?

5 A. I don't remember this incident.

6 Q. Okay.

7 A. But from the summary the gist of it is we went to a
8 publicly accessible business next door and ---

9 Q. Next door to the person you are actually
10 investigating?

11 A. To the residence, correct. And used that location
12 to gain the ability to observe that house and that yard,
13 yes.

14 Q. When the homeowner says what are you doing in my
15 property you say, oh, we are checking out this business
16 next door; right?

17 A. Yes, we did.

18 Q. You weren't?

19 A. No.

20 Q. You said there was an alarm going off at this
21 business next door and that is why we are here, and there
22 wasn't an alarm; was there?

23 A. No.

24 Q. Okay. For that the internal investigations said
25 that substantiated that you fabricated, you lied about

1 why you were there, but it was justified for
2 investigative purposes?

3 A. No. Because -- and I was trying to review and
4 find out exactly what the substantiation was. This is
5 exactly -- because when we are investigating it is like
6 being charged with a crime. There is a specific
7 allegation. And on this one the best one I can find is
8 entering a property under false pretense.

9 Q. On the very last paragraph ---

10 A. Is said partially substantiated.

11 Q. You and Deputy Hampton both stated they deceived
12 Hardwick when they told him they were checking an alarm
13 for the adjacent business; that is the part that was not
14 true, correct?

15 A. I'm sorry?

16 Q. Sure. Read in the first sentence --

17 A. Which part -- when you say that is the part that was
18 not true what do you mean by that?

19 Q. Because there was not an alarm going off at the
20 business next door?

21 A. That is correct.

22 Q. Okay.

23 MR. DAVIS: No other questions, Your Honor. Thank
24 you.

25 THE COURT: Do you have any redirect?

1 MR. SOWARDS: No, Your Honor.

2 THE COURT: All right. You can step down.

3 WITNESS: Thank you, Your Honor.

4 THE COURT: How many witnesses are there going to
5 be?

6 MR. SOWARDS: Your Honor, we have from the State
7 Deputy Alexander and then Detective Plyler; and that will
8 be it for us. So two additional witnesses.

9 THE COURT: Is it all new material -- or we are not
10 just going to hash over two hours of what we just did?

11 MR. DAVIS: That was the primary defense, Your
12 Honor.

13 THE COURT: All right. Well, why don't we take a
14 break until 2:15 and resume.

15 MR. DAVIS: Yes, sir.

16 (WHEREUPON, break was had 1:36 p.m. for lunch.)

17 (Resume following lunch break.)

18 MS. FRIERSON: The State calls Detective Alexander.

19 (WHEREUPON, the witness comes forward)

20 (WHEREUPON, the witness is duly sworn)

21 CLERK OF COURT: Have a seat and state your full
22 name and spell your last name for the record.

23 THE WITNESS: Julius Dwayne Alexander,
24 A-L-E-X-A-N-D-E-R.

25 MS. FRIERSON: Thank you. May it please the Court,

1 Your Honor.

2 THE COURT: All right.

3 JULIUS ALEXANDER, being first duly sworn, testified as
4 follows:

5 **DIRECT EXAMINATION BY MR. SOWARDS OF JULIUS ALEXANDER:**

6 Q. Detective Alexander, could you please tell the court
7 what your current occupation is and who you work for?

8 A. I work with the Charleston County Sheriff's Office
9 as a major violent crimes detective.

10 Q. And how long have you worked there?

11 A. Since last November it's been ten years.

12 Q. Have you worked in any other units?

13 A. No, ma'am. Just patrol before, yeah.

14 Q. And what was your assignment back on October -- in
15 October of 2010?

16 A. I was assigned to B Squad, the West Ashley area.

17 Q. And was that ---

18 A. On patrol team.

19 Q. Oh, excuse me. I'm sorry. Did you say patrol?

20 A. Patrol. Yes.

21 Q. Were you dispatched to a call that day at [REDACTED] Old
22 Fort Avenue?

23 A. Yes, ma'am, I was.

24 Q. Do you recall what kind of call it was?

25 A. It was a heated domestic.

1 Q. Now, as a patrol deputy do you respond differently
2 to different types of calls for service?

3 A. Yes, ma'am.

4 Q. What would you do differently responding to a heated
5 domestic?

6 A. Basically try to get there as quickly as possible to
7 eliminate any threats, try to locate any victims,
8 witnesses, suspects, to determine actually what happened
9 and try to render any aid if there's anybody hurt.

10 Q. Is it fair to say that it's one of the more
11 dangerous calls that you respond to?

12 A. Definitely. I think it's the number one cop killer.

13 Q. Now, what is protocol, let's say, in coming on scene
14 to something like that, a domestic call?

15 A. I'm sorry, can you say that again?

16 Q. What would be the protocol as you arrive on scene
17 for something like that?

18 A. Basically you would check in with dispatch over the
19 radio advising them that you're on the scene. You would
20 try to make your way up to the area or facility and try
21 to make contact with anyone at the residence.

22 Q. Do you recall having a lot of information going into
23 this call?

24 A. We did not have a lot of information. I believe we
25 only received a 9-1-1 call from a cell phone and that it

1 was -- the caller name was Tamika Wilson, if I recall.

2 Q. Was the call dispatched as in progress?

3 A. Yes, I believe so.

4 Q. And did you have any information on where she was
5 located?

6 A. She was supposedly hidden in the bathroom of the
7 residence trying to get away from the spouse or
8 boyfriend.

9 Q. So as far as the information you had, they were both
10 still on the scene when the call was made?

11 A. Yes, ma'am.

12 Q. Were you the only deputy that was dispatched?

13 A. No, ma'am. Jason Bowen he went over with me.

14 Q. And the only information you had was what was just
15 relayed?

16 A. Yes, ma'am.

17 Q. Did you have computers in your car at the time?

18 A. No, ma'am.

19 Q. So you only knew what dispatch relayed to you?

20 A. Yes, ma'am. Correct.

21 Q. Not what was coming up on a screen or anything else?

22 A. No, ma'am.

23 Q. In your experience as a deputy and your time on the
24 road, does dispatch try to verify information from the
25 caller and provide it to you?

1 A. Yes, they do to the best of their ability.

2 Q. And so did you have any information on the caller's
3 location other than where you were dispatched to?

4 A. No, ma'am.

5 Q. What about did you have any information on whether
6 the caller was still on the line or had been
7 disconnected?

8 A. I believe they stated that the caller was
9 disconnected and they were unable to reconnect.

10 Q. And is there any significance to you as a patrol
11 deputy to them not being able to get her back on the
12 line?

13 A. Yes.

14 Q. And what is that significance?

15 A. Basically something is happening where she could
16 possibly be harmed or tied up or even death at that
17 point.

18 Q. Would you say that's a red flag?

19 A. Yeah, it's definitely a red flag.

20 Q. Now, when you arrived on the scene, can you tell us
21 a little bit about your initial observations?

22 A. I believe there was a vehicle in the driveway. And
23 as we got closer to the residence we saw the front door;
24 and it had a deadbolt on it, and it didn't have a knob.

25 It was kind of weird. To me it was like maybe they

1 didn't use that door much.

2 Q. Did you see anybody or hear anything?

3 A. Didn't hear anybody, didn't see anybody, other than
4 Jason Bowen.

5 Q. Did you locate any other doors?

6 A. Yes. I went to -- towards the -- around the right
7 side of the residence, towards the back where there was a
8 sliding glass door that was slightly cracked open.

9 Q. And was that significant to you?

10 A. Definitely.

11 Q. And tell us why.

12 A. I mean, you have to add everything up. From the
13 9-1-1 call, a female is hiding herself in the bathroom
14 getting away from her husband, back door is open. Maybe
15 think -- made me think, okay, there's -- we need to get
16 in there and see what's going on or

17 Q. And so what did y'all do next?

18 A. I put it over the radio that we had an open door and
19 I let Jason Bowen know to come around back.

20 Q. And did you ask the dispatcher to do anything with
21 the radio?

22 A. I asked him to put the radio in emergency radio
23 status, which is a status that it only allows the deputy
24 on that location to be able to communicate directly with
25 dispatch. And the channel marker lets the other deputies

1 know that there's an emergency at a specific address.

2 And let them know not to speak on the radio.

3 Q. And by channel marker are you referring to the
4 beeps?

5 A. Yeah, the beeps.

6 Q. And so -- because at any given time there's a lot
7 going on on the radio?

8 A. Uh-huh.

9 Q. So is that beep meant to kind of alert everybody ---

10 A. It's to alert everybody to us.

11 Q. So in case they don't hear what's going on before or
12 after, they know ---

13 A. Yes.

14 Q. --- if they're not the person that put it in the
15 emergency mode they cannot talk?

16 A. Yes.

17 Q. And why would you put it into emergency status?

18 A. For safety reasons. Just in case, you know, we're
19 inside of the residence, we get in an encounter with
20 someone or we get into a fight with anyone, we want to be
21 able to get on the radio quickly without someone else
22 tying up the radio.

23 Q. And you said going into the residence. What was the
24 purpose of going into the residence?

25 A. To check the safety of the victim and any other

1 persons that were potentially in the house.

2 Q. Could that have been the apprehension of a suspect?

3 A. Yes.

4 Q. Or rendering aid to a victim?

5 A. Yes.

6 Q. Was your primary purpose in entering to search for
7 anything other than a person?

8 A. No, it was just a protective sweep.

9 Q. Did you locate anyone inside?

10 A. No.

11 Q. How long would you say you were in the residence?

12 A. It was definitely minutes. Probably closer to four
13 minutes.

14 Q. You mentioned you didn't locate anyone, but did you
15 locate anything in the residence that was of significance
16 to you as a law enforcement officer?

17 A. Yes. Located some what we believed was a powder --
18 a white-powder substance in the master bathroom. It was
19 right next to a scale and a razor.

20 We potentially believed that it was drugs, illegal
21 drugs. Located some guns under the bed in the master
22 bedroom as well as some loose money that was on top of
23 the safe. I think it was like fresh twenty-dollar bills.

24 Q. And did you open any cabinets?

25 A. No.

1 Q. Did you open any closets?

2 A. Only where persons can hide or potentially be.

3 Q. And is that what a protective sweep is?

4 A. Yes.

5 Q. So none of the items that you saw were because you
6 opened any closed containers or cabinets?

7 A. It was basically areas where people can be.

8 Q. Now, was the safe -- you mentioned a safe. Was
9 there money just like lying around?

10 A. There was like -- from what I can recall it was like
11 loose twenty-dollar bills I believe was on top of the
12 safe. And then there was a bag, a black bag of money as
13 well.

14 Q. So once your primary purposes of either apprehending
15 a suspect or looking for a victim is done and you see
16 these things, what is your next step?

17 A. Basically, we called our supervisor, who was Nikki
18 York at the time, but now is Nikki Monese. And she came
19 on the scene. We briefed her on what was going on.

20 She felt the need to test what we believed was
21 cocaine on the bathroom sink; and it came back positive,
22 presumptively positive.

23 Q. So do you as a patrol deputy follow-up with that
24 call?

25 A. At that point in time she made the decision to call

1 our metro narcotics unit. They arrived on the scene and
2 basically took over the scene and executed a search
3 warrant later.

4 MS. FRIERSON: Court's indulgence, Your Honor.

5 Q. I have no further questions, Detective Alexander.
6 Please answer any the defense may have.

7 A. Thank you.

8 **CROSS-EXAMINATION BY MR. DAVIS OF JULIUS ALEXANDER:**

9 Q. It's detective now, right?

10 A. Yes, sir.

11 Q. Okay. So Detective, back when you were dispatched
12 to this location you were Unit 254?

13 A. Yes, sir.

14 Q. Still are?

15 A. Well, I'm 286 now.

16 Q. Okay. You arrived about the same time that Deputy
17 Bowen did?

18 A. Yes, sir.

19 Q. Y'all approached the house in a manner called
20 contact and cover. Are you familiar with that tactic?

21 A. Yes.

22 Q. You were the cover officer?

23 A. I believe so.

24 Q. So you're kind of the global look, anybody coming
25 out of the house, anybody coming onto the scene, for

1 safety purposes?

2 A. And Jason Bowen's back.

3 Q. And, yes, and for his back. Do you recall this
4 house sat back from the street a ways and had kind of a
5 decent sized front yard?

6 A. It's a little bit of a distance.

7 Q. And you've already said that a domestic dispute, a
8 heated domestic, is what the dispatch told you. Your
9 senses are heightened. You've testified that this type
10 of call is the number one cause of death in the line of
11 duty, right?

12 A. Yes, sir.

13 Q. So you would have seen the ADT Security sign staked
14 in the front yard?

15 A. I don't recall.

16 Q. Do you recall seeing a truck in the driveway?

17 A. I believe I do recall seeing a vehicle in the
18 driveway.

19 Q. And that was the driveway on the right-hand side?

20 A. I believe so.

21 Q. Okay. You first approached the front door?

22 A. Yes, sir.

23 Q. But, again, in your capacity as cover, you would
24 have hung back a little bit?

25 A. No, we would have been walking close to each other.

1 Q. Okay. So did you or Detective Bowen knock on the
2 door?

3 A. Yes.

4 Q. I'm sorry, did you or Detective Bowen knock?

5 A. I believe it was Detective Bowen.

6 Q. Okay. Multiple times?

7 A. Yes.

8 Q. No one answered?

9 A. No.

10 Q. Didn't hear any voices?

11 A. No.

12 Q. Didn't hear anybody run around or scampering around
13 or anything like that?

14 A. No, sir.

15 Q. You didn't observe the front door to be damaged?

16 A. No, sir.

17 Q. Windows to be busted out, nothing like that?

18 A. No, sir.

19 Q. You all split up to walk the perimeter of the house;
20 is that right?

21 A. Yes, sir.

22 Q. Okay. And when you arrived to the back of the house
23 that is where you see the sliding glass door?

24 A. Yes, sir.

25 Q. Between the front of the house and when you get to

1 the front door and when you get to the sliding glass
2 door, did you notice any other doors?

3 A. There may have been a side door.

4 Q. Okay. Not sure?

5 A. I believe there may have been a side door.

6 Q. Okay. Have you had the recent opportunity to listen
7 to the dispatch tape?

8 A. No, sir.

9 MR. DAVIS: I'm not going to play the whole thing,
10 Your Honor; but I am going to go to a particular thing
11 that has been already admitted into evidence.

12 Q. If the recording indicates, if the quote was, 254,
13 133, come around back, I've got an open sliding glass
14 door, does that sound like what you would have radioed to
15 both dispatch and to 133?

16 A. I believe so.

17 Q. And 133 is Bowen?

18 A. Yes.

19 Q. So he's not with you when you find the open door ---

20 A. No.

21 Q. --- because you call him around there?

22 A. Yes.

23 MR. DAVIS: May I approach the witness, Your Honor?

24 THE COURT: (Nods affirmatively)

25 Q. I'm going to show you what's been admitted as

1 State's Exhibit Number 5. Take a second and look at
2 that.

3 A. This is the back sliding glass door that was open.

4 Q. Now, it's open in that picture, right? But it's
5 fully open?

6 A. Yeah, it's fully open.

7 Q. That's not how you saw it?

8 A. No.

9 Q. Okay. Can you tell Judge Young from fully open to
10 fully shut, where in between there did you observe when
11 you got there? What did it look like?

12 A. It was like a crack probably half an inch or so that
13 you could see straight in from the outside.

14 Q. So it wasn't that it was unlocked, there was a gap;
15 it was not shut; it was opened?

16 A. It was an open door.

17 Q. Okay. Bowen gets with you?

18 A. Uh-huh.

19 Q. There's a crack in the door; you have got all of the
20 other stuff that you observed and dispatch has told you.
21 What do you recall the next thing y'all did?

22 A. I believe we put the radio in emergency status. And
23 once that was done we entered into the residence
24 tactically.

25 Q. What does it mean when you say tactically? Can you

1 tell Judge Young what that means?

2 A. Basically when we enter into a residence we call out
3 and say Charleston County Sheriff's Office. So it lets
4 people know who stays there, if someone is in there, that
5 law enforcement is coming in and there is no need to be,
6 you know, on the defense.

7 Q. Prior to that, at any point, front door, side of the
8 house, whatever, had you ever yelled out who you were?

9 A. No.

10 Q. Now you've got an open door though, right?

11 A. Uh-huh.

12 Q. So you're trying to project into the house, hey,
13 Sheriff's Office; ---

14 A. Yes.

15 Q. --- right?

16 Did this earlier. Could you in real time
17 demonstrate what you would have yelled into the house?

18 A. Charleston County Sheriff's Office. If you're in
19 the house, you know, let us know. Something to that, you
20 know.

21 Q. You got no response?

22 A. No response.

23 Q. Heard nothing again, no voices, no footsteps?

24 A. No, sir.

25 Q. And actually that could cut either way; that could

1 either mean that it is safe, or it might be more
2 dangerous since you're not hearing anything; right?

3 A. It's a possibility.

4 Q. Okay. While you're standing right there you don't
5 hear an alarm going off, do you; an audible alarm?

6 A. I don't recall hearing an audible alarm.

7 Q. Okay. So then you enter, correct?

8 A. Yes, sir.

9 Q. Side-by-side, one at a time?

10 A. One behind the other.

11 Q. Okay. Do you recall who went in first?

12 A. I don't recall.

13 Q. Okay. It would be important to stay close together,
14 though, right?

15 A. Yes, because we're clearing particular rooms
16 together at a time before we move forward.

17 Q. Okay. In looking at the photo you have -- you still
18 have that there, right?

19 A. Yes, sir.

20 Q. Okay. Do you recall when you went in that door it
21 kind of is a bit of an open room right there in front of
22 you? Do you recall that?

23 A. I believe it is open where you can see from the back
24 door to the front door.

25 Q. Okay. In the line from the back to the front door,

1 do you remember there being a wall but you could walk on
2 either side of it?

3 A. I'm probably sure. I'm not sure of the exact layout
4 unless you put it in front of me.

5 Q. Okay. Once you physically are inside, you have just
6 come in that back door; do you hear an alarm go off then?

7 A. I don't recall that I did.

8 Q. Okay. Now, in sweeping the house would you have
9 just gone straight in the middle of the house or would
10 you have hugged the wall to the right and kind of gone
11 around that way?

12 A. Well, basically when we, you know, check rooms or
13 buildings tactically we're doing quick peeks and, you
14 know, might have had a flash light to look so we won't
15 get our heads, you know, shot or whatever.

16 Q. Now, this is eleven-something in the morning though,
17 right?

18 A. Okay.

19 Q. Do you recall?

20 A. I believe -- yes.

21 Q. So you didn't need to use flashlights?

22 A. Well, there's dark rooms in the house even
23 though ---

24 Q. Fair enough.

25 A. --- it's lit outside.

1 Q. Fair enough. So do you recall that you went to the
2 right when you came in?

3 A. Sir, I don't recall like the layout of the house.
4 Do you have it in front of you? Maybe I can ---

5 Q. Let me try to walk it through you in your mind's
6 eye, okay?

7 A. Okay.

8 Q. Do you remember to the right there being a short
9 hallway with two bedrooms on either side and a bathroom
10 straight back to the right; do you recall that?

11 A. I can't recall.

12 Q. Okay. If there were two bedrooms on the right-hand
13 -- from the back, on the right-hand side of the house, if
14 there were two bedrooms and a bathroom would you have
15 gone in there?

16 THE COURT: He said he didn't recall.

17 MR. DAVIS: Okay.

18 THE COURT: I'm not going to let you just ask
19 hypotheticals.

20 Q. You would not be able to tell Judge Young today the
21 path you took of this protective sweep?

22 A. Sir, it's based on what is a necessarily more of a
23 threat than another threat. Like, for example, if you
24 have an open area in the house, you're going to take that
25 area first before you go behind a closed door.

1 Q. Okay. So, again, you would not be able to tell
2 Judge Young today the route you took on this
3 particular ---

4 A. I don't recall, sir.

5 Q. Okay. The house was empty?

6 A. Yes, sir.

7 Q. Your goals of helping the caller or some victim,
8 finding a suspect or perpetrator, and protecting you and
9 Officer Bowen -- Deputy Bowen, the goals were met once
10 attempted?

11 A. Not in that order; but, yes.

12 Q. Fair enough. No broken furniture?

13 A. Not that I recall.

14 Q. No blood?

15 A. Not that I recall.

16 Q. And no one home?

17 A. Yes, sir. No one was home.

18 Q. You did not do an incident report on this incident?

19 A. I didn't. Jason Bowen, we talked about what had
20 happened; and basically his report was an exact depiction
21 of what actually happened and we agreed that that would
22 suffice.

23 Q. You didn't do a report on this case?

24 A. You want me to answer it again or ---

25 Q. And it seems to be a yes or no ---

- 1 A. I said ---
- 2 Q. --- question.
- 3 A. I said no, and I explained why.
- 4 Q. Okay. I didn't hear -- I didn't hear the no. While
- 5 you're outside you don't recall hearing an alarm going
- 6 off. While you're inside, did you hear an alarm going
- 7 off?
- 8 A. Sir, I believe you asked me that question; and I
- 9 gave you the answer that I don't recall hearing an alarm
- 10 going off.
- 11 Q. If it had gone off twice would you remember that?
- 12 A. Sir, I don't recall hearing an alarm.
- 13 Q. Do you recall the phone ringing while you were --
- 14 the landline ringing while you were in the house?
- 15 A. I believe so.
- 16 Q. Do you recall it ringing four times?
- 17 A. Sir, I don't recall how many times the phone rung.
- 18 Q. Can you tell Judge Young where you found the cash?
- 19 A. I believe in a master bedroom.
- 20 Q. Laid out on the floor.
- 21 A. (Witness pauses)
- 22 Q. Laid out on the floor?
- 23 A. It was some on top of the safe, and then there was
- 24 some in a black bag.
- 25 Q. And did you find -- let me -- I apologize. You and

1 Deputy Bowen would have been right beside each other
2 doing the sweep, right?

3 A. Yes.

4 Q. So -- I'm sorry?

5 A. Yes.

6 Q. Okay. So you found the cash simultaneously in plain
7 view?

8 A. Plain view.

9 Q. You found the guns. Can you tell Judge Young where
10 you found the guns?

11 A. They were under the bed in the master bedroom.

12 Q. Okay. The bed was off the floor or the bed was on
13 the floor?

14 A. The bed was off the floor.

15 Q. Okay. And did you have -- could you see them right
16 away, or did you have to move one of those little flaps
17 to see?

18 A. I believe you could see under there. I don't think
19 there was like a sheet skirt or anything like that over
20 it.

21 Q. Okay. So when you were sweeping that room, you saw
22 them?

23 A. When we checked under the bed for -- which was a
24 place that a person can hide, that's when we saw
25 them, ---

- 1 Q. Okay.
- 2 A. --- during the sweep.
- 3 Q. Okay. So didn't have to move anything, but you got
4 down to look?
- 5 A. Sir, I looked -- I bent down and I looked under the
6 bed.
- 7 Q. And then you saw white powder in -- on the bathroom
8 counter; is that right?
- 9 A. Yes, sir, next to a scale.
- 10 Q. From looking at it is there a way to note the powder
11 -- what the powder is just by looking at it?
- 12 A. No, sir. That's why we did a field test on it.
- 13 Q. You tested it?
- 14 A. I believe Sergeant at the time, Nikki York, tested
15 it.
- 16 Q. Okay.
- 17 A. But we were all present while she did.
- 18 Q. Do you happen to know Dispatcher or Operator
19 Patricia Stanley? Do you know her?
- 20 A. No, sir.
- 21 Q. All right. You've had situations other than this
22 incident where you've been called out and you've had to
23 enter a residence by force, right?
- 24 A. I'm trying to remember. I've been in law
25 enforcement for about seventeen years now. And I can't

1 recall an exact depiction of what you're asking about.

2 Q. Okay. In this case, given the totality of
3 everything you had about the potential, ongoing, heated
4 domestic, if you hadn't have found that open back door
5 you would have gone in any way for security and safety;
6 right?

7 A. That would be the supervisor's determination.

8 Q. That would be?

9 A. Sergeant Nikki York at the time.

10 Q. But you found it open and you went in without a
11 warrant, right?

12 A. Yes, sir, due to the situation.

13 Q. Do you recall back then that Unit 273 was Deputy
14 Riley?

15 A. I believe so, yes.

16 Q. Was he with y'all?

17 A. No. He arrived later.

18 Q. Okay. He arrived later and came in the house, or do
19 you recall?

20 A. He -- I don't believe he came into the house at all.

21 MR. DAVIS: If I could have just a moment.

22 (WHEREUPON, Mr. Davis confers with Mr. Summa)

23 MR. DAVIS: Thank you, Your Honor.

24 Q. Thank you, Detective. No other questions.

25 A. Thank you.

1 MS. FRIERSON: We have no redirect, Your Honor.

2 THE COURT: All right. You may step down.

3 THE WITNESS: Thank you. Would you like the exhibit
4 back, sir?

5 COURT REPORTER: I'll take it. Thank you.

6 THE WITNESS: Thank you, ma'am.

7 COURT REPORTER: Uh-huh.

8 (WHEREUPON, witness steps down)

9 THE COURT: Next witness.

10 MR. SOWARDS: Thank you, Your Honor. The State
11 calls Detective Thomas Plyler.

12 (WHEREUPON, the witness comes forward)

13 (WHEREUPON, the witness is duly sworn)

14 CLERK OF COURT: Please state your first and last
15 name and spell your last name loud and clearly for the
16 record.

17 THE WITNESS: Thomas Plyler, P-L-Y-L-E-R.

18 THOMAS PLYLER, being first duly sworn, testified as
19 follows:

20 **DIRECT EXAMINATION BY MR. SOWARDS OF THOMAS PLYLER:**

21 Q. Thank you, Detective Plyler. Did you take part in
22 the investigation of this case, the State versus Therron
23 Richardson?

24 A. Yes, sir, I did.

25 Q. And what was your role in the investigation of this

1 case?

2 A. I was the on-call narcotics detective for that
3 particular week. I received a phone call from my
4 supervisor and he informed me to reach out to the
5 deputies on the scene, and which I did.

6 Q. And did you obtain a search warrant for [REDACTED] Old
7 Fort Avenue in Charleston County as part of your
8 involvement in this case?

9 A. Yes, sir, I did.

10 Q. And how did you prepare that search warrant?

11 A. I left my residence once I spoke with my supervisor,
12 and I headed to my office. That's where my desktop and
13 our equipment to execute search warrants are at. I knew
14 I had to grab that. So I went to my desk and reached out
15 to Deputy Bowen and prepared the affidavit on my
16 computer, printed it out, and reached out to Judge
17 Koontz.

18 MR. SOWARDS: May I approach the witness, Your
19 Honor?

20 THE COURT: You may.

21 Q. I'm handing you, Detective Plyler, what's been
22 marked for I.D. as State's Exhibit 1. Do you recognize
23 that?

24 A. Yes, sir. This is a copy of the affidavit that I
25 prepared.

1 Q. And is that in the same condition or representative
2 of what you prepared back in 2010?

3 A. Yes, sir, it is.

4 MR. SOWARDS: Your Honor, at this point the State
5 would seek to admit what's been marked as State's 1 into
6 evidence.

7 MR. SUMMA: The only exception, Judge, is it's the
8 cover sheet, the affidavit, and the return; it's multiple
9 pages. But we have no objection.

10 MR. SOWARDS: And, Your Honor, I have a copy for you
11 if you'd like.

12 THE COURT: Sure.

13 (WHEREUPON, State's Exhibit Number 1, probable cause
14 affidavit, admitted into evidence)

15 Q. And Detective Plyler, you testified that you
16 prepared the probable cause affidavit in this case?

17 A. Yes, sir.

18 Q. And, again, how did you obtain the information that
19 went in that probable cause affidavit?

20 A. Well, once I got to my desk and had the ability to
21 write stuff down and type I reached out to Deputy Bowen
22 on the radio and advised him -- or asked him if he could
23 call me at my desk number.

24 Q. And, just again for the record, what was the subject
25 property for this search warrant?

1 A. [REDACTED] Old Fort.

2 Q. And did you present that search warrant to a
3 magistrate after you prepared it?

4 A. I did. Yes, sir.

5 Q. And did you offer any supplemental testimony to the
6 magistrate?

7 A. No, sir. Usually, typically if a judge asks
8 additional questions I note it in my report. My report
9 does not reflect any questions asked, so I'm confident
10 that there were no questions or answers or any other
11 additional info other than this affidavit presented.

12 Q. And did you have any personal knowledge of what
13 transpired with Deputy Bowen and Deputy Alexander?

14 A. Just ---

15 Q. Were you present?

16 A. I'm sorry?

17 Q. Were you present?

18 A. No, sir. Just all the information I got was over
19 the telephone.

20 Q. And was this search warrant executed?

21 A. Yes, sir, it was.

22 Q. And when was it executed?

23 A. I probably got to the residence around 14:00 hours,
24 which is two o'clock in the afternoon. I did my walk
25 through. I confirmed what Deputy Bowen told me over the

1 phone to be where and what it was. And then executed
2 probably around 14:10, 14:12 hours, which is 2:10, 2:12,
3 in the afternoon.

4 Q. And was a return ---

5 A. Yes, sir, it was.

6 Q. --- completed in this case?

7 A. Yes, sir.

8 Q. And was that submitted to Judge Koontz?

9 A. Yes, sir. On October 19th.

10 MR. SOWARDS: Beg the Court's indulgence.

11 No further questions from the State at this time.

12 **CROSS-EXAMINATION BY MR. SUMMA OF THOMAS PLYLER:**

13 Q. Just really briefly, Detective Plyler. So you were
14 not at the scene obviously when ---

15 A. Not until I arrived with the signed search warrant,
16 correct.

17 Q. So you got all of your information from somebody who
18 was there ---

19 A. Correct.

20 Q. --- at the time?

21 A. Yes, sir.

22 Q. Okay. That information was relayed to you by
23 Detective Bowen, right; or Deputy Bowen at the time?

24 A. Yes, sir.

25 Q. Okay. And he told you a number of things obviously,

1 but one of those was that a substance on scene field
2 tested positive presumptive for cocaine; is that correct?

3 A. Yes, sir.

4 Q. Okay. And that was one of the things you put in
5 your affidavit; is that right?

6 A. Yes, sir.

7 Q. And that's one of the things you swore to when you
8 presented your affidavit to the magistrate?

9 A. Yes, sir.

10 Q. Okay. So fair enough to say the field test was
11 conducted before the warrant was signed, right?

12 A. Correct. Yes, sir. And that's probably one of the
13 questions I was asked to have done prior to typing this
14 up over the phone with Deputy Bowen.

15 Q. Thank you.

16 MR. SUMMA: Court's indulgence?

17 (WHEREUPON, pause.)

18 MR. SUMMA: No further questions, Your Honor.

19 THE COURT: Redirect?

20 MR. SOWARDS: No, Your Honor.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you, Your Honor.

23 (WHEREUPON, witness steps down)

24 THE COURT: Anything else?

25 MR. SOWARDS: No more witnesses for the State, Your

1 Honor.

2 THE COURT: Do you have any witnesses, Mr. Davis?

3 MR. DAVIS: If I could have a moment to check, Your
4 Honor. We would have two. And if I can check if they're
5 here.

6 THE COURT: All right.

7 (WHEREUPON, Mr. Davis exits the courtroom)

8 (WHEREUPON, court at ease)

9 (WHEREUPON, Mr. Davis enters the courtroom)

10 MR. DAVIS: Thank you, Your Honor. We would call
11 William Bunn, B-U-N-N. He's from -- I'm not sure if it's
12 ADT or Tyco now, but he's a representative of the
13 security company. He should be on his way in right now,
14 Judge.

15 (WHEREUPON, court at ease)

16 (WHEREUPON, the witness comes forward)

17 (WHEREUPON, the witness is duly sworn)

18 CLERK OF COURT: Please state your first and last
19 name and spell your last name loudly and clearly into the
20 microphone.

21 THE WITNESS: William Bunn, B-U-N-N.

22 WILLIAM BUNN, being first duly sworn, testified as
23 follows:

24 **DIRECT EXAMINATION BY MR. DAVIS OF WILLIAM BUNN:**

25 Q. All right. Mr. Bunn, you go by Earl?

1 A. I do.

2 Q. All right. And Earl, can you tell Judge Young where
3 you're currently employed?

4 A. ADT Security.

5 Q. And what's your job description there?

6 A. Install and service manager.

7 Q. How long you been working for them?

8 A. For the Charleston office a year.

9 Q. Now, we are here about some events from October
10 17th, 2010. Did you play an active role in that event?

11 A. No, I did not.

12 Q. Okay. But are you familiar with documents and
13 recordings that your company keeps in the normal course
14 of business?

15 A. Yes, I am.

16 Q. Have you reviewed a letter that was sent to the
17 public defender's office years ago providing certain
18 paperwork and audio files?

19 A. I did.

20 Q. Did you also have a chance to review a contract
21 relating to the address on Old Fort Avenue?

22 A. I have.

23 Q. And did you have a chance to review six tracks or
24 six different audio recordings that your company provided
25 the Public Defender's Office?

1 A. I did.

2 MR. DAVIS: You Honor, could I approach and have
3 these marked?

4 (WHEREUPON, Defendant's Exhibit Number 3, event
5 history report marked for I.D.)

6 (WHEREUPON, Defendant's Exhibit Number 4, audio
7 recording was marked for I.D.)

8 COURT REPORTER: Defendant's Number 3 and 4 marked
9 for identification.)

10 MR. DAVIS: May I approach the witness, Your Honor.

11 Q. I'm going to show you what's been marked as Defense
12 Exhibits Number 3 and 4 for identification purposes only.
13 Can you take a second; take a look at them, and I'm going
14 to have a few questions for you about them.

15 A. Okay.

16 Q. Have you had a chance to look at them?

17 A. Uh-huh.

18 Q. Okay. Three is the event history report; is that
19 right?

20 A. That's correct.

21 Q. Okay. And in general, can you briefly explain what
22 that document is to Judge Young?

23 A. These are events that came in from the alarm system
24 and the operator's actions on the events that are
25 received through the monitoring center.

1 Q. And the one sheet that we have, all of the listing
2 on that sheet appears to be October 17th of 2010?

3 A. Yes.

4 Q. And does that correspond to a contract that you had
5 with Therron Richardson?

6 A. I don't understand. Does that mean is it during the
7 time period of the contract?

8 Q. I'll ask it -- fair enough. I'll ask it in two
9 parts. Did you have a contract with a Mr. Therron
10 Richardson for ADT services?

11 A. Yes.

12 Q. Did that contract cover the time period of
13 October 17th, 2010?

14 A. Yes.

15 Q. And did the property being secured reside at [REDACTED]
16 Old Fort Avenue in Charleston?

17 A. Yes.

18 Q. And so you recognize Number 3 as a report that your
19 company keeps in the normal course of business?

20 A. Yes.

21 MR. DAVIS: We would ask that Defense Number 3 be
22 admitted into evidence.

23 MR. SOWARDS: No objection from the State, Your
24 Honor.

25 MR. DAVIS: And I have a copy for you, Your Honor.

1 THE COURT: It's admitted.

2 MR. DAVIS: Thank you, Your Honor.

3 (WHEREUPON, Defendant's Exhibit Number 3, event
4 history report, admitted into evidence)

5 Q. As to Number 4, could you tell Judge Young what
6 Number 4 is?

7 A. It's a disk of recordings that I listened to.

8 Q. Okay. And generally what do those recordings appear
9 to be when you listen to them?

10 A. An ADT operator in communication with -- sounds like
11 a police officer and it sounds like a person at the
12 premises. I think it was a Mr. Therron is what -- if I
13 remember correctly.

14 Q. Are those audio recordings the type of recordings
15 that your company keeps in the ordinary course of
16 business?

17 A. Yes.

18 Q. And you recognize them?

19 A. Yes.

20 Q. And they pertain to an incident that is represented
21 in Number 3, which is event history; correct?

22 A. That is correct.

23 MR. DAVIS: We would ask, Your Honor, that Defense
24 Number 4 be admitted into evidence.

25 MR. SOWARDS: No objection from the State, Your

1 Honor.

2 (WHEREUPON, Defendant's Exhibit Number 4, audio
3 recording, admitted into evidence)

4 Q. Based on your review of the documents to this
5 account are you able to tell Judge Young what components
6 were installed at this residence?

7 A. Repeat?

8 Q. Sure. By your review of the documents related to
9 this account ---

10 A. Okay.

11 Q. --- are you able to tell Judge Young what components
12 were installed at this residence?

13 A. Based on the contract I can.

14 Q. Okay.

15 A. Based on the contract I see one alarm touchpad,
16 two -- three door sensors, four window sensors, one
17 motion detector, one smoke detector, and one key fob
18 which is a remote.

19 Q. When you install components into a house do you
20 install components and assign specific zones to different
21 installations?

22 A. We do assign zones to specific devices in specific
23 locations of the house, yes.

24 Q. Unless you were the installer or the owner would you
25 be able to tell what zones go with what door or what

1 window?

2 A. Not without a proper zone description.

3 Q. Based on what you reviewed from eight years ago, are
4 you able to tell what zones correspond with ---

5 A. I am not.

6 Q. --- these different things? Okay. But in looking
7 at Number 3, it begins -- what is the first entry into
8 the event history for October 17th, 2010?

9 A. Zone 3, B-A-R.

10 Q. Can you tell Judge Young what that means?

11 A. It just means that a zone, Zone 3, being a device
12 that's installed, tripped, or was set off.

13 Q. And what does the BA two-way voice mean?

14 A. It means it's a way for ADT to listen into the
15 premise to see if there's anything going on at the time.

16 Q. And so just below that in fact it says, that listen
17 inactive; correct?

18 A. Correct.

19 Q. Do you see anything in the next few lines that
20 showed that that Zone 3 tripping was cleared?

21 A. I do not. I just show that it is under the comments
22 that the two-way didn't activate and then they -- then
23 they called the premise. But I do not see where it
24 restored.

25 Q. Is there a second zone that is tripped; and if so,

1 at what time?

2 A. 11:32, Zone 9.

3 Q. Other than knowing it's something different than the
4 first one, can you tell us where in the house that was?

5 A. I would have no idea.

6 Q. Did the two-way activate again?

7 A. It does state that in listen active, yes.

8 Q. And then we have commentary on the far right; is
9 that correct?

10 A. Yes.

11 Q. Does there appear to be, in your reading of this
12 report, a second tripping of Zone 9; and if so, at what
13 time?

14 A. 11:35.

15 Q. At 11:32:07 -- and these are all in the a.m.,
16 correct?

17 A. Correct.

18 Q. Okay. 11:32:07, on the far right it has a name.
19 Can you explain to Judge Young why Therron Richardson
20 would be listed there on that line?

21 A. Because he is the contact person on the call list.

22 Q. And that's showing a connected call?

23 A. It is.

24 Q. Is there an importance under that on the line that
25 has user number zero? The comment on that line, what is

1 the importance of that, audio call, DNIS, a number listed
2 and pending?

3 A. Just that Mr. Richardson just said to disregard,
4 everything is okay.

5 Q. Just below that, Shelf Number 01, Slot Number 04,
6 dial 30185, what's the importance of that?

7 A. I don't know what that importance of that is.

8 Q. Okay.

9 A. I can only state that it's an operator action.

10 Q. Okay. The next line, SW Therron Richardson, STTD,
11 disregard, STTD, everything is okay. Can you interpret
12 those abbreviations?

13 A. Just STTD to my understanding is going to be stated.

14 Q. Okay. Down at 11:36 and :58 seconds can you tell
15 Judge Young what that log-in is about?

16 A. It's an inbound call from outside our center.

17 Q. And is there anything on the notes that correspond
18 with that?

19 A. It states that there was Mr. Richardson returning a
20 call.

21 Q. Is that after the second Zone 9 tripped?

22 A. Yes.

23 Q. At 12:50, :27 seconds, can you tell the Judge the
24 importance of that line?

25 A. It's an in-bound call. It says operator 35 stated

1 open rear doors, looks like someone broke in.

2 It sounds like it's an operator from the police
3 department.

4 Q. Calling your company?

5 A. Calling my company, yes. It's an in-bound call.

6 Q. And the notes on the right is what would have been
7 relayed to your operator?

8 A. That's correct.

9 Q. Line 12:51 and :24 seconds, can you tell the
10 importance of that line?

11 A. Basically, that Deputy Brown stated that he's on --
12 I am assuming it is a he -- but the person is on the
13 scene.

14 Q. And that's ---

15 A. Deputy ---

16 Q. Bowen?

17 A. Brown. It says Deputy -- it says Deputy Brown
18 stated on the scene. Police department, which is the
19 next line down.

20 Q. And then the final line which is at 12:53:30, what's
21 the importance of that line?

22 A. Operator 30 stated that there's an officer on the
23 scene and disregard any further contact with Deputy
24 Brown. And that's stated he will. But I don't know what
25 the rest of it is. /

1 Q. When a zone is triggered or tripped -- was this
2 installed with an audible alarm?

3 A. Typically, yes.

4 Q. Can you tell in this case whether it was or not?

5 A. I cannot.

6 Q. If it is the type that has an audible alarm is it
7 something that would be -- be able to be heard outside of
8 the residence as well as inside?

9 A. It really depends on where the system is installed.

10 MR. DAVIS: Judge, I'd like to publish -- there are
11 six short tracks. And if I can get that exhibit from the
12 witness.

13 (WHEREUPON, pause for audio setup)

14 MR. DAVIS: This is track two.

15 (WHEREUPON, pause for audio setup)

16 MR. DAVIS: Your Honor, if we can have a moment. I
17 apologize. He just listened to this in our office and it
18 played accurately. We're working on it. We'll try to
19 get it for you in just a moment.

20 THE COURT: I'll be back in five to see if you've
21 got it working.

22 MR. DAVIS: Thank you, Your Honor.

23 (WHEREUPON, short break)

24 THE COURT: Is it working?

25 MR. DAVIS: From help with the Solicitor's, yes,

1 Your Honor.

2 (WHEREUPON, Defendant's Exhibit Number 4, audio
3 recordings, published)

4 Q. Okay. Mr. Bunn, we heard one, two, three, four,
5 five, six different calls there in sequence there; okay?
6 If I referred you to 11:31 and :23 seconds would that be
7 the first call where the Lazy Man Lawn answering machine
8 picked up?

9 A. Yes.

10 Q. I referred you to 11:32 and :07 seconds. That is a
11 call to the customer?

12 A. Correct.

13 Q. 11:33 -- and that's -- so that's the second track we
14 listened to?

15 A. That's correct.

16 Q. Third track we listened to 11:33:05 is a call from
17 what appears to be the customer?

18 A. That is correct.

19 Q. And that's the third track we listened to?

20 A. (No response)

21 Q. The fourth track we listened to, 12:50 - and let's
22 see here - :27 seconds?

23 A. Right.

24 Q. That's a call from Operator 35, county operator?

25 A. Correct.

1 Q. 12:51:08 is the next track where we -- an officer is
2 asking for a lot of information?

3 A. Correct.

4 Q. And then a final track is at 12:53:30 where your
5 operator is calling to confirm that that's really a
6 police officer?

7 A. Correct.

8 Q. The last thing on the event history report, the
9 times that it shows a Number 9 trigger, that was twice;
10 correct?

11 A. Correct.

12 Q. Okay. I am going to point you to -- if you will
13 look down the column under event. Do you see the first
14 CIR 132?

15 A. Yes.

16 Q. And that's at 11:35:35?

17 A. Right.

18 Q. Zone 9?

19 A. Uh-huh.

20 Q. It says restore interior.

21 A. Uh-huh.

22 Q. A few lines below that we have the exact same thing
23 at 11:38:47, correct?

24 A. Uh-huh.

25 Q. Zone 9, right?

1 A. Yes.

2 Q. Restore interior, right?

3 A. Yes.

4 Q. Can you -- does the fact that it's restore interior,
5 does that suggest that it's an interior motion sensor ---

6 A. In the interior, yes.

7 Q. Mr. Bunn, no other questions. Thank you.

8 MR. SOWARDS: Just very briefly, Your Honor.

9 **CROSS-EXAMINATION BY MR. SOWARDS OF WILLIAM BUNN:**

10 Q. Mr. Bunn, thank you for being here. I just have one
11 question for you. It's true that your testimony here
12 today is that you can't tell based on what you have in
13 front of you whether this house was equipped with an
14 audible alarm; is that correct?

15 A. That's correct.

16 MR. SOWARDS: Thank you, Your Honor. And thank you.

17 THE COURT: Redirect?

18 MR. DAVIS: Nothing on redirect.

19 THE COURT: You may step down.

20 (WHEREUPON, witness steps down)

21 MR. DAVIS: If I can check to see if our last
22 witness is here, Your Honor, if I may step out.

23 (WHEREUPON, Mr. Davis exits/enters courtroom)

24 MR. DAVIS: Your Honor, may we approach?

25 THE COURT: Yes.

1 (WHEREUPON, an off-the-record bench conference is
2 held)

3 THE COURT: I'll be back in five minutes.

4 (WHEREUPON, short break)

5 THE COURT: Call your next witness.

6 MR. DAVIS: Thank you, Your Honor. We'd call Ms.
7 Cousino to the stand.

8 (WHEREUPON, the witness comes forward)

9 (WHEREUPON, the witness is duly sworn)

10 CLERK OF COURT: If you would just state your first
11 and last name and spell your last loudly and clearly for
12 the record.

13 THE WITNESS: Miriam Cousino, C-O-U-S-I-N-O.
14 MARIAM COUSINO, being first duly sworn, testified as
15 follows:

16 **DIRECT EXAMINATION BY MR. DAVIS OF MIRIAM COUSINO:**

17 Q. Can you tell Judge Young where you are currently
18 employed?

19 A. Charleston County Consolidated Dispatch.

20 Q. Were you employed in that capacity on October 17th,
21 2010?

22 A. Yes, sir.

23 Q. You've testified in a previous trial in this same
24 incident, have you not?

25 A. Yes, sir.

1 Q. I'm going to cut directly to some important things.
2 When you are at your station or were on October 17th of
3 2010, when a call comes in -- I want to specifically talk
4 about the screen that's able to show where the call is
5 coming from, okay?

6 A. All right.

7 Q. Can you describe that to Judge Young what you're
8 able to see?

9 A. The phone screen itself will actually come up with a
10 location if the cell phone is faced to. It will say an
11 approximate area of where the caller is actually at. And
12 it usually -- if it doesn't have GPS it will say the cell
13 phone tower in the area that it's at or it will give a
14 street or a block range where the caller is calling from.

15 Q. That's in real time?

16 A. Yes.

17 MR. DAVIS: May I approach the witness, Your Honor?

18 Q. I'm going to show you what's been admitted into
19 evidence as State's Exhibit Number 4. It's multiple
20 pages. Take your time and look at it. Let me know when
21 you've reviewed it.

22 A. (Reviews document)

23 MR. DAVIS: Your Honor, do you have a copy?

24 THE COURT: No.

25 (WHEREUPON, counsel hands document to court)

- 1 THE COURT: Oh, I do.
- 2 MR. DAVIS: Okay.
- 3 Q. Have you had a chance to look at it?
- 4 A. Yes, sir.
- 5 Q. Okay. I'm going to direct your attention to Page 3.
- 6 About halfway down the page there's a second column. It
- 7 says performed by. Do you see that?
- 8 A. Yes, sir.
- 9 Q. Okay. And there's three initials underneath that.
- 10 And it's MJC, correct?
- 11 A. Yes, sir.
- 12 Q. That's you?
- 13 A. Yes, it is.
- 14 Q. Okay. So any place we see MJC you were actually
- 15 inputting information in -- you are keying in
- 16 information; is that accurate?
- 17 A. Yes.
- 18 Q. Okay. Below that we see SYS. That's system; is
- 19 that right?
- 20 A. Yes.
- 21 Q. Automated, ---
- 22 A. Yes.
- 23 Q. --- correct? Let me flip you to the next page, Page
- 24 4. There's your initials, and then if we scan straight
- 25 on down that column we see PES?

1 A. Yes.

2 Q. Patricia Stanley?

3 A. Yes.

4 Q. Is that right?

5 A. Yes, it is.

6 Q. She's kind of got a heavy New York accent?

7 A. Heavy northern, yes.

8 Q. A northern accent. Okay. Do you recall if she was
9 Operator 35?

10 A. I believe that's still her operator number. So,
11 yes.

12 Q. Okay. And, again, it's her initials; that's
13 something she is keying in?

14 A. Yes.

15 Q. Okay. Let's go back to the beginning of the event,
16 for lack of a better term, there on Page 3. Those first
17 six lines that you would have keyed in ---

18 A. Uh-huh.

19 Q. --- can you explain those to Judge Young?

20 A. Where it says per case, entry complete, that?

21 Q. Yes.

22 A. Okay. That is where some of the automated
23 information, also information that I put in. It was
24 based on the address she gave me and also the phone
25 number that came up when she called. Which in this case

1 started with a 9-1-1 area code. It was disconnected.

2 Q. Okay. So the location, is that something you keyed
3 in or it showed up automatically?

4 A. That is something I keyed in.

5 Q. Okay. Then the callback number. Can you explain
6 what -- we've got 9-1-1 but then it seems to be a full
7 number there?

8 A. It's a disconnected cell phone. It still has 9-1-1
9 call-out capability, even if they cannot call a
10 generalized number. So that is the number that was
11 assigned to it, even though it's random and we can't call
12 it back.

13 Q. To really dumb this down. It's a cell phone that
14 would not be able to call anybody else but the 9-1-1
15 capability remains active?

16 A. Yes.

17 Q. The next line, colors, name, that's something you
18 input?

19 A. Yes.

20 Q. The problem description. Is that something you
21 input?

22 A. Yes, sir.

23 Q. And can you just decipher that abbreviations there?

24 A. I'm sorry. Domestic between girlfriend and
25 boyfriend.

1 Q. Then chief complaint underneath that, there is a
2 number. Can you explain that?

3 A. That is the pro QA codes, the line of questioning
4 that we do. It's the domestic protocol for us.

5 Q. So 114 is a code to trigger you to ask questions
6 about a domestic ---

7 A. Yes.

8 Q. Okay. Now, the second screen we talked about a
9 second ago where it gives you real time a cell tower or
10 an actual location, is there a way to track that on this
11 document?

12 A. Not on this document, not that I'm showing.

13 Q. Can you speak up just a bit? I'm sorry.

14 A. Not that I'm seeing on this document.

15 Q. Okay. Do you recall when you were looking at the
16 screen actively - and it's been eight years ago, but do
17 you have a recollection of where the incoming 9-1-1 call
18 was showing up on your map?

19 A. Specific area, no, other than it was hitting a cell
20 tower downtown, in downtown Charleston.

21 Q. The residence being complained about was West Ashley
22 Shadow Moss, near there?

23 A. (Witness pauses)

24 Q. I'll say it this way. It was Old Fort Avenue.

25 That's not downtown, right?

1 A. No, it's not downtown.

2 Q. Okay.

3 A. I thought it was James Island. But, no. It's been
4 a long time.

5 Q. If you could look at Page 5.

6 A. (Witness complies)

7 Q. The map is saying somewhere downtown generally. The
8 address complained about is not downtown. That would
9 have gotten your attention, right?

10 A. Yes.

11 Q. Do you recall or does Page 5 indicate what you would
12 have done since those two things didn't seem to match up?

13 A. Obviously a city dispatcher was contacted to have
14 them respond to an address on North Romney Street in
15 Bridgeside which is where the cell phone was possibly
16 hitting.

17 THE COURT REPORTER: If you could pull that
18 microphone up a little bit.

19 THE WITNESS: Yes. Sorry.

20 THE COURT REPORTER: Thank you.

21 Q. And for my benefit could you repeat that? Thank
22 you.

23 A. That's fine. One of the -- actually two of the
24 notations state that where I had contacted a city police
25 dispatcher to respond, have a unit respond to an address

1 on [REDACTED] North Romney, which is where the cell phone was
2 possibly hitting.

3 Q. And so then we see three entries there on Page 5
4 that you are kind of dealing with that, the issue of the
5 phone pinging off of a tower downtown ---

6 A. Yes.

7 Q. --- or an address downtown; is that right?

8 A. Yes.

9 Q. The remaining ones, which are Ms. Stanley, that's
10 something you -- she put in and you're not involved with;
11 right?

12 A. Correct.

13 Q. You're not radioing -- I may not be using the right
14 words here. You are not radioing deputies at Old Fort
15 Avenue, you're talking to CPD about downtown; right?

16 A. Yes, on the phone.

17 Q. So you had no occasion to tell deputies on the scene
18 -- the phone is hitting on a place downtown. You didn't
19 relay that to the deputies, did you?

20 A. No. I was not the radio dispatcher.

21 Q. I'm sorry?

22 A. I was not the radio dispatcher that day.

23 Q. Who was?

24 A. Ms. Stanley

25 Q. Ms. Stanley. It doesn't appear that you told her

1 either. You're working on it actually while she's doing
2 something else, right?

3 A. Yes.

4 Q. You're not in a uniform, but Consolidated Dispatch
5 is Charleston County Law Enforcement; right?

6 A. To a point.

7 Q. And to do your job you had to go through training
8 about how to run the system and how to run the radio,
9 right?

10 A. Yes.

11 Q. And like the four -- I'm sorry. Like the 114
12 protocol, that's something you would have been taught;
13 right?

14 A. Yes.

15 MR. DAVIS: If you'll give me just one moment.

16 (WHEREUPON, pause)

17 Q. The apparent mismatch of locations was enough for
18 you to prioritize that issue, right?

19 A. Yes.

20 Q. That's odd that we've got a call from someplace
21 other than where the caller claims to be?

22 A. Yes.

23 Q. Thank you. No other questions at this time.

24 THE COURT: Cross-examination?

25 **CROSS EXAMINATION BY MR. SOWARDS OF MIRIAM COUSINO:**

1 Q. Ma'am, you said the location that pops up is a tower
2 location.

3 A. If it is wireless. If it is Phase 2 it will show a
4 generalized area of where the caller is actually at.

5 Q. But in this case it was wireless? Is that what you
6 testified to?

7 A. No. Unfortunately if I had an address to call City
8 police on, it would have been Phase 2.

9 Q. Okay. So the information you had on this call I
10 thought you said it was a 9-1-1 call from a disconnected
11 cell phone?

12 A. Yes. It can still have Phase 2 capability though.

13 Q. Okay. But the location that comes up is because --
14 your testimony, if I understood correctly, was it hits a
15 cell tower?

16 A. Yes.

17 Q. And so that's not the actual physical location of
18 the caller; it's the tower that it's hitting?

19 A. Unfortunately there is no -- able to say other than
20 it depends. When the call originally comes in it goes to
21 the cell tower. And then where the area that you are
22 closest to.

23 And then Phase 2 location will kick in. Still
24 connected to that cell tower. And it will show you where
25 the caller is calling from or with a hundred foot to two

1 hundred foot radius.

2 Q. And -- but you don't have any personal knowledge of
3 all the cell towers for the various companies that were
4 in service in 2010?

5 A. No.

6 Q. So you can't tell us here today exactly where the
7 caller was, just that it hit that tower on North Romney?

8 A. It would have been a Phase 2 location if I called
9 the city about it.

10 Q. Okay. But we don't have that information?

11 A. No, not right here.

12 Q. Okay. Thank you.

13 THE COURT: Redirect?

14 **REDIRECT EXAMINATION BY MR. DAVIS OF MIRIAM COUSINO:**

15 Q. With it being Phase 2, you're confident it came
16 from -- within a close proximity of the [REDACTED] Romney
17 Street?

18 A. Yes.

19 Q. Thank you. No other questions.

20 THE COURT: Recross?

21 MS. FRIERSON: No, Your Honor.

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

23 (WHEREUPON, the witness steps down)

24 THE COURT: Anything else?

25 MR. DAVIS: That's all we have, Your Honor. Thank

1 you.

2 THE COURT: Anything from the State in reply?

3 MR. SOWARDS: No, Your Honor.

4 THE COURT: All right.

5 (Addressing Ms. Cousino) You're free to go. Thank
6 you.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Well, who would like to make the first
9 argument? It's your motion, Mr. Davis. Why don't you
10 make it?

11 MR. DAVIS: At the end of this I am going to go
12 ahead and tell you I don't -- I would prefer you not to
13 rule from the bench. I would prefer you to take what's
14 been presented, because I think it's -- devil is in the
15 details. That is why the first primary witness took so
16 long.

17 And I would like for you to look thoroughly over the
18 event report from ADT, the CAD report, and the testimony
19 that we have had.

20 I have -- this is my creation, so it's not presented
21 as an exhibit. But if I may approach, it helped me try
22 to keep track of times here and when things happened.

23 (WHEREUPON, Mr. Davis hands document to Court)

24 MR. DAVIS: We have a three-part argument, Your
25 Honor. First of all, we believe that you should suppress

1 the evidence because this search and seizure was
2 warrantless and unreasonable.

3 The reason we make that argument is based on two
4 things: What the officers heard, were told over
5 dispatch, and what they independently observed at the
6 residence was not sufficient for entry without a warrant.

7 We would argue that there is enough evidence
8 presented today from both sides, even when you use the
9 testimony from both sides and the evidence from both
10 sides, that a warrantless entry was unreasonable.

11 They get to the house. Nothing is broken. No
12 sounds. They don't get a response. They take the time
13 to get the number off the truck and call that in.
14 They're not really in a rush in an emergency to get in
15 there.

16 I believe I asked both of them if you really felt
17 compelled. And there wasn't an open door, you are
18 busting in if you thought somebody was in immediate
19 danger. They didn't. They weren't.

20 We believe that on their knowledge that a
21 warrantless search would be unreasonable both under the
22 Fourth Amendment and the more restrictive, more
23 beneficial to my client, right to privacy under our State
24 Constitution.

25 We piggyback that with the fact that, as was just

1 testified to, the operator that received the call and saw
2 on her screen -- this is coming from a downtown --
3 Romney. And, again, I would hope you could take judicial
4 notice of these locations. You can Google Map them.
5 That's not privy to either side.

6 She knows that, and that concerns her enough that
7 she starts actively involving CPD to check that out.
8 She's law enforcement. She is the State.

9 She doesn't convey that to the officer. But the
10 State knew. And she could have. Ms. Stanley who's the
11 one with the unique voice, Caller 35 -- Operator 35, who
12 is doing the dispatch, the whole -- that lengthy call,
13 they work together: Hey, Stanley, tell the deputies on
14 the scene we're not sure the call came from there. Hold
15 their horses. Just a second. And or get a search
16 warrant.

17 If you've got something to justify it, then go get
18 the search warrant. They didn't go get a search warrant.
19 The State should be responsible for the information and
20 knowledge that they have -- they had that the call is
21 coming from a different location or at least enough
22 suspicion to investigate that.

23 And based on those two things -- if you don't find
24 the deputies at the scene, their lack of emergency,
25 exigent circumstances, it doesn't rise enough, if you

1 think, well, ---

2 THE COURT: The triangulation didn't take place
3 until fifteen minutes after they got there.

4 MR. DAVIS: Right. But in real time ---

5 THE COURT: The exigent circumstances were what
6 happened when they walked onto that property, not what
7 knowledge got discovered fifteen minutes later.

8 MR. DAVIS: They finally get the answer. That --
9 but they are actively -- she's actively looking for it at
10 the time the call comes in.

11 From the time the call comes in on her screen she
12 sees that's not Old Fort Road -- Old Fort Avenue. She's
13 suspicious about it from the time of the call. It's real
14 time.

15 She doesn't get an answer until later because she
16 has to get help from City dispatch and City police. But
17 there's a concern about it from the moment the call comes
18 in. From the moment -- and it's never relayed. And it
19 should have been relayed.

20 And our right to privacy and protection from
21 unreasonable seizures, if the State knows something, say
22 it. Say it. Hold off a second. We may not have an
23 emergency.

24 We would argue that it's unreasonable on those two
25 factors.

1 Judge, we also have a real concern about the
2 veracity of the entry. And, again, take the documents.
3 Listen to it. But compare the testimony about how the
4 house was searched. They split up; no, they didn't. It
5 was an open door; well, unsecure means open. We didn't
6 hear any alarm go off, even when we are inside didn't
7 hear any alarm go off. We have testimony that twice that
8 the motion sensor interior, interior motion sensor, went
9 off twice. Nothing.

10 There were four calls evidently to this house. You
11 remember the testimony. Doesn't recall -- recalls two of
12 them. And on those two I would ask you, Judge -- he can
13 tell you what he heard. He can't tell you who was
14 calling him. Right, he can tell you what he heard; but
15 he can't tell you who it was on the line.

16 We would dispute the officers -- well, I don't think
17 we have an accurate story about how they went in. Their
18 testimonies do not match up. That should cause you
19 concern about their actual justification of how they
20 conducted it.

21 Even if I give you its exigent circumstances, they
22 have got an emergency, if they are coming in here and not
23 telling the story straight about how they did it, that
24 calls into question exactly how it happened. It should
25 call into question the veracity of that.

1 If you're unpersuaded that they had justification to
2 go in because of what they saw on the scene, and they
3 didn't know and you're not going to impugn what the
4 operator knew so they are allowed to go in, they are
5 still then limited by the scope of that emergency.

6 Multiple times both officers they told you the
7 goals: Find anybody in trouble. Victim, help them.
8 Find the suspect perpetrator. Be -- protect us. Be
9 safe. That's the goal of the protective sweep.

10 Here's why and how we know they went outside of
11 that. They didn't walk through and see in plain view.
12 They may have a couple of things. We had different
13 stories about how they saw the guns. But guns in a
14 secure home in and of itself is not a -- indicates an
15 illegality. Cash in front of a safe is not indication of
16 illegality. A powder in a bathroom, baby powder, talcum
17 powder -- I mixed a protein shake today. That in and of
18 itself is not enough.

19 How do we know they went outside the scope of the
20 protective sweep? Because they tested the powder.
21 Protective sweep is we search the house, nobody's in
22 here, all clear. Get out of the house. Secure the
23 house.

24 Nobody's going to come in unless you -- stand there.
25 But get out of the house. Your job is done. Get out of

1 the house. But they didn't. They waited ---

2 THE COURT: They can't un-see what you have not
3 mentioned, and that is there was -- the powder was on a
4 set of scales. And people don't typically have scales in
5 the bathroom that are usually used to measure out drugs.
6 It wasn't just powder was laying on the cabinet in the
7 bathroom; it was on the scales.

8 MR. DAVIS: Look at the picture. They also -- one
9 of the officers talked about a razor blade. There's no
10 razor blade. Take a look at it.

11 Law enforcement is trained to observe and to arrest
12 for offenses. But they're also likely to see that and
13 think not talcum powder, not baby powder. That doesn't
14 mean that's accurate.

15 And, again, seeing is one thing. Seeing is one
16 thing. Call Plyler. Hey, man, got a house secure over
17 here; got some guns, got some cash, got some white
18 powder; why don't you get a search warrant on that.

19 THE COURT: Well, you know, there are two separate
20 issues, and you cannot conflate them together. The first
21 is the exigent circumstances. And then there's plain
22 view. Exigent circumstances gets them in the house.

23 If they had the right to go in the house then is
24 what did they see and the inferences from what they saw.
25 But the first hurdle does not necessarily preclude a

1 plain-view search, all right.

2 So the first thing is they've got a 9-1-1 call that
3 said we got a call from a woman who says she's at this
4 address and her boyfriend or somebody it beating her up
5 and she's hiding out in the bathroom and then the call
6 got disconnected and they couldn't get back.

7 So that's an emergency. They show up. They knock.
8 They call out. Nobody answers. Now, you could go, well,
9 nobody answered, nobody's home; go home.

10 Well, if there had been somebody dying in there then
11 we'd be here with you probably representing them suing
12 the police for not having gone inside.

13 So I don't think it is at all unreasonable for them
14 to have gone in the house under those circumstances,
15 those two police officers.

16 They could have gone in. There could have been no
17 response because nobody was there, which it appears
18 nobody was there at the time or by the time they got
19 there.

20 Or there could have been a dead body, or there could
21 have been an unconscious body, somebody who couldn't
22 respond. Maybe they were tied up or bound up or hidden
23 in a closet or hidden in a room. All of those things go
24 to exigent circumstances and whether or not they had the
25 right to go into that house.

1 There was a door cracked. That just made it easier
2 for them to get in. Besides you go, well, somebody could
3 have left that door open all night or it could have been
4 they tried to shut it behind them and it just popped back
5 open.

6 So the exigent circumstance is an entirely separate
7 issue. And I think there's plenty of evidence based on
8 what I heard today that says they had exigent
9 circumstances to go into that house to look to see if
10 there was, in fact, somebody who was the victim of a
11 domestic violence crime.

12 So then let's go to the second issue, what did they
13 see when they were in there. And what they saw, some of
14 the things -- if it was just a gun, no question that they
15 wouldn't have been able to get a search warrant. If it
16 was just money laying on the ground next to a safe, no
17 question that's not enough to get you a search warrant.

18 But probably by itself bathroom scales -- or scales
19 in a bathroom that are used for weighing food and things
20 like that, which are often used for weighing drugs, found
21 in the bathroom -- yeah, there's a lot of times powder in
22 a bathroom. But when there's powder on scales in a
23 bathroom we can't just ignore that that powder was on the
24 scales which if you see in a house are usually in a bath
25 or in a kitchen. Not in a bathroom.

1 I don't even know why -- I mean I have got -- I
2 have got two wives now, two ex -- two -- two wives, two
3 step-daughters and a daughter, and I've never seen a
4 digital scale to weigh anything in a bathroom. And I've
5 had to not even use the bathrooms there's so much stuff
6 in there. But I've never seen a bathroom with weighing
7 scales in there. So that we just cannot ignore away.

8 And that in and of itself was probably enough to get
9 a search warrant. They didn't just start -- when they
10 went in and did their search of the house they didn't
11 pull open drawers, they didn't pull open cupboards to
12 look and see. They looked for a person and they didn't
13 see one.

14 But then they -- while they were looking, in plain
15 view, they saw those scales. That, along with a gun
16 laying on the floor or underneath the bed, that and money
17 laying out, that would go to support probable cause. And
18 they did -- they got a warrant.

19 They just didn't start confiscating and say, oh,
20 we've got enough to make a search -- to make a search
21 without a warrant. They stopped and got a search
22 warrant. Somebody called the magistrate and went over
23 there and obtained a search warrant.

24 I'm having difficulty figuring out what else they
25 should have done in this case?

1 MR. DAVIS: Before I would pick up there I would ask
2 you to talk through the fact that, again, this operator
3 knew there was a question about where this call was
4 coming from. I think that factors into or should -- I
5 would argue that should factor in ---

6 THE COURT: To what; exigent circumstances or plain
7 view?

8 MR. DAVIS: You have got to have -- like you said,
9 the first hurdle is exigent circumstances.

10 THE COURT: And exigent -- that finding out that
11 this call was in fact perhaps pinging off of a tower ten
12 miles away occurred fifteen minutes after they got on the
13 scene?

14 MR. DAVIS: They confirmed it fifteen minutes after.
15 They are actively looking into it. She said I put all
16 my -- I prioritized that.

17 So from the time the call came in, the last witness
18 is looking into that issue and never conveyed that to the
19 deputy on the scene. But as she and her supervisor
20 testified, they're law enforcement.

21 THE COURT: Well, they have conflicting evidence at
22 that point.

23 MR. DAVIS: Yes.

24 THE COURT: Because they have the possibility that a
25 phone was in fact somewhere else; but they have a real

1 live person who called in and said I am being threatened,
2 I'm being beaten, and I am at this address. They can't
3 ignore that.

4 Now, there's a possibility it was a setup. You
5 can't rule that out. But they don't know that.

6 MR. DAVIS: The deputies should have been informed
7 of that so that they could make an on-scene determination
8 about whether it's such an emergency and we should go in
9 or not. And they weren't told, and that's the State's
10 fault.

11 THE COURT: Well, even if they had been told and
12 they were on the scene, the fact of the matter is is
13 they're looking for somebody who has called in and said
14 they are in danger of their life.

15 And I don't think they have to sit down at that
16 point and say, well, let's just call a magistrate and see
17 if we can go in that house because we have got
18 conflicting evidence at this point.

19 I mean, you've got the possibility, a real
20 possibility, that somebody is dead or dying or captured
21 and tied up or some harm inside of that house and that's
22 the reason why there was no response, why there was a
23 hang-up. And that just cannot be ignored.

24 MR. DAVIS: I will remind you, locked behind a door.
25 He's trying to get in, yet no sounds of knocking or, you

1 know, pounding.

2 He doesn't have -- I don't think he has access to
3 weapons. All that's conveyed by the first caller. Some
4 of which, some of which is conveyed to the deputies or
5 not -- I will move on.

6 One final thing before jumping to what they did
7 after plain view. Judge, if you will look at the event
8 history from ADT which is the one page. Right at the top
9 it says event history report.

10 Again, I would ask you to question the veracity of
11 the testimony about how this entry was made. The very
12 first entry is a Zone 3 notification of triggers. If
13 that back door was open then opening it doesn't trigger
14 it. If Zone 3 is the back door. We don't know where
15 Zone 3 is. But we know it's not the key fob, because
16 that's just how you set it. We know it's not the key
17 fob. We know it's not the smoke detector. It could be a
18 window. It could be a door. That's the first thing that
19 registers.

20 If it's already open it would have been ping
21 before the 11:29, which is after the deputies arrive. It
22 would have been ping before that. It would have been
23 triggered before that if it was -- that's the first
24 thing.

25 Later, at 9 and 9 twice while they're in there,

1 there is a motion sensor as best we can tell. Some
2 window, some door, triggered at 11:29:52.

3 THE COURT: Well, that might be. I guess when you
4 are looking at suspicious circumstances when you have --
5 was it Bowen was his name?

6 MR. DAVIS: The longest witness.

7 THE COURT: The first witness, ---

8 MR. DAVIS: Yes, ---

9 THE COURT: --- the first officer.

10 MR. DAVIS: --- Your Honor.

11 THE COURT: You know, he says he actually talked to
12 somebody who identifying themselves as Mr. Richardson.
13 And he said, you know, we are here investigating your
14 house for a burglary, why don't you come over here.

15 And the person who identified themselves as Mr.
16 Richardson refused to come. Now, I guess is that a
17 reasonable response to somebody who's burglarizing your
18 house, would you like to come over? Or does that raise
19 suspicion?

20 Then you add in -- as long as we're looking at the
21 ADT thing, this looks like at around 11:30 -- 11:31,
22 thereabouts; and you're saying 11:33 Richardson called
23 and said disregard the fact that the alarm went off
24 because everything's okay. Which would certainly imply
25 to ADT: I am here.. There's nothing wrong.

1 He's not there. And that's at the same time that
2 the police are there. So ---

3 MR. DAVIS: It makes it more suspicious. You're
4 right, a homeowner who gets called or talks to the police
5 says, well, there may have been a burglary at your house;
6 oh, my gosh, I'm on my way.

7 So it makes it suspicious as to who that was. It
8 does not at all -- and again there is no way -- there is
9 no testimony that they've ever talked to my client
10 before. They can't identify his voice. There's no way
11 to determine that, either through the officers or through
12 ADT.

13 We simply have a name here. Just like the 9-1-1
14 caller gave a name, we don't know that that's accurate.
15 And you are right that if it is really your house you go
16 running back there. It didn't happen.

17 We have a suspicion about all of that. We have
18 suspicion about all of that, which should cause you
19 concern about the actual implementation of the exigent
20 search, the protective sweep.

21 Now, after -- if you don't agree with that and you
22 allow in a warrantless domestic exigent circumstances
23 search, I don't have a dispute on we see white powder on
24 the scales, plain view. There's been no testimony nor do
25 we have anything else to refute that's where it was seen.

1 Well, then, but they've cleared the house. Your
2 purpose for going in warrantlessly is done. Yes, plain
3 view. I follow.

4 Stop. Go get the search warrant. Don't actively
5 start a drug investigation by testing those drugs.
6 That's where he stepped across the line. That's where he
7 stepped across the line.

8 You're investigating a domestic disturbance, a
9 heated domestic. You see powder. Fair enough. Hey,
10 let's get the folks that do this for a living. Get a
11 search warrant. We'll secure it. We're not going to let
12 anything be tampered with. It's going to be secure. It
13 will be there is you lock that place up tomorrow.
14 There's no reason to rush.

15 But they go over their bounds by swabbing it. And
16 that's outside the scope of the - if you say it's valid -
17 the exigent circumstance search and sweep.

18 They overstepped their bounds. And we would argue
19 that you should suppress it on that matter as well.

20 Finally ---

21 THE COURT: Well, wouldn't that be something that
22 you'd think would be a -- what a reasonable police
23 officer would do, would be to do a field test on it
24 before they wasted a magistrate's time?

25 Because if they did a field test on it and it came

1 back, no, this is just baby powder, then you would go,
2 okay, well, we, you know, we would be wasting our time
3 going and getting a magistrate to issue a search warrant.

4 In fact, they would have to probably affirmatively
5 misrepresent what they were putting on a search warrant
6 in order to have a false report on a field test and then
7 still go before a magistrate. So I would think they kind
8 of have a duty to field test it.

9 MR. DAVIS: The good news is we're not in the
10 production business. We're not about -- once you have it
11 secured, we're not about expediency.

12 We're about expediency if there's someone that might
13 be being hurt or killed, or expediency if it's an
14 automobile that can be moved. This is the house that he
15 can secure. We are not about expediency.

16 And then he, like every one of us, has the right to
17 not have an unreasonable warrantless search and seizure
18 when they tested ---

19 THE COURT: Well, are they supposed to just stare at
20 that stuff until it manifests itself as to what it is?
21 Because under your theory they were supposed to not field
22 test it at all but just go get a warrant ---

23 MR. DAVIS: Correct.

24 THE COURT: --- based on the fact that it could be
25 anything.

1 MR. DAVIS: To search. And if they meet probable
2 cause they get to seize that and test it. If they don't
3 meet probable cause we are securing our paper, our
4 person, and our property. You don't get to ---

5 THE COURT: Where is the harm then -- if they could
6 have gotten the warrant without the results of the field
7 test where is the harm in having gotten the field test to
8 support going to get the warrant which you say they could
9 have gotten without it?

10 MR. DAVIS: Because there's rules to play by. And
11 you don't overstep your bounds. Secure the scene. Get
12 out of the house. You have no reason to be in it. No
13 one's in there.

14 If there's an open door you secure it. There's cop
15 cars on the scene. See if you have enough for a warrant
16 search. See if you have probable cause. Stop continuing
17 this warrantless search outside the scope of the
18 emergency.

19 And if they did it that way, if they did it the,
20 quote, unquote, right way, I don't have that argument.
21 They take that argument away from me.

22 And there is no urgency to test that right now.
23 Probably - we don't know - the best they can tell, it was
24 either Bowen or York that swabbed it. Probably. It was
25 somebody on the scene. And then passes that along.

1 Don't overstep your bounds., Don't be in such a
2 rush. These things matter especially, especially in the
3 case ---

4 THE COURT: But is it -- wasn't the evidence that
5 they didn't field test it until their supervisor came on?
6 It wasn't the two guys that -- they didn't do it until
7 after they called in their supervisor who came in and did
8 the field test?

9 MR. DAVIS: My recollection -- again, I'd love for
10 you to take time on this. But my recollection is, right,
11 not until York gets there. But they're still inside.
12 They're right there. They don't remember which one of
13 the three.

14 Alexander is pretty sure not him. Bowen is not
15 sure, him or York. You're right, not until a supervisor
16 arrives. But, again, what are you doing in the house?
17 There is no emergency, and there is nobody in there to
18 save, to arrest, or to protect yourself from. Secure it.

19 These things, these things matter.

20 THE COURT: I don't think we're ever -- I know we're
21 not going to agree on the fact that -- you know, I -- you
22 don't have a harm to a constitutionally protected right
23 if they have the right to get the same warrant without
24 the field test I am having difficulty in seeing the harm
25 in having done the field test if they could have gotten

1 the search warrant by your argument without the test.

2 MR. DAVIS: Two things. It would have been in the
3 right sequence if they would have waited.

4 THE COURT: They did wait. They waited on their
5 supervisor to get there. And when their supervisor got
6 there ---

7 MR. DAVIS: Meaning, don't test it is what I mean by
8 wait. Don't -- if they -- would have done it in the
9 right sequence if they would not have tested it first.

10 Second of all, maybe they don't get the warrant
11 without the positive test. That is why they did it.
12 They needed that for the warrant.

13 If they don't have that they -- I would argue they
14 don't get the warrant. And that's the whole point.
15 You're outside the scope to make sure that you've got
16 everything you need.

17 That would be my argument, Judge. And then I do
18 have one final prong when ---

19 THE COURT: Okay. What?

20 MR. DAVIS: The final one is the statutory argument,
21 that under the domestic violence code -- if you can give
22 me just a second, Your Honor. Let me get to that.

23 Because it gets - fact, they were there pursuant to
24 a domestic call. There is, I think, little to no dispute
25 on that, based on the testimony from all the officers,

1 based on the dispatch, based on the questions on direct,
2 16-25-70(h) - and then it has a couple subsections - our
3 argument on this one is that -- and if I may I will just
4 read it into the record:

5 Evidence discovered as a result of a warrantless
6 search, correct, administered pursuant to a complaint
7 filed under this article, correct, call-in domestic, is
8 admissible in a court of law, one, if it is found (a) in
9 plain view of a law enforcement officer in a room in
10 which the officer is interviewing, detaining, or pursuing
11 a suspect.

12 Okay. Let's pause there. Ain't got no suspect.
13 So that's not happening.

14 Or, the second one, Subsection (b): Pursuant to a
15 search incident to a lawful arrest for a violation of
16 this article -- I'm sorry. Or for a violation of Chapter
17 III, Title XVI. Ain't got no arrest. Or if it is
18 evidence of violation of this article.

19 So if you meet that criteria, fine. It doesn't.

20 Next, an officer may arrest and file criminal
21 charges against a suspect for any offense that arises
22 from evidence discovered pursuant to this section.

23 But you have got to go through what was just read.
24 They can't. They can't meet those requirements.

25 Finally, unless otherwise provided for this section

1 no evidence of a crime found as a result of a warrantless
2 search, yes, administered pursuant to a complaint filed
3 under this article, yes, is admissible in any court of
4 law.

5 This is a -- 2015 appears to be the last one if I'm
6 reading that right. I'm sorry, 2008 I believe is the
7 last amendment to this.

8 They visit this in two primary cases, which have
9 been cited; a 1999 State v. Cannon, a 2000 State v.
10 Roberts.

11 I am going to focus on Cannon because -- I'm going
12 to focus on Cannon because Roberts is an arrest for -- as
13 an arrest.

14 In Cannon I am going to jump straight to Footnote 4.
15 This is our Supreme Court, Chief Justice Finney. So
16 several years ago.

17 But they were concerned about this. They were
18 concerned about the argument I am making. And basically
19 like General Assembly, do you really mean that? I mean,
20 seriously, do you mean that?

21 And the statute has been amended and updated to
22 include those ways in which they could use it. It used
23 to be just kind of a general bar. But even after this
24 case with the updates, the section that they were
25 concerned about in 1999, they left in there: Unless

1 otherwise provided for in this section, no evidence of a
2 crime found as a result of a warrantless search
3 administered pursuant to a complaint filed under this
4 article is admissible in a court of law.

5 The General Assembly left it. They had from 1999.
6 And they have changed it to take that out. And they did.
7 The State cannot meet the requirements of (h)(1)(a) or
8 (b), or (h)(2).

9 If they can't meet those requirements they can't use
10 it as evidence, Judge. It's a plain reading of the
11 statute.

12 And we would argue under that final prong, as well
13 as the first two that we've debated, that the evidence
14 should be suppressed.

15 THE COURT: Okay. Do you want to respond?

16 MR. SOWARDS: Yes, sir.

17 THE COURT: Could I get those cases from you?

18 MR. DAVIS: You can have mine, Judge. I'm handing
19 you Roberts and Cannon. And I have highlighted the
20 footnote that I was just talking about.

21 THE COURT: Thank you.

22 (Document provided to the court)

23 MR. SOWARDS: Your Honor, I will start with the
24 State's response to the domestic violence statute.

25 THE COURT: Okay.

1 MR. SOWARDS: In the Cannon case the court did say
2 in a footnote that it was concerned about ramifications
3 of the act. I pulled all three versions and they appear
4 to be the same, that (h) provision, 70(h).

5 But I think what's important here is that in Cannon
6 the Court noted that the officer went into the home
7 because he was invited into the home, not because he had
8 probable cause to believe that a domestic violence crime
9 had occurred. He was specifically going into the home
10 without a warrant to pursue or to arrest the suspect.

11 I think that's similar to what we have here where
12 the officers testified that their primary goal was to
13 locate a victim and render aid.

14 Yes, there's a possibility they may discover a
15 suspect as well; but based on what was relayed to them
16 from the 9-1-1 dispatcher, that they needed to get inside
17 that house and locate a victim. And they were not going
18 in there specifically to arrest a domestic violence
19 suspect.

20 And I believe it was Jason -- or Detective Bowen
21 also testified that at that point in time they had no
22 idea whether a criminal domestic violence, as it was
23 termed at the time, episode had occurred. That the
24 caller stated it was her boyfriend but they had no
25 evidence or information which led them to believe that

1 they were cohabitating, that they were household members
2 or any of the elements that are required for a crime to
3 be committed under the act. In order to have probable
4 cause to arrest someone, you have to know those facts.

5 The other thing I would say, Your Honor, is -- it
6 says unless (h) -- 70(h) states, unless otherwise
7 provided for in this section no evidence of a crime found
8 as a result of a warrantless search administered pursuant
9 to a complaint under this article is admissible in any
10 court of law.

11 So I think we've satisfied, assuming it does apply,
12 have satisfied (h) (1) because although their primary
13 purpose was to render aid and locate a victim, I mean if
14 they found the suspect in there, if they were cognizant
15 that a suspect may be in there, that they would pursue
16 and arrest that person.

17 And the items that they observed were in plain view
18 in areas where you might find a victim hiding. So that's
19 satisfied.

20 And then I don't believe that last provision
21 applies, Your Honor, because they obtained a warrant.
22 They observed items in plain view and then went and got a
23 search warrant. So anything they found after that was
24 discovered pursuant to a valid search warrant.

25 So for those reasons, Your Honor, we believe that

1 the case law is actually on our side.

2 There was only a couple of cases. This doesn't
3 really seem to be an issue that's come up a lot, but we
4 don't believe the statute applies because they were not
5 gaining entry pursuant to this statute. They were gaining
6 entry into the home under exigent circumstances to find
7 and locate the potential victim of a crime.

8 I can address the exigency. I think the State's
9 argument here is for the questions that Your Honor was
10 asking Mr. Davis. When the officers arrived at the
11 location the only information they had was that a
12 woman called 9-1-1 claiming to be the victim of a
13 domestic-related dispute with her boyfriend, that she had
14 locked herself in the room, that she feared for her
15 safety. She told the 9-1-1 operator that. And that she
16 needed police assistance.

17 And I think they both testified that even if the
18 door wasn't unlocked, wasn't open, they were going in
19 there because they have a duty as law enforcement
20 officers, given what they knew at the time, to enter into
21 that home.

22 I don't think they can stand outside the residence
23 and just wonder, well, maybe she is, maybe she isn't,
24 what if it's a hoax, and like Your Honor said, find out
25 two hours later that she's deceased. Because that's how

1 long it took to obtain a search warrant in this case once
2 they discovered the drug evidence. I don't think they
3 had the luxury of waiting for a search warrant at that
4 point.

5 Both officers testified that as they searched
6 through the house they only looked where a person could
7 reasonably be hiding. Whether there was a bed skirt,
8 they looked under the bed because it was off the ground
9 and they wanted to see if the person was in there or
10 under there.

11 They looked in the closet. They looked in the
12 kitchen. They checked all the rooms. And when they
13 learned that there was no one in there, that's when they
14 said, okay, we've also found some other stuff and we need
15 to talk to our sergeant about that.

16 And to Mr. Davis' point about the field test and the
17 scale, at first he argues that we don't know what that
18 substance was; was it baby powder; was it makeup. And
19 then when they find out what it is, he says, well, you
20 can't do that; you can't try to determine what that
21 substance is. Which would put law enforcement in between
22 a rock and a hard place where they have to make a split
23 second decision over, you know, what is this substance;
24 is it cocaine residue; is it baking powder. And then
25 when they actually try to verify what it is we say, oh,

1 you can't actually find out what it is.

2 And Detective Plyler testified that he would have
3 insisted that they obtain a field test because he's not
4 going to go to a magistrate and ask for a search warrant
5 based on cocaine residue unless he knows that's what it
6 is. Or at least with a high degree of certainty based on
7 a field test that that's what that substance is.

8 THE COURT: All right. Do you need to respond to
9 anything?

10 MR. DAVIS: No, Your Honor. Thank you.

11 THE COURT: All right. Well, I need to give a
12 little bit of thought to the issue of the 16-25-70 issue.
13 So I will let you know as soon as I come up with an
14 answer. How about that?

15 Right now I understand y'all are on the trial docket
16 before Judge Dennis on Monday. So I know there's a time
17 factor, and I will do my best to get it to you sooner
18 rather than later.

19 MR. DAVIS: If I could raise this issue now, Judge:
20 We hope this becomes a moot point, but you are hearing
21 this pretrial suppression motion because we had asked
22 Judge Dennis to recuse himself because he was involved in
23 two pretrial -- three, three pretrial hearings ---

24 THE COURT: He's not recused himself from presiding
25 over the trial. He only agreed, as I understand it, to

1 allow me to do this hearing since he basically did this
2 hearing so many years ago.

3 He did not recuse himself from the trial. In fact,
4 I called him last night just to ask him that question.
5 Because I said I've got some stuff in here from I think
6 it was the State and it looks like a pretrial brief. I
7 said, am I trying this case on Monday? And he said, no,
8 I'm trying the case on Monday; you're just doing the
9 suppression hearing. So he has not recused himself from
10 the case.

11 MR. DAVIS: Like I said ---

12 THE COURT: Just from this hearing. And has agreed
13 to bind himself to whatever I decide.

14 MR. DAVIS: I will raise that issue with him when we
15 meet. Thank you, Your Honor.

16 THE COURT: There you go. Okay. All right.

17 MR. DAVIS: Thank you, Judge Young.

18 MR. SOWARDS: Thank you.

19 THE COURT: Thank you. I'll let you know as soon as
20 I come up with something.

21 (WHEREUPON, the hearing adjourned.)

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2011-GS-10-2320
	)	2011-GS-10-2321
	)	2019-GS-10-0879
	)	

STATE OF SOUTH CAROLINA

vs.

THERRON RENARD RICHARDSON

Defendant

TRANSCRIPT OF RECORD

January 14, 2019
Charleston, South Carolina

Volume 1 (of 3)

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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State v Therron Renard Richardson
Proceedings
January 14, 2019

1 PROCEEDINGS
2 THE COURT: Mr. Richardson?
3 [Whereupon, there is no response]
4 THE COURT: Are you Mr. Richardson?
5 MR. RICHARDSON: Yes, sir.
6 THE COURT: Good morning, sir. That's alright. You
7 can remain -- every judge is different. If he wants to
8 stand, he can. He doesn't have to stand. But thank you
9 very much.
10 MR. RICHARDSON: Yes, sir.
11 THE COURT: I appreciate it very, very much.
12 [Off the record momentarily]
13 THE COURT: Alright. Are we ready for the jury
14 panel to come in?
15 MR. DAVIS: Judge, one matter before then.
16 THE COURT: Sure.
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State v Therron Renard Richardson
Motion to Recuse
January 14, 2019

MOTION TO RECUSE

MR. DAVIS: We would renew our motion. I don't recall the date we filed it, Judge, but as you recall, this is a ---

THE COURT: --- December the 20th.

MR. DAVIS: Okay. This is a retrial in Mr. Richardson's case. In 2012, on three different occasions you were involved in this matter for pretrial motions, a motion to reconsider, and then another set of a couple of motions just before the jury trial began. Because of that, on behalf of Mr. Richardson, we would ask that you recuse and we be transferred over to Judge Young, who heard our pretrial motion last Thursday and allow him to complete the trial.

Because while the majority of the factual arguments of the suppression was held on Thursday, of course we need to renew our objections from the evidence presented. There will be testimony between now and then. So a decision on those issues will have to be readdressed.

And for that reason, on behalf of Mr. Richardson, respectfully, arguing no specific bias of course, but to avoid the mere appearance of impropriety or bias, we would ask that you recuse yourself. Judge Young is present today holding General Sessions, of course, and we would ask to continue this trial in front of him. Thank

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1 you, Your Honor.

2 THE COURT: Thank you. Does the State wish to be
3 heard?

4 MR. SOWARDS: Your Honor, just I think this issue
5 was addressed when Judge Young presided over the
6 suppression hearing and that was adequate. And I think
7 the law does not require -- there's some case law out
8 there that I don't think it requires a judge in this
9 circumstance to order back on a retrial. You were not
10 the PCR judge, you were not the trial judge, and I don't
11 think the State sees any issue with Your Honor presiding
12 over this trial.

13 THE COURT: Okay. Any response to that, Mr. Davis?

14 MR. DAVIS: No, Judge.

15 THE COURT: Alright. Obviously, I don't fault you
16 for filing the motion. And, quite frankly, I think it
17 was Judge Scalia was the one that in the decision that
18 talked about recusal. And he wrote a decision and one of
19 the things he said in that, that I recall -- and I
20 haven't read it; it was a discussion about recusal.

21 We are elected to serve. And where there is some
22 compelling reason for us to declare some bias, then we
23 are to do that under the canons of ethics. But we also
24 have an obligation not to push something onto some other
25 judge that we could have tried. And the problem that I

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1 have with that is if a judge has to recuse himself or
2 herself on every case where they hear something, then
3 we're going to have judges not being able to hear any --
4 mainly not so much in -- more and more in criminal court,
5 but it's just starting. But in the civil side, Lord have
6 mercy, we hear cases, we hear motions almost every day in
7 those cases, and those cases are decided.

8 The beauty of it is, and it will be here, I've been
9 -- I've heard cases where I was not the trial judge but I
10 was listed as a judge on the appeal because I heard
11 something that was an issue preserved, just as Judge
12 Young did when he heard the Motion to Suppress.

13 My deciding a case, first of all -- if I had tried
14 the case, maybe, but even then, I don't -- there's no
15 case with which I'm familiar that says you can't be the
16 trial judge in a case that you tried. And if you -- if
17 the Court says you made a mistake, it seems to me it
18 would be good to have that judge try the case because
19 then you're not going to make the same mistake twice,
20 hopefully.

21 But from the standpoint of any rulings in the trial,
22 I haven't heard the evidence now. I don't know what
23 addition it is, if there are any additions. But clearly
24 I'll make a decision. Yes, I'd move to suppress it. In
25 reading the decision there was an interesting comment by

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1 the trial judge in the PCR when he said, I don't think
2 he'll be successful in arguing that motion before the
3 Supreme Court, meaning that he didn't think there was a
4 mistake. I think that's what that means. I don't know
5 what it means. It would be - I would have to get inside
6 his mind, and I'm not about to do that.

7 But clearly the trial of the case is on its own
8 situation. And quite frankly, to be honest with you, Mr.
9 Davis, in retrials some of the times what came out in the
10 first one doesn't come out in the second one. It's a
11 totally different trial because there can be different
12 approaches. Each lawyer says, you know, I wish I hadn't
13 done that. I know I did. I didn't have many of them,
14 but I had some.

15 And as a result, I don't see any prejudice
16 whatsoever for my trying this. I certainly don't have
17 any -- one thing that I have tried to do, and I've
18 acknowledged this on numerous occasions -- somebody has
19 asked me whether I'd sua sponte, meaning on my own,
20 reconsider the sentence in a case.

21 I haven't done it many times, but I think it's more
22 than five that I've done it in my career. So I'm not
23 about to be influenced by anything that happened. This
24 is a separate case. But that being said, your motion is
25 noted, protected for the record, and denied. Thank you.

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1 MR. DAVIS: Thank you, Judge.

2 THE COURT: All right. Anything else before we
3 bring in the jury?

4 MR. DAVIS: Judge, I've handed hard copies of the
5 voir dire ---

6 THE COURT: --- yeah. I have it ---

7 MR. DAVIS: --- I know the State responded
8 electronically. I'm just asking for a hard copy to see
9 if I have any objections to theirs.

10 THE COURT: Well, I will tell you I don't read most
11 of these verbatim. I use what you're looking for. So,
12 each of you go down your list at the end. If you want me
13 to give something that is specifically stated, I'll do
14 so. But I try to cover it in a generic fashion, is what
15 I try to do.

16 MR. DAVIS: And, Judge, I apologize. In seeing it
17 again, I had seen there were seven that were put in their
18 trial motion. I had seen that last week. I don't have
19 an objection to any of the State's, but I'll follow your
20 instructions.

21 THE COURT. Thank you. Okay.

22 MR. DAVIS: Finally, Judge, one matter, then. Judge
23 Young took a matter under advisement last Thursday ---

24 THE COURT: --- yeah ---

25 MR. DAVIS: -- and then issued an email. We would

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1 like to make that a Court's Exhibit because that sets out
2 his ruling against us.

3 THE COURT: Well, that will be fine. But it's going
4 to be -- it needs to be reduced to an order. But that's
5 between you and Judge Young.

6 MR. DAVIS: For today, at least, could I make this a
7 Court's Exhibit?

8 THE COURT: That's fine.

9 MR. DAVIS: Thank you, Judge.

10 [Whereupon, Court's Exhibit Number 1 is marked by
11 the court reporter]

12 MR. DAVIS: And with that, Judge, I think we're
13 ready. Thank you so much.

14 THE COURT: Mr. Robinson, bring in the jury, please.

15 [Off the record momentarily]

16 [Whereupon, the jury panel enters the courtroom at
17 11:17 a.m.]

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State v Therron Renard Richardson
Motions in Limine
January 14, 2019

1 MOTIONS IN LIMINE

2 THE COURT: Alright. We have some in limine
3 motions. Any on behalf of the State?

4 MR. SOWARDS: Thank you, Your Honor. I filed one.
5 I think Mr. Davis and I probably agree on ninety percent
6 of it, the crux of it.

7 THE COURT: All right.

8 MR. SOWARDS: Which is that the State would just
9 seek to preclude any comments during opening or closing,
10 any questions, which might suggest undue delay on the
11 part of the State. It is an old case. He was arrested
12 in 2010. And just comments that might suggest we've been
13 waiting around for eight years to try him.

14 And, honestly, I don't think either side wants the
15 fact that there's been a prior trial. And they may
16 introduce that from transcripts and whatnot. But I think
17 just to be safe, to limit any comments which may suggest
18 an undue delay on the part of the State. And that's our
19 only...

20 THE COURT: Do you anticipate making any such
21 references?

22 MR. DAVIS: To that specific no, Your Honor. In our
23 discussions, and I think I understand the concerns. To
24 undue delay by this Solicitor's Office, no. But in the
25 pretrial hearing, there's some failed recollections and

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1 the fact that I commented it was eight years ago, I think
2 that's fair in dealing with, you know, cross-examination.
3 But in blaming them for it, I intend not to discuss that
4 at all.

5 THE COURT: Well, eight years ago you're talking
6 about the incident itself?

7 MR. DAVIS: Yes, Your Honor.

8 THE COURT: All right.

9 MR. DAVIS: Yes, Your Honor.

10 THE COURT: That's fine. You know, again, it gets
11 into something that Michael Loignon and I had a
12 discussion about. He wanted to go into some examination
13 in the other case about dropping the charges against the
14 brother. And that opens a Pandora's Box, is what I see.
15 Because, oh, yeah, we can talk about the delay, and I can
16 say, yeah, well, he was sentenced, he was convicted, and
17 they got it and it was overturned and that's why we had
18 the delay. I mean, so it just opens something that we
19 just don't need to go there.

20 Delay, I understand the period of time. I don't see
21 any harm in that, per se. It's obvious for both sides.
22 So I appreciate y'all's working that out. And I don't
23 have any problem with what you just said, Mr. Davis.
24 Anything else from the State?

25 MS. FRIERSON: Thank you, Your Honor.

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1 THE COURT: Yes, Ms. Frierson?

2 MS. FRIERSON: As it was referred to in our brief
3 filed by Mr. Sowards, we wanted to bring up the issue of
4 third-party guilt and the testimony of a deceased
5 witness. I didn't know which one you would like to
6 address first.

7 THE COURT: Doesn't matter. Whichever you want to
8 address first is fine with me.

9 MS. FRIERSON: As far as third-party guilt, Your
10 Honor, the State would just seek to eliminate any
11 reference to third-party guilt and make sure that Mr.
12 Davis proffer any testimony that he planned to bring, as
13 far as responsibility of somebody else.

14 Under the third-party guilt doctrine, as Your Honor
15 is probably well aware, that there must be -- it's got to
16 be more than just some other evidence that there's
17 somebody else. They found items belonging to the
18 defendant in the house. There's also an ID that belongs
19 to somebody else.

20 The State isn't seeking to argue that this is the
21 defendant in exclusion of anybody else, but we believe
22 that the defendant is limited to allowing speculative
23 evidence regarding the possibility that anybody else
24 actually lived there or that this was, in fact, their
25 drugs, without the accompanying testimony or other

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1 information. It would, Your Honor, confuse the jury and
2 would be in stark contrast to the law. And that if he
3 doesn't conclude -- or choose to ask any of those
4 questions, that testimony must be proffered outside the
5 presence of the jury and Your Honor rule on it before any
6 of those arguments, evidence, questions, or other general
7 or specific reference to some third-party guilt with
8 regard to an allegation of another party claiming
9 responsibility for that controlled substance, that that
10 be proffered outside the presence of the jury.

11 THE COURT: Mr. Davis?

12 MR. DAVIS: We don't intend to lay blame to this
13 other ID to that person. We do believe, though, that the
14 factual nature of the way this started, this 911 call
15 that is quite suspicious, we think we can argue,
16 obviously, any facts in evidence and any reasonable
17 inferences from it. We don't intend to elicit any
18 testimony from any witness naming, you know, Joe Johnson
19 as the actual owner of these drugs. So we don't intend
20 to do third-party guilt. But we're going to ---

21 THE COURT: --- obviously, that is something that
22 will come out during the trial and I'll -- motions in
23 limine, we have to wait until I hear it and make rulings
24 on it. I understand your position, Ms. Frierson. I
25 would just urge both of you as we know, opening

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1 statements, although we all -- I would do it, too, and
2 it's done every day, try to make it an opening argument.
3 But I would ask that you not make any reference to any
4 third-party issues or other persons in your opening
5 statements. Those things -- if it -- obviously, in
6 closing argument you may have an opportunity to address
7 it. But refrain from that in opening statement, making
8 non-argumentative statements.

9 MR. DAVIS: Yes, sir.

10 THE COURT: All right.

11 MS. FRIERSON: Thank you, Your Honor.

12 THE COURT: What else?

13 MR. SOWARDS: I put something in our trial brief
14 regarding the prior witness testimony ---

15 THE COURT: --- right.

16 MR. SOWARDS: The individual who is now deceased.
17 I know that was their motion to exclude. I don't know
18 whether you prefer to hear from me or ---

19 THE COURT: ---- I'll be happy to hear from you as to
20 why should it not come in under 804.

21 MR. SUMMA: Thank you, Your Honor. I think it
22 mainly comes down to 403. I know we said, you know, we
23 don't want the jury learning that there was a prior
24 trial. But I think they will. I mean, we're talking
25 about someone testifying previously.

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1 THE COURT: Well, you don't have to say testifying.
2 You can just -- you don't have to say anything but we're
3 publishing -- be like publishing a deposition. I mean,
4 all it is is -- you don't have to even identify it. You
5 say the next witness is going -- you're going -- is going
6 -- testimony is going to be presented to you by somebody
7 reading from it. So, I mean, it doesn't have to be
8 disclosed when and where and what was done, unless you
9 choose to, has been my experience with it.

10 MR. SOWARDS: I certainly have no intention of
11 discussing when and where it occurred.

12 THE COURT: And, quite frankly, this is where -- and
13 I understand the ultra caution here and the concern about
14 prior trials. But if any of these folks have ever sat on
15 a jury in a civil case, they've heard tons of that,
16 because publishing from depositions is done every day in
17 civil procedures. I mean, that's no big deal.

18 MR. SUMMA: Sure. Another reason ---

19 THE COURT: --- now, the 403 situation, that goes to
20 the -- I assume to the substance of what he's saying.
21 I'll have to make a determination as to whether -- or is
22 the 403 is a prejudice of a prior trial?

23 MR. SUMA: Well, I'm saying that the jury is going
24 to learn he had a prior trial. That would prejudice him,
25 and the probative value does not outweigh the prejudice.

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1 THE COURT: I'll have to consider it at the time
2 it's offered.

3 MR. SOWARDS: Your Honor, if it would help we can
4 provide you with a copy of the transcript to be sure.

5 THE COURT: That will be fine.

6 MR. DAVIS: And I know we have -- might have some
7 time between --

8 THE COURT: I'll read it.

9 MR. DAVIS: Okay. -- email a copy.

10 THE COURT: That's fine. All right.

11 MR. SUMMA: I have some other reasons ---

12 THE COURT: --- sure ---

13 MR. SUMMA: --- why it should be excluded. Your
14 Honor, obviously the reason why 804 exists is because
15 he's had an opportunity, presumably, to develop that
16 testimony through cross. I just wanted to remind the
17 Court that we are here because that prior counsel was
18 ruled ineffective. I think they did a really good job.
19 But, technically, they were ineffective.

20 There's an issue with the testimony where basically
21 I believe the State is going to present it to show that
22 the defendant parked his car away from the house and
23 maybe acted a little bit suspicious when he was in the
24 area. It's not really developed why he parked down the
25 street in that cross-examination. It talks about, you

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1 know, it's possible that the cars -- the deputies had
2 fully pulled up in his driveway and filled it up so it
3 wouldn't be that weird for him to park down the street.
4 So I think that it wasn't fully developed, so I don't
5 think that the issue comes in under 804.

6 THE COURT: Okay. Well, again, I don't recall 804
7 dealing with the thoroughness or completeness of
8 testimony. It comes in primarily because, number one,
9 the witness -- I don't think there's any question the
10 witness is unavailable because they're deceased. Number
11 two, the next question is was it testimony under oath?
12 Yes, it was.

13 And then we get into -- and I'll look at 804. And
14 obviously, folks, you're making these but you'll have to
15 remember -- and I state this -- I know you know this, but
16 remind you any ruling here doesn't remove the fact that
17 you have to raise it again during the trial to preserve
18 it.

19 So I'll look at 804. I'll read the transcript and
20 I'll look at 804. But right now, 804 is used. It's
21 rarely used, but it's certainly available to be used, and
22 it has been used. And used both in civil and in criminal
23 cases. Okay. What else? Anything?

24 MR. SUMMA: Judge, I just wanted to mention that the
25 -- what I was saying before about the reasons behind it.

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1 That comes under the confrontation laws, Your Honor, so
2 I'll just put that on the record.

3 THE COURT: Yeah. You had the confrontation,
4 though, didn't you, specifically?

5 MR. SUMMA: Well, yes, Your Honor.

6 THE COURT: Thank you. You don't have the
7 confrontation, but we're not eliciting anything else that
8 wasn't previously elicited. So everybody's there.

9 And quite frankly, in reading the opinion, Judge
10 Hayes did something that I think is good for Mr.
11 Richardson. I think somebody else might have said that
12 might not have been the real issue because of they could
13 have addressed the issue at hand instead of punting, but
14 they punted instead. And that would have -- the punting
15 creates the problem today.

16 But I understand. The issue of preservation is
17 critical, critical to that group in Columbia. And I get
18 it. That way, they don't get to pick and choose, and
19 that's important for all of us as practitioners, I think.
20 They need to be fair across the board.

21 But, clearly, the confrontation was there. And I
22 don't think the basis for -- the basis for the return was
23 while she was confusing it with the federal practice that
24 was the only issue that she failed to object to that. It
25 had nothing to do with failure to thoroughly represent or

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1 properly represent Mr. Richardson. And so I don't find
2 that as being a confrontation issue. But, Mr. Summa,
3 again, I haven't looked at it, you have. I don't know
4 what it is. I'll read it and then we'll -- we will
5 revisit this when and if the State intends to present it.
6 Okay?

7 MR. SUMMA: Okay. Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. DAVIS: Judge, final issue. And I just talked
10 to the Solicitor. I believe they have a copy of the
11 obituary and we would ask that it be a Court's Exhibit.
12 Obviously, that's a precursor to this whole...

13 THE COURT: What?

14 MR. DAVIS: The obituary for Mr. Hess, that actually
15 we have that in the record so --

16 THE COURT: The bench warrant?

17 MS. FRIERSON: The obituary.

18 MR. DAVIS: The obituary. I'm sorry, Judge.

19 THE COURT: Oh, obituary. Okay. That's fine.

20 MR. SOWARDS: And I actually have a copy --

21 THE COURT: Because if we issued a bench warrant for
22 him, I'm not going to serve it.

23 MR. DAVIS: May I approach, Your Honor?

24 THE COURT: Yes, sir. Why don't we do this. At
25 the appropriate time, we'll put that in so that -- right

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1 now, I don't know whether it's necessary with that. But
2 clearly at the appropriate time we'll put that in. The
3 Court will take judicial notice of that at the
4 appropriate time. But I'm not going to do it until it
5 becomes necessary. Okay?

6 MR. SUMMA: Thank you, Your Honor.

7 THE COURT: Thank you. Alright. Anything else from
8 the State?

9 MR. DAVIS: And, Judge, I believe you were also
10 handed a copy of the transcript ---

11 THE COURT: --- I have ---

12 MR. DAVIS: --- of his prior testimony. We have
13 that, as well.

14 THE COURT: Very good. Thank you. All right. Any
15 other issues?

16 MR. SOWARDS: Your Honor, we're going to stipulate
17 to his prior conviction being one that is statutorily
18 violent. The one that -- the stipulation that we
19 prepared doesn't have the correct caption, but we'll make
20 sure that's ---

21 THE COURT: --- that's fine ---

22 MR. SOWARDS: --- done before tomorrow.

23 THE COURT: That's no problem. Okay?

24 MR. SOWARDS: And I think that's the last thing from
25 the State, Your Honor.

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1 THE COURT: Are you going forward on both gun
2 charges?

3 MR. SOWARDS: We are. There's -- originally he was
4 charged with the trafficking, the possession of a weapon
5 during the commission of a violent crime, and then five
6 of the possession with a prior statutory violent
7 conviction.

8 I'm not real sure what happened in the prior trial.
9 They went forward on crime of violence and then listed
10 trafficking crack cocaine, which is not a statutory crime
11 of violence. It's a violent crime. They stipulated --
12 I'm not real sure what happened. That's why I directly
13 indicted him for the newer or the accurate one, just the
14 ones that are filed.

15 THE COURT: Well, the verdict form is interesting.
16 I can't wait until when Judge McDonald comes back to ask
17 her, because I've never done that at all. And she's very
18 thorough. I'm curious as to why she went through a list
19 each -- each one of the firearms. But the one that went
20 forth was being convicted of a crime, for a crime of
21 violence and ---

22 MR. SOWARDS: --- and in the indictment it listed
23 trafficking in cocaine and that actually ---

24 THE COURT: --- but yours is having possession of a
25 gun while he's committing trafficking, aren't you?

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1 MR. SOWARDS: There are two. There's the possession
2 of ---

3 THE COURT: --- I know, I know. But why are you
4 going -- why are you going on both? It's the same gun,
5 isn't it?

6 MR. SOWARDS: There were five guns.

7 THE COURT: Well, I don't care whether there were a
8 hundred guns. I mean, he's -- that's fine. I just
9 wonder what you -- why you're doing that, what's the
10 purpose of that. What's the reason, other than the fact
11 that -- I mean, let me just give you this example. And
12 I'm not saying it's going to happen here.

13 I think it was burg first. I tried it in Columbia
14 in 1996. I'll never forget it. It was a burg first and
15 an armed robbery, and there was another crime. And they
16 also -- the car where they caught him, the tags were
17 improper and they charged him with driving a car with
18 improper tags, in addition to all of this other stuff.
19 You know what the first question from the jury was within
20 about ten minutes? Could you give us the law on improper
21 tags?

22 My feeling is what in the world are you doing? Why
23 waste the time on something that's subsumed, as we know
24 and Mr. Richardson knows. The best deal he can hope for,
25 if he's convicted, is twenty-five years.

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1 MR. SOWARDS: Right.

2 THE COURT: So I just throw that out. I mean, the
3 other one -- the other one, the one that -- the
4 possession -- commission of -- possession of a weapon
5 during the commission of a violent crime, does both of
6 them trigger the five-year, or does that -- that's the
7 one that triggers the five-year? Or all of them trigger
8 it?

9 MR. SOWARDS: I thought that ---

10 THE COURT: --- I mean the ---

11 MR. SOWARDS: --- the possession of weapon is the
12 five-year.

13 THE COURT: That's just a straight five-year ---

14 MR. SOWARDS: --- that's zero to five ---

15 THE COURT: --- but possession during the commission
16 triggers the five-year, which can be consecutive.

17 MR. SOWARDS: Right.

18 THE COURT: I mean I can make those consecutive.
19 But I don't think the other five years is a day-for day.
20 There's...

21 MR. SOWARDS: I don't think it is, either.

22 MR. DAVIS: That's the way I've advised my client,
23 Your Honor. The prior record, making possession
24 unlawful, is zero to five. Possession during the
25 commission of a violent crime is a flat five. That's the

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1 way I always ---

2 THE COURT: Five years.

3 MR. DAVIS: Yes, Your Honor.

4 THE COURT: Correct. And it's a day-for-day
5 sentence.

6 MR. DAVIS: Yes, Your Honor.

7 THE COURT: So I just wonder why you want to go
8 forward with all the others. But you do what you want.
9 It just makes me have to charge more, but that's okay.
10 Whatever. Okay. I'll prepare -- we'll talk about that
11 later. Anything else, Mr. Sowards?

12 MR. SOWARDS: No, Your Honor.

13 THE COURT: Anything, Mr. Davis, from the defendant?

14 MR. DAVIS: Yes, Your Honor. We've got three
15 motions we filed.

16 THE COURT: Yes, sir.

17 MR. DAVIS: The first one deals with one of the
18 guns, Judge.

19 THE COURT: All right.

20 MR. DAVIS: It's the -- Judge, what we're asking to
21 suppress is in a review of the discovery last week -- the
22 Solicitor's Office had us down to their office and
23 reviewed it. One of these five that they seized is
24 inoperable. It's my interpretation of our procedural
25 history that that warrant was dismissed before the last

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1 trial for that very reason.

2 THE COURT: It was inoperable?

3 MR. DAVIS: It's inoperable. And there's a tag on
4 the weapon that says that. The issue I think being that
5 it's one of the three guns that is alleged to have been
6 seen in plain view that gives rise to all of the rest of
7 this.

8 But if it was not inoperable so they couldn't go
9 forward on that charge. As you notice on the jury form
10 or the verdict form last time, it lists all of them. And
11 I don't believe it has the Intratec 9 on there, and
12 that's the one we're specifically talking about.

13 THE COURT: Okay.

14 MR. DAVIS: If it's not operable and they couldn't
15 go forward, then I don't think this jury ought to hear
16 about it. And finally, Judge, if I may approach, this is
17 premarked as State's Exhibit 13.

18 THE COURT: Sure.

19 MR. DAVIS: It's the big one with the long clip that
20 looks the most ominous.

21 [Whereupon, Mr. Davis provides photograph to the
22 Court]

23 THE COURT: Yes.

24 MR. DAVIS: The other four guns are hand -- are
25 pistols, semiautomatic pistols, with a normal clip in

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1 them. So there's two pistols there, along with the big
2 submachine gun. I'm making up that definition, but it
3 sure looks ominous to me. Those two other pistols, and
4 then two other pistols found under pillows.

5 We're going to fight about the other four, but I
6 would argue that we not fight about that one since it's
7 inoperable, and the prejudice of seeing that, it just
8 looks ominous, Judge. It's inoperable and it looks
9 ominous. We would argue they not be able to elicit
10 testimony to that gun and not be able to use that photo
11 or any other photo.

12 I think that's the first one where they see it and I
13 think that may be the most obvious one they -- the one
14 they intend to introduce. So for all those reasons we
15 ask that it be blocked for relevance, probative versus
16 prejudicial. We would ask it be excluded.

17 THE COURT: Okay. What's your position?

18 MR. SOWARDS: Your Honor, specifically as to that
19 that picture, that's what the deputy saw when he entered
20 the house and one of the keys to getting the probable
21 cause for the search warrant. And I don't think he knew
22 whether it was operable. And the testimony will bear ---

23 THE COURT: --- well, why was it one of the keys to
24 getting the search warrant?

25 MR. SOWARDS: Because when he went in to clear the

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1 house looking for this 911 caller, you know, he looked --
2 they looked under the bed, saw guns, looked in the
3 bathroom, saw a scale with white-powder residue, and saw
4 the cash. I think it's important to show the jury what
5 he saw which led him to believe and to call the narcotics
6 unit in.

7 THE COURT: Well...

8 MR. SOWARDS: The State certainly doesn't intend to
9 harp on the fact that it's ---

10 THE COURT: --- well, the point is this. Obviously,
11 it depends on what comes in and what's necessary at the
12 time of the trial. A ruling has already been made
13 concerning the legitimacy of the search warrant, I
14 assume, by Judge Young, in failing to suppress -- in
15 denying the motion to suppress.

16 But obviously the guns may have triggered a reason
17 to look more. But the calling the narcotics wasn't the
18 guns, it was the finding the drugs, I would assume,
19 wasn't it?

20 MR. SOWARDS: Primarily the drugs. Yes.

21 THE COURT: Yeah. So how does this -- how does the
22 probative value outweigh the potential prejudice of --
23 obviously, I assume you are not going to elicit testimony
24 that says these types of guns are typically by drug
25 dealers, cartel dealers, and things like that. In fact,

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1 there was a program I was watching last night -- I don't
2 know which one of the -- I think it was L.A. whatever.
3 And they were busting this guy who -- horrible situation.
4 The guy was pinned against -- he had done something
5 against this group and they drove the car into him,
6 enough that it crushed his lower body but it didn't kill
7 him. And they left him like that.

8 And when they found him they said, we can't move the
9 car because once we move the car he's going to bleed out
10 and there's nothing we can do. The pressure of the car
11 kept him from bleeding out. And I thought -- but at the
12 end there was a shootout, and they were there with their
13 weapons like I'm seeing here, like police officers and
14 these others were shooting what seemed like machine guns
15 at them.

16 And I thought somebody's outgunned here. All I'm
17 saying, and why I'm saying all of that, that's what
18 people watch every day. And you're not trying to imply
19 that because that type of gun was under the bed; he's one
20 of these big-time drug dealers, are you?

21 MR. SOWARDS: No. I mean, I think ---

22 THE COURT: --- but therein lies the issue of my
23 concern about that. But I'm just expressing that now.
24 Obviously, I can't rule in a vacuum on this type of
25 thing. I hear you. I'll have to make a 403 analysis of

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1 that. I've articulated some of my concern about the
2 probative value being outweighed by the potential
3 prejudice. But at the time, I don't know what's going to
4 lead up to all of this. So I'll have to just simply say
5 it's noted but I can't give you a definitive ruling on
6 that, Mr. Davis, at this point. Okay?

7 MR. DAVIS: Thank you, Your Honor.

8 THE COURT: But thank you, Mr. Sowards. And I'm not
9 suggesting you're doing anything wrong by offering that,
10 sir. What else?

11 MR. DAVIS: We heard testimony -- we had testimony
12 on Thursday and there was a brief period of testimony by
13 Detective Bowen that he received two calls into the
14 residence while he's there. He described those calls.
15 And one of those calls he testified, I got a call from a
16 person identifying themselves as Therron Richardson, and
17 gives a number.

18 There is no foundation to say they've had any
19 contact before or can identify his voice in any way. We
20 think it is unduly prejudicial to allow him to testify
21 that way in front of the jury, to suggest that it was, in
22 fact, my client calling in. There's no other recorded
23 evidence to corroborate that -- we'd have to have some
24 other recording dispatch and the like. We don't have
25 that on this particular issue. And so the probative

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1 value is clear if it is who they say it is. But that's
2 the whole thing in dispute is we would argue that the
3 prejudice outweighs the probative value, since it's
4 unsubstantiated.

5 MR. SOWARDS: Your Honor, Deputy Bowen will testify
6 that -- I believe he'll testify that while they were
7 inside the house, they received two calls. The first to
8 a number that they linked to the defendant and that
9 person identified themselves as Mark. That call was
10 ended and a subsequent call was received at the house,
11 this time from a blocked number.

12 In that conversation Deputy Bowen said, am I
13 speaking with Therron Richardson? His testimony will be
14 that the other individual on the call said, yes, or
15 confirmed that it was, in fact, Therron Richardson.
16 That's the extent of it. I think it's probative to show
17 his connection to the home. So I think he was not at
18 home. So whether he's the owner, the occupier of that
19 residence is a critical issue in this case.

20 THE COURT: Well, obviously, I've got to hear all of
21 the evidence and get to that point. When you do want to
22 elicit that testimony, I would just simply ask that we
23 excuse the jury so I can hear it in context with all of
24 the other evidence at that time.

25 MR. SOWARDS: Sure.

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1 THE COURT: That way, the jury won't hear it until I
2 pass it. All right.

3 MR. DAVIS: Finally, Your Honor, there was testimony
4 in the prior trial -- you said earlier we've got new
5 attorneys on both sides. But in talking with opposing
6 counsel, I think they want to track the original --
7 there's some testimony from one of the Metro Narcotics
8 officers dealing with the street value of the cocaine.

9 We object to that, the relevance. It's not an
10 element of the offense. Again, it would only lead to
11 inflame the jury as to the value of this and the
12 magnitude of this. That's not an element of the offense
13 and that is not something that's necessary for the State.

14 Also, it's speculative. I don't know what answer
15 I'm going to get in 2019. We are now -- and this was
16 tried in 2012, the incident was in 2010. It can only be
17 used to inflame the jury and therefore that's
18 prejudicial. We would ask that since it's unnecessary
19 and irrelevant, that it be suppressed.

20 THE COURT: All right. What's your position, Ms.
21 Frierson?

22 MS. FRIERSON: Thank you, Your Honor. We would
23 argue that it's important to explain the situation as a
24 whole. The significance in weight and the amount, in
25 addition to its proximity to the items located. As the

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1 indictment that Your Honor read to them indicated, there
2 are to aid, abet, and conspire. There are multiple parts
3 within the statute and part of that would be to describe
4 a drug operation that's ongoing. And in order for a jury
5 to fully understand that we believe that it's important
6 for them to understand the complexity and the operation
7 as a whole.

8 THE COURT: Well, you hit the nail on the head, Ms.
9 Frierson, of why I when I tried my first trafficking case
10 years ago, I wondered why I had never seen -- because I
11 was looking for the component of the charge that talked
12 about just what you just alluded to, that this is some
13 big-deal, money-making deal, where the person is big time
14 in drugs. That's what we -- what's always implied when
15 we talk about trafficking.

16 Of course, I found out the obvious. It has nothing
17 to do with that. Whether you made a dime, it doesn't
18 matter if you had in your possession the requisite
19 amount. I don't know what the evidence is going to say.
20 If it's consistent with everything else that's led up to
21 it, I probably would allow it.

22 But if it's just in itself just suddenly, oh, it had
23 a value of this much, I'll have to wait and see how it is
24 in context. But I don't quarrel with it being relevant
25 to the charge, because you are absolutely correct.

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1 That's a very broad statute as to the various elements of
2 it. And certainly well within the rights -- the State's
3 right to present that aspect of it. I'll just have to,
4 again, as I did with the other, look at it from a 403
5 perspective is the prejudice -- does the prejudice
6 outweigh the probative value of it. And I'll have a
7 better picture once I get to that point. Okay?

8 MS. FRIERSON: Thank you, Your Honor.

9 THE COURT: Thank you. But I do not fault you for
10 offering that. I think it's very legitimate and very
11 relevant. Anything else?

12 MR. DAVIS: No, not from the defense, Your Honor.

13 THE COURT: Okay. Anything else?

14 MR. SOWARDS: I do have just one question.

15 THE COURT: Sure.

16 MR. SOWARDS: Assuming -- as far as the prior
17 testimony from the now-deceased witness.

18 THE COURT: Uh-huh ---

19 MR. SOWARDS: --- when ---

20 THE COURT: --- when do you plan to do that?

21 MR. SOWARDS: It would be tomorrow afternoon at the
22 earliest I think.

23 THE COURT: That's fine. We'll talk about it.

24 MR. SOWARDS: Okay.

25 THE COURT: I mean, how do you do it?

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1 MR. SOWARDS: Just thinking mechanically --
2 THE COURT: However you --
3 MR. SOWARDS: -- how do you do that?
4 THE COURT: But let me tell -- let me tell you --
5 let me answer you in this fashion. I don't know that
6 there's any outline for it. I know it's in an outline
7 for deposition. In my career of twenty-one years,
8 typically what we had was a person, and usually it was
9 the youngest lawyer in the firm or someone that was
10 working in there, that read the part.
11 Then you had some people that employed a lawyer.
12 Well, when I was in Beaufort for six months, the Clerk of
13 Court, Henry Jackson, was people started selecting him
14 and I found out why. He could play the role of a doctor
15 better than a doctor. I had never seen anybody like
16 that. He was really an undiscovered actor in Beaufort
17 and he just -- he got into the roles.
18 I had seen it done, the one that -- and I've only
19 seen it done one time, but it was really effective. I
20 was trying a case in Horry County in '95 and George
21 Kefalas, it was a civil case, was the Plaintiff's lawyer.
22 He published it. And what was good was he put the
23 inflection he wanted on the parts and I thought, wow,
24 that's -- and he just stood in front of the jury and did
25 it. I don't -- I share that with you to say I don't know

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1 that there is any way to do that. It's up to what you
2 want to do, however you want to present your case. You
3 just simply say the next witness, we're going to present
4 sworn testimony, we're going to publish it for you.

5 And I'll tell them that they're -- just as I do with
6 a deposition, they're to consider that testimony the same
7 as anybody that comes, it doesn't matter whether the
8 person is physically present in the courtroom, it's just
9 not necessary. So however you want to do it is fine with
10 me. But I guess the majority of the time it's a -- a
11 lawyer reads the -- plays the role. It's typically what
12 I see. But I don't know that that's necessarily the only
13 way. If you want to get a -- if you want to employ
14 someone, you can do that, too. If you want to get an
15 actor or actress to do it, it'll be fine, too. But
16 anyway; if that answers your question.

17 MR. SOWARDS: It does. Thank you.

18 THE COURT: Okay. Anything else? Thank you-all. I
19 look forward to trying the case with you. We'll be at
20 ease, then until 9:30 in the morning.

21 MR. SOWARDS: Thank you, Your Honor.

22 MR. DAVIS: Thank you.

23 THE COURT: And I will be reading the transcript for
24 my perusal.

25 [Whereupon, jury trial adjourns at 12:40 p.m.]

STATE OF SOUTH CAROLINA)

COURT OF GENERAL SESSIONS)

COUNTY OF CHARLESTON)

DOCKET NO. 2011-GS-10-2320)

2011-GS-10-2321)

2019-GS-10-0879)

STATE OF SOUTH CAROLINA)

vs.)

THERRON RENARD RICHARDSON)

Defendant)

TRANSCRIPT OF RECORD)

January 15, 2019

Charleston, South Carolina

Volume 2 (of 3)

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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Circuit Court Reporter

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PROCEEDINGS

THE COURT: All right. Anything from the State before we begin?

MR. SOWARDS: Your Honor, I think Mr. Davis and I were just talking yesterday about the evidence that was introduced in the prior trial.

THE COURT: Uh-huh.

MR. SOWARDS: Where that conviction was vacated.

THE COURT: Uh huh.

MR. SOWARDS: Our plan was to put a sticker over the -- there are some items like physical items that we can't just remove the sticker. Would it be okay with you if we just put a new sticker over it? That way the jury...

THE COURT: Well, I'm comfortable with it if Joy is comfortable with that.

MR. SOWARDS: Okay.

MR. DAVIS: And that's what we discussed and we both thought that that would work. And the following question is there are items we -- both sides admitted on Thursday, and they're bringing them right now. I don't recall what were party's exhibits versus Court's exhibits.

THE COURT: Well, whatever the marking was, it has to stay there, obviously -- it'll just be another marking -- because that's been referenced in a prior hearing so.

MR. DAVIS: What I would like to do is take a look.

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1 I don't -- I want to see if -- if the Court Exhibits will
2 never be in front of the jury, we have no issue.

3 THE COURT: Okay.

4 MR. DAVIS: We can just use the labels that are on
5 there.

6 THE COURT: Well, they won't -- what would --

7 MR. SOWARDS: I can tell you that, from the stuff
8 that we admitted in the pretrial, that we intend to
9 submit new copies of those.

10 THE COURT: Okay.

11 MR. DAVIS: Okay.

12 THE COURT: That's fine. Then that takes care of
13 it.

14 MR. DAVIS: Yes.

15 THE COURT: Alright. Anything from the defendant,
16 Mr. Davis?

17 MR. DAVIS: Nothing, Your Honor. Thank you.

18 THE COURT: All right. And let the record reflect
19 that Mr. Richardson is present. Let's bring in our jury,
20 please.

21 [Whereupon, the jury enters the courtroom at 9:34
22 a.m.]

23 THE BAILIFF: Judge, all jurors are present.

24 THE COURT: Thank you, Mr. Pryor. And thank you
25 very much, ladies and gentlemen. I hope you had a good

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1 what remained of your day yesterday. And we're ready now
2 to continue the matter that we started. As I mentioned
3 to you when we qualified you, the first acts that would
4 happen is that you would be administered an oath similar
5 to the oath that I took when I assumed this job, and now
6 I would ask you to give your attention to the clerk as
7 she administers that oath, please. Thank you.

8 CLERK OF COURT: May I have the Defendant stand?

9 [Whereupon, the Defendant stands]

10 CLERK OF COURT: Mr. or Ms. Foremen, ladies and
11 gentlemen of the jury, please stand and raise your right
12 hands to be sworn.

13 [Whereupon, the jury stands]

14 CLERK OF COURT: Do you swear or affirm that you
15 shall well and truly try and a true deliverance make
16 between the state of South Carolina and the Defendant at
17 the bar whom you shall have in charge and a true verdict
18 render according to the evidence and the laws so help you
19 God?

20 [Whereupon, all jurors respond with I do]

21 THE COURT: Thank you. You may be seated, ladies
22 and gentlemen.

23 [Whereupon, the jury complies]
24
25

State v Therron Renard Richardson
Opening Statements-Remarks by Mr. Sowards
January 15, 2019

1. OPENING STATEMENT

2 BY MR. SOWARDS:

3 Good morning, ladies and gentlemen. As I stated to
4 you before when we selected you all for our jury
5 yesterday, my name is Whit Sowards. I am an Assistant
6 Solicitor here in the Ninth Judicial Circuit. With me is
7 Assistant Solicitor Lauren Frierson, and together in this
8 case we represent the State of South Carolina.

9 Ladies and gentlemen, this case began with a 911
10 call. On October 17th, 2010, Charleston County dispatch
11 received a 911 call from what appeared to be a distressed
12 woman claiming that she was the victim of an ongoing
13 domestic incident. She gave the address [REDACTED] Old Fort
14 Avenue in Charleston County, and she told the dispatcher
15 that she had locked herself in a room, that her assailant
16 was trying to get into the room and she needed help.

17 That information was relayed from the dispatcher to
18 deputies with the Charleston County Sheriff's Department
19 and two deputies showed up at that house about ten
20 minutes later. And when they walked to the front of the
21 door, they noticed something a little unusual about the
22 house. The front door didn't have a doorknob or a door
23 lever, it only had a deadbolt. And thinking that's a
24 little strange, they went around the back and realized
25 that a sliding-glass door was slightly ajar. And you'll

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Opening Statements-Remarks by Mr. Sowards
January 15, 2019

1 hear the deputies discuss why that was important to them.
2 So knowing that there's potentially a victim of a crime
3 inside the house needing their attention, they went into
4 the home. And they swept it. They'll tell you a little
5 bit more about what that means. It took them a few
6 minutes. They only looked where a person could
7 reasonably be hiding in the home. They didn't look in
8 drawers, they didn't open up cabinets. They searched the
9 house for any occupants, anybody who might need
10 assistance.

11 And it was only after that, when they had cleared it
12 of any potential victims, that they let their supervisor
13 know, hey, while we were in here we noticed a few things
14 we want to talk to you about. And those few things, in
15 plain view, were a scale with some drug residue on it or
16 what they believed at the time was drug residue, they
17 found some firearms under a bed, and then they found cash
18 in a closet. They relayed that information to the
19 supervisor and then let the narcotics detectives with the
20 Charleston County Sheriff's Department know.

21 They obtained a search warrant and conducted a more
22 thorough search of the house. At the conclusion of their
23 search, they had found over 2,000 grams of cocaine, over
24 2 kilos of cocaine, over 20,000 dollars in cash, and
25 multiple firearms. So based on some of the other stuff

State v Therron Renard Richardson
Opening Statements-Remarks by Mr. Sowards
January 15, 2019

1 in the house, which you'll hear about, which they were
2 able to link to the defendant, they arrested him and
3 charged him based on what they found.

4 Now, as Judge Dennis mentioned in his opening
5 remarks, the State has the burden in this case, and we
6 embrace that burden. And over the course of this trial
7 we intend to present testimony and introduce evidence
8 that will prove to you, once you've had an opportunity to
9 hear everything that the Defendant, Therron Richardson,
10 is guilty of the crimes for which he's charged. Thank
11 you very much.

12 THE COURT: Thank you, Mr. Sowards. Mr. Davis?
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State v Therron Renard Richardson
Opening Statements-Remarks by Mr. Davis
January 15, 2019

1 OPENING STATEMENT

2 BY MR. DAVIS:

3 If only it were that simple. If we agreed with
4 that, then we wouldn't have a dispute and we wouldn't be
5 here in trial today.

6 I'm thinking as I'm listening to him speak that when
7 you see a preview for a movie and you think you know what
8 it's about and the movie doesn't match up to the preview,
9 I think that's what we're going to have here.

10 I believe after you hear all the evidence, you'll know
11 that Therron Richardson was a blue-collar worker, was a
12 landscaper. I believe that you'll know that these
13 charges are just wrong.

14 It starts with a bogus 911 call. I want you to pay
15 attention to that recording, listen to the call, listen
16 to what it says. Pay attention to what law enforcement
17 knew about that call at the time of the call. This was a
18 setup. This was absolutely a setup. I believe at the
19 end of this trial, you will have doubts about what the
20 State just promised you they're going to prove.

21 You get to be the teachers that are grading the
22 exam. You were just promised a story. Grade them on it.
23 And I admit we don't have all the answers, either.
24 Neither are you going to have all the answers at the end
25 of this. Now, the Judge told you we're not required to

State v Therron Renard Richardson
Opening Statements-Remarks by Mr. Davis
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1 give you the answers. I'll tell you, we don't have the
2 answers to this and neither does the State. Your oath
3 and your obligation, though, is not to solve this mystery.
4 And it is mysterious. That's their show. That's their
5 obligation.

6 The Judge asked you to be detail people. Be detail
7 people. Pay attention to when the testimony of witnesses
8 contradict each other, because it's going to. Pay
9 attention to recordings that you will hear, be able to
10 listen to it as many times as you want, recordings from
11 dispatch, law enforcement with radios to officers telling
12 them where to go, what's going on. Pay attention to
13 that. Pay attention to what's said and who is saying it.

14 We've got Deputy Bowen, Alexander, Plyler, their
15 supervisor, York, the dispatcher. All those folks are
16 going to be on this dispatcher recording. Pay attention
17 to what's recorded. Pay attention to what's not
18 recorded. Pay attention to the witnesses that are called
19 and the witnesses the State chooses not to bring forward
20 and explain things to you.

21 The Judge has told you that you're going to be judge
22 of the facts. Try to determine what the facts are. You
23 get to judge the credibility or the believability of
24 witnesses when they take that witness stand. Please pay
25 attention to what the evidence does not show you. And

State v Therron Renard Richardson
Opening Statements-Remarks by Mr. Davis
January 15, 2019

1 when there's evidence that the State doesn't bring
2 forward, it's fair to ask why. Note the things that --
3 as the Judge said, note the things that don't make sense.
4 Don't decide then, but note the things that don't make
5 sense.

6 I believe during this trial you're going to know
7 that there was a security system on the residence at [REDACTED]
8 Old Fort Avenue. I believe you'll know that ADT
9 monitored that home and had security in that home. I
10 believe you'll hear calls to and from ADT. Please pay
11 attention to those recordings and what is said and what
12 is not recorded. I believe you'll know about an event
13 log of alarms that are tripped and the sequence in which
14 they are tripped.

15 Pay attention to that because as we know, using our
16 common sense and just our life experiences, humans can
17 have faulty memories. That's natural. They can have
18 biases, they can lie. But a recording, an audio
19 recording, simply records verbatim what is said. A real-
20 time event log just logs what happens and when it
21 happens. Those things are recordings of a real event,
22 either audio or some -- an event that happened.

23 I believe at the end of this case, once you've heard
24 all of the evidence the State presented, and I'm going to
25 tell you we haven't decided yet. We may, we may not. We

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Opening Statements-Remarks by Mr. Davis
January 15, 2019

1 get to hear it just like you do the State's case first.
2 But at the end of this, you're still going to be
3 confused. And that's okay, because this is confusing,
4 this is a mystery. There are holes in this case.

5 But at the end of this trial, with all of the
6 evidence they present, if you're still confused, and
7 you're going to be, then the verdict is not guilty. And
8 that's the correct verdict. Thank you.

9 THE COURT: Thank you, Mr. Davis. All right
10 Solicitor, you may call your first witness.

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State v Therron Renard Richardson
Tonia Mallette-Direct Examination by Ms. Frierson
January 15, 2019

1 MS. FRIERSON: The State calls Tonia Mallette.
2 THE COURT: Okay.
3 [Whereupon, Ms. Mallette comes forward]
4 CLERK OF COURT: Please put your left hand on the
5 Bible and raise your right hand.
6 [Whereupon, Ms. Mallette is duly sworn by the Clerk
7 of Court]
8 CLERK OF COURT: Will you, for the record, please
9 state your full name, spelling your last name.
10 THE WITNESS: Sure. Tonia Mallette. The last name
11 is spelled M-A-L-L-E-T-T-E.
12 MS. FRIERSON: Thank you. May it please the Court,
13 Your Honor?
14 THE COURT: Yes, ma'am.
15 - - - - -
16 TONIA MALLETTE,
17 Having Been First Duly Sworn,
18 was Examined and Testified as Follows:
19 DIRECT EXAMINATION
20 BY MS. FRIERSON:
21 Q. Ms. Mallette, could you please tell the jury what
22 your occupation is and who you work for?
23 A. Sure. I work for Charleston County Consolidated 911
24 Center, and my current occupation is the FOIA analyst.
25 Q. And what is FOIA?

State v Therron Renard Richardson
Tonia Mallette-Direct Examination by Ms. Frierson
January 15, 2019

1 A. FOIA is freedom of information.

2 Q. How long have you worked there?

3 A. Twenty-eight and a half years.

4 Q. And would you tell the jury a little bit about your
5 duties?

6 A. Sure. My duties include I am the records custodian.
7 I am responsible for the timely and accurate release of
8 911 calls, radio, audio, CAD logs to Solicitors' office,
9 Public Defenders' office, to attorneys' offices, and to
10 private citizens as well.

11 Q. And you mentioned the term CAD. What does that
12 stand for?

13 A. CAD is an acronym for Computer Aided Dispatch, also
14 known as a 911 transcript.

15 Q. And prior to working in your capacity as a records
16 custodian, did you ever have the opportunity to work as a
17 dispatcher?

18 A. Yes, I did.

19 Q. And how long did you do that?

20 A. I worked in -- for a period of about six years.

21 Q. And given your prior experience as a dispatcher,
22 could you let the jury know kind of the duties and a goal
23 of a dispatcher?

24 A. The goal of a dispatcher is there is two different
25 parts. There is a call-taker part, where we take the 911

State v Therron Renard Richardson
Tonia Mallette-Direct Examination by Ms. Frierson
January 15, 2019

1 calls, the admin calls, and we enter those into our
2 computer system. There's also the dispatcher aspect
3 responsible for providing that information to the
4 officers in a timely and effective manner.

5 Q. Could you explain to the jury the process of call-
6 taking from when you receive a 911 call through the
7 dispatch?

8 A. Sure. Once a call is received by 911, everything
9 that comes in is recorded. So that information, the
10 address, the name, the pertinent information, is obtained
11 by that call-taker and is entered into the Computer Aided
12 Dispatch; into the CAD system.

13 Q. Do different types of calls on a 911 system require
14 different dispatch responses?

15 A. Yes. We have high priority. Obviously, that would
16 be responsible for -- would result in immediate dispatch.
17 And we have nonemergency-type incidents, such as a theft
18 that has occurred over a substantial period of time
19 obviously would not require an immediate response.

20 Q. If you receive a call from a party in distress, what
21 is the protocol on something like that?

22 A. For a party in distress, obviously that would be
23 entered and that would be dispatched immediately.

24 Q. And do you ever make attempts to, if you're
25 disconnected from somebody on 911, to call them back?

State v Therron Renard Richardson
Tonia Mallette-Direct Examination by Ms. Frierson
January 15, 2019

1 A. Yes. That is part of the policy. We must make an
2 attempt to call back on a 911 phone call, if we are able
3 to.

4 However, there are some times when someone calls
5 from a cell phone that is disconnected, meaning that it
6 could not receive incoming calls. Therefore, we are not
7 able to call those type lines back.

8 Q. And is there any significance to you, as a
9 dispatcher, when you receive a call from somebody in
10 distress and you cannot get them back on the line?

11 A. Obviously, that information is entered into the CAD
12 and an officer is sent out immediately.

13 Q. Would you relay that information, the inability to
14 reconnect with them, to dispatch -- or excuse me -- to
15 deputies?

16 A. Yes, we would.

17 Q. Now is there any information that you as a
18 dispatcher, when you're looking at your call-taking
19 screen, may see but may not relay to deputies?

20 A. There's a possibility, but in most cases all the
21 information is relayed to the lead officer.

22 Q. Now, after the fact, when a call is done, is there a
23 way to determine what information was, in fact, relayed
24 to the deputies?

25 A. That information is -- the information is usually

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1 listed in the comment section of the CAD report so the
2 dispatcher has the ability to log that information.
3 Q. So there is a written report of that?
4 A. Yes.
5 Q. And is there an audio copy, as well?
6 A. There is an audio copy, as well.
7 Q. And going forward in your current job duties now as
8 a records custodian, you testified it includes copying
9 these recordings and bringing them to court; is that
10 correct?
11 A. That is correct.
12 Q. And are these records kept in the normal course of
13 business at Charleston County Consolidated Dispatch?
14 A. Yes, it is.
15 Q. And that's where you're the custodian of records?
16 A. Yes. Yes. That is correct.
17 MS. FRIERSON: Your Honor, may I approach the
18 witness?
19 THE COURT: Yes, you may.
20 Q. [Ms. Frierson] Ms. Mallette, I'd like to give you
21 what's been premarked as State's Exhibit Number 3 and
22 State's Exhibit Number 5.
23 [Whereupon, the witness is shown exhibits]
24 A. Yes.
25 Q. If you could review them. I'll start with State's

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1 Exhibit Number 3. Take a minute and look at it and tell
2 me if you recognize it.

3 A. I do.

4 Q. And what is that?

5 A. This is the 911 call placed on a CD and it's -- my
6 initials are notated on the CD.

7 Q. And how is it that you recognize it?

8 A. They're my initials.

9 Q. Would that be a fair and accurate recording of the
10 911 call that was received in this case and then copied
11 for the Court?

12 A. Yes.

13 MS. FRIERSON: Your Honor, at this time the State
14 would request to admit State's Exhibit Number 3 into
15 evidence and publish it to the Court.

16 THE COURT: Is there any objection?

17 MR. DAVIS: No objection, Your Honor.

18 THE COURT: Very well. Without objection, State's 3
19 is admitted and you may publish.

20 MS. FRIERSON: May I?

21 THE COURT: Yes.

22 [Whereupon, State's Exhibit Number 3 is admitted
23 into evidence by the Court]

24 [Whereupon, State's Exhibit Number 3 is played for
25 the jury]

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1 Q. [Ms. Frierson] Now I'd like for you to review
2 State's Exhibit Number 5, please.

3 A. Sure.

4 Q. And could you tell me if you recognize that?

5 A. I do.

6 Q. And what is it?

7 A. It's the printed copy of the CAD report.

8 Q. And, again, what is a CAD report?

9 A. It's Computer Aided Dispatch, an incident report
10 generated by the dispatcher for the dispatch office.

11 Q. And what does it memorialize? What's its purpose?

12 A. Its purpose is just a summary of what transpired
13 between the call taker, the caller, the dispatcher, and
14 the officer.

15 It gives the address that the caller gives; gives an
16 address. It gives a -- on here it has the caller's name
17 and it has time the call was picked up, and some other
18 information from the dispatcher's standpoint.

19 Q. And is that record also kept in the normal course of
20 business and maintained at Charleston County Consolidated
21 Dispatch?

22 A. Yes, it is.

23 MS. FRIERSON: Your Honor, at this time I request to
24 admit State's Exhibit Number 5 and publish it to the
25 jury.

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1 THE COURT: Is there any objection?

2 MR. DAVIS: No, Your Honor.

3 THE COURT: Without objection, State's 5 is admitted
4 and you may publish it.

5 [Whereupon, State's Exhibit Number 5 is admitted
6 into evidence by the Court]

7 Q. [Ms. Frierson] I would like to publish that to the
8 jury by going through it with you and asking you a few
9 questions if you could refer to it.

10 A. Sure.

11 Q. Now, when deputies responded to this, are you able
12 to determine whether they closed the channel?

13 A. Yes.

14 Q. And can you explain to the jury what it means for a
15 deputy who's on scene at a call to close the channel?

16 A. The deputy closes a channel for a safety concern so
17 that any other deputies not involved with this incident
18 will not be speaking over that particular channel,
19 putting that officer in harm's way.

20 Q. And how is that broadcast to every other deputy
21 that's using the channel?

22 A. The dispatcher will make an announcement, this
23 channel is in emergency status, and there will also be
24 alert tones that will be sounded every -- like it's every
25 ten seconds while that channel is closed.

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1 Q. And when you make the recording, as the custodian of
2 records, to provide to us or someone else for court, or
3 other purposes for FOIA, is -- are those tones that you
4 just testified are ten seconds apart, do those change on
5 the dispatch recording?

6 A. Well, they change because of the way the recording
7 is set up. So it's in a condensed form. It's not in an
8 actual -- I guess it's not, what's the -- it's not a
9 standard or it's not by the second. So it's in a
10 condensed form.

11 Q. So you would hear a series of beeps rather than ---

12 A. --- correct, rather ---

13 Q. --- a beep every ten seconds ---

14 A. --- than every ten seconds. Correct.

15 Q. Okay. Now, getting back to this particular
16 incident, does it show how long the deputies closed the
17 channel for emergency use?

18 A. Sure. It was closed four minutes and fourteen
19 seconds.

20 Q. And who requested that it be closed?

21 A. The -- it just says emergency traffic, so most
22 likely it was the deputy on scene.

23 Q. And is that made by a deputy as opposed to a
24 dispatcher?

25 A. Correct.

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1 Q. And based on the notes and information, can you tell
2 why they requested to close the channel?

3 A. For safety purposes. They were -- it says there was
4 an open door, so I have to say that the deputy was
5 clearing the way into the residence.

6 There was an open door and for his safety, as well
7 as for in order for him to get on the radio if he needed
8 to without any other obstructions, that's why the channel
9 was closed.

10 MS. FRIERSON: Court's indulgence.

11 THE COURT: Certainly.

12 [Whereupon, Mr. Sowards and Ms. Frierson confer]

13 MS. FRIERSON: Ms. Mallette, I have no further
14 questions. Please answer any the defense may have.

15 THE WITNESS: Sure.

16 MS. FRIERSON: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes, you may.

19 [Whereupon, Ms. Frierson retrieves exhibits from the
20 witness]

21 THE COURT: You may cross-examine, Mr. Davis.

22 MR. DAVIS: Thank you, Your Honor.
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CROSS-EXAMINATION

BY MR. DAVIS:

Q. To be clear, you were not involved in the 911 call or the dispatch of this incidence back October 17th, 2010?

A. That is correct.

Q. And I think you may have said this on the record but I just wanted the jury to be clear. Any call into a 911 operator is recorded?

A. That is correct.

Q. And the radio traffic on dispatch is recorded?

A. That is correct.

Q. Likewise, if there happened to be a call, for example, from an officer to dispatch, that would be recorded?

A. That is correct.

Q. And, finally, while you're not in uniform, and likely the employees are not in uniform, consolidated dispatch is a part of Charleston County law enforcement; correct?

A. Correct.

MR. DAVIS: Give me just one moment.

THE COURT: Yes, sir.

[Whereupon, Mr. Davis and Mr. Summa confer]

MR. DAVIS: Thank you, Your Honor. No other

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1 questions.

2 Q. Thank you, Ms. Mallette.

3 THE COURT: Redirect, Ms. Frierson?

4 MS. FRIERSON: Briefly, Your Honor.

5 THE COURT: Sure.

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Tonia Mallette-Redirect Examination by Ms. Frierson
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1 REDIRECT EXAMINATION

2 BY MS. FRIERSON:

3 Q. Ms. Mallette, you testified you work with law

4 enforcement?

5 A. Charleston County Consolidated, yes.

6 Q. And do you also provide services to fire and EMS?

7 A. Yes, I do.

8 Q. Do you go to the Academy to be certified as a law

9 enforcement officer?

10 A. As a dispatcher. Not a law enforcement officer; as

11 a dispatcher, yes.

12 Q. And that's significantly different than going to the

13 Academy for law enforcement; correct?

14 A. Yes, it is.

15 Q. Do you carry a weapon?

16 A. I do not.

17 Q. Do you have a car that's marked with any kind of

18 insignia to denote that you're a police officer?

19 A. I do not.

20 Q. And you mentioned briefly, earlier, something about

21 caller location on a CAD report?

22 A. Uh-huh.

23 THE COURT: Was that a yes?

24 THE WITNESS: Yes.

25 Q. [Ms. Frierson] And please let me know if you need to

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1 refer to this, the CAD report, for this again.

2 Was there ever any information provided to deputies that
3 were responding about a caller's location, other than at
4 [REDACTED] Old Fort Avenue?

5 A. That was the address that she provided [REDACTED]. That
6 would have been the address that would have been -- the
7 deputy would have been dispatched to.

8 Q. And going back to your dispatch experience, if you
9 had a live caller on the phone calling in distress, are
10 you going to send a deputy to that address?

11 A. That is where we would send the deputy.

12 Q. If you have any additional information about where a
13 call may be coming from, perhaps what cell tower it's
14 bouncing off of, or anything else, would you still send a
15 unit to where you have a live caller on the phone?

16 A. We would send a deputy ---

17 MR. DAVIS: --- objection, Your Honor. It calls for
18 speculation.

19 THE COURT: I'll allow that question under 701.

20 Thank you.

21 Q. [Ms. Frierson] I'll ask it again. If you have a
22 live caller in distress on a phone providing an address,
23 who you were disconnected from, and you have any other
24 information about where a call may be located or what
25 cell tower it's hitting off of, are you still going to

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1 send a deputy to the location provided by the caller in
2 distress?

3 A. We would send a deputy to the location provided by
4 the caller.

5 MS. FRIERSON: Thank you, Your Honor.

6 THE COURT: Recross, Mr. Davis?

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2 BY MR. DAVIS:

5 A. Well, it depends, because 2010 I was part of North
6 Charleston Police Department. We consolidated in 2010.
7 So I need to know the date to let you know if I was a
8 part of Consolidation.

11 | A. Yes.

16 | A. No.

18 A. In 2010, we did not have the map. What we had in
19 2010 was a screen that showed the location of where the
20 call was originating from, the address, which would be
21 the Automatic Location Indicator.

25 Q. And I believe on that report, the things you just

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1 mentioned, Automatic Number Indicator, ANI?
2 A. ANI.
3 Q. Automatic Location Indicator, ALI?
4 A. ALI. Correct.
5 Q. So if the jury sees that on that report, that's what
6 those things mean?
7 A. If I could see that again?
8 Q. Sure.
9 MR. DAVIS: May I approach, Your Honor?
10 THE COURT: You may.
11 Q. [Mr. Davis] Let me show you what's been entered into
12 evidence as State's Number 5.
13 [Whereupon, the witness is shown document]
14 A. Yes. On the bottom right that says ANI-ALI address.
15 Q. So I misspoke. It's not actually a map but in real
16 time when the 911 call comes in at an address indicating
17 where that call is coming from is showing up in real
18 time?
19 A. In this case it was a cell phone. It would have
20 shown where the cell phone tower, the closest tower, to
21 where that individual was calling.
22 MR. DAVIS: Thank you so much. No other cross.
23 THE COURT: Alright. Thank you, Ms. Mallette. You
24 may step down. Do you wish this witness to be excused,
25 Solicitor?

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1 MR. SOWARDS: Yes, sir.
2 THE COURT: Any objection, Mr. Davis?
3 MR. DAVIS: No, Your Honor.
4 THE COURT: You're also free to leave.
5 THE WITNESS: Thank you.
6 THE COURT: Thank you.
7 [Whereupon, the witness is excused and exits the
8 witness stand]
9 THE COURT: Call your next witness, please.
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State v Therron Renard Richardson
Jason Bowen-Direct Examination by Mr. Sowards
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1 MR. SOWARDS: Thank you, Your Honor. The State
2 calls Detective Jason Bowen.
3 [Whereupon, Jason Bowen comes forward]
4 CLERK OF COURT: Please place your left hand on the
5 Bible and raise your right hand.
6 [Whereupon, Mr. Bowen is duly sworn by the Clerk of
7 Court]
8 CLERK OF COURT: For the record please state your
9 full name, spelling your last name.
10 THE WITNESS: Jason Bowen, B-O-W-E-N.
11 - - - - -
12 JASON BOWEN,
13 Having been first duly sworn,
14 Was examined and testified as follows:
15 DIRECT EXAMINATION
16 BY MR. SOWARDS:
17 Q. Good morning, Detective Bowen.
18 A. Good morning.
19 Q. Where do you currently work?
20 A. I work at the Charleston County Sheriff's Office.
21 Q. And in what capacity do you work at the Sheriff's
22 Office?
23 A. Currently I am a detective assigned to special
24 victims' cases and the ICAC Task Force.
25 Q. How long have you been with the Sheriff's

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1 Department?

2 A. Right at sixteen years.

3 Q. Have you had any other roles at the Sheriff's
4 Department?

5 A. I have. I've been on patrol, as well as a school
6 resource officer, and I'm also currently assigned to the
7 underwater recovery team as a collateral duty.

8 Q. And have you had any training and experience as a
9 law enforcement officer?

10 A. Yes. Quite a bit.

11 Q. Training? Okay. Could you describe for the jury
12 your training and background, please?

13 A. Sure. So starting from basic training on how to
14 respond to calls and the legal concepts that we need to
15 know as law enforcement officers, including domestic
16 violence response.

17 With school resource, went through several different
18 types of training for that, to include DARE training, as
19 well as juvenile law. Currently as a special victims'
20 detective, I've been trained in sexual crimes, sexual
21 assaults.

22 And ICAC stands for the Internet Crimes Against
23 Children Task Force, so I currently investigate any crime
24 that involves an adult with a child as a victim and any
25 type of technology, be it the internet or text messaging,

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1 things like that. And I'm currently an instructor for
2 the dive team. I'm a scuba and emergency response dive
3 instructor.

4 Q. And I want to ask you about October of 2010. In
5 what capacity were you working with the Sheriff's
6 Department at that time?

7 A. I was on the patrol division.

8 Q. And on October 17th, 2010, did you have the
9 opportunity to become involved in this case, State versus
10 Therron Richardson?

11 A. I did. I was dispatched to respond.

12 Q. And dispatched to respond where?

13 A. I apologize. To -- was it Fruitwood -- no. I'm
14 sorry.

15 Q. Were you dispatched to respond to [REDACTED] Old Fort
16 Avenue?

17 A. Yes, we were. [REDACTED] Old Fort Avenue in Charleston,
18 Charleston County.

19 MR. SOWARDS: May I approach the witness, Your
20 Honor?

21 THE COURT: You may.

22 Q. [Mr. Sowards] Detective Bowen, I hand you what's
23 been premarked as State's 6.

24 [Whereupon, the witness is shown exhibit]

25 Q. I'll ask you if you can identify that and whether

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Jason Bowen-Direct Examination by Mr. Sowards
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1 you've seen it before.

2 A. Yes. It is an overall satellite view shot of the
3 neighborhood that includes [REDACTED] Old Fort Avenue.

4 Q. And is that map a fair and accurate representation
5 of where you responded on that date?

6 A. It is.

7 MR. SOWARDS: Your Honor, at this time the State
8 would seek to admit State's Exhibit 6 and publish it to
9 the jury.

10 THE COURT: Is there any objection?

11 MR. DAVIS: No, Your Honor.

12 THE COURT: Without objection, State's 6 is
13 admitted.

14 [Whereupon, State's Exhibit Number 6 is admitted
15 into evidence by the Court]

16 [Whereupon, the exhibit is published]

17 Q. [Mr. Sowards] So, Deputy Bowen, if you could, could
18 you tell us what we're looking at here?

19 A. Yes. If you would move down just a hair.

20 [Whereupon, Mr. Sowards complies]

21 A. Thank you. So this [indicates] is Ashley River
22 Road, also known as Highway 61. This [indicates] is Old
23 Fort Avenue. This [indicates] is Fruitwood Drive. And
24 this [indicates] is currently no longer there. It was an
25 old grocery store shopping center.

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- 1 Q. Is that where you responded on that date?
- 2 A. It is.
- 3 Q. And I know you testified to this previously but I
4 just want to make sure. Is that location in Charleston
5 County?
- 6 A. It is in Charleston County.
- 7 Q. So you testified that on October 17th, 2010, you
8 responded to a call for service at that location. Do you
9 know what the nature of the incident was?
- 10 A. Yes. We were dispatched to what dispatch described
11 as a heated domestic.
- 12 Q. And what did that tell you, if anything?
- 13 A. That told us that there was a -- and dispatch had
14 given us information that it was ongoing, it was
15 currently happening, if you will. The complainant had
16 just called in to 911 and stated that she had locked
17 herself in a room and was in fear.
- 18 Q. And did you ever, at any point, have an opportunity
19 to speak with the 911 caller?
- 20 A. No, I did not.
- 21 Q. Did you know her name?
- 22 A. I did not.
- 23 Q. Did you know anything about her assailant?
- 24 A. No, I didn't.
- 25 Q. So do you recall about what time you arrived at [REDACTED]

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1 Old Fort Avenue?

2 A. I believe it was just after 11:00 a.m. that morning.

3 Q. And what did you do when you arrived at the home?

4 A. Initially, myself and at the time Deputy Julius
5 Alexander, we always respond in a pair to a domestic, got
6 together. We approached the front of the house and I
7 went to the front door while Deputy Alexander stood
8 watch.

9 MR. SOWARDS: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, you may.

12 Q. [Mr. Sowards] Detective Bowen, I'll now hand you
13 what's been premarked as State's 7, 8, 9 and 10. I'll
14 ask if you can take a look at those four photographs and
15 let me know when you're finished.

16 [Whereupon, the witness reviews photographs]

17 A. Okay.

18 Q. Do you recognize those photographs?

19 A. I do.

20 Q. And what are those photographs?

21 A. They are pictures of the house from that day.

22 Q. And are they a fair and accurate depiction of the
23 house as you saw it on October 17th, 2010?

24 A. Yes, they are.

25 MR. SOWARDS: Your Honor, at this time the State

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1 would seek to admit Exhibits 7, 8, 9 and 10 and publish
2 for the jury.

3 THE COURT: Any objection, Mr. Davis?

4 MR. DAVIS: No, Your Honor.

5 THE COURT: Without objection, State's 7, 8, 9 and
6 10 are admitted, each being a photograph.

7 [Whereupon, State's Exhibit Numbers 7, 8, 9 and 10
8 are admitted into evidence by the Court]

9 [Whereupon, the photographs are published for the
10 jury]

11 Q. [Mr. Sowards] So, Detective Bowen, you testified
12 that you and Deputy Alexander arrived at the home as a
13 pair. And is this the home where you all arrived?

14 A. It is.

15 Q. And I apologize. Is this the front of the house?

16 A. That's the front. Yes.

17 Q. And what are we looking at here?

18 A. That is the address affixed to the post next to the
19 front door.

20 Q. And when you arrived at the home, how did you
21 approach the home?

22 A. We went to the front door pretty directly. Whenever
23 we're on a domestic call, we try to observe the scene but
24 we try to make contact.

25 Q. And did you notice anything about the front door?

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1 A. I did. The front door, instead of having a doorknob
2 had only a key-deadbolt type lock. And I thought that
3 was unusual.

4 Q. And looking here at State's Exhibit 9, is that the
5 front door?

6 A. That is the front door. And that would be a
7 deadbolt where normally you'd find a doorknob.

8 Q. And why did that seem odd to you?

9 A. I had never seen a door that didn't have at least
10 one doorknob on it. And when we put that into context
11 with the fact that we were responding to a domestic, my
12 first thought was with that type of lock you could
13 potentially keep somebody imprisoned in a house,
14 essentially.

15 Q. Did you knock on the door?

16 A. We did.

17 Q. Did you get any answer?

18 A. No, we did not.

19 Q. At that point in time, did you hear any noises
20 coming from inside of the home?

21 A. No, we didn't.

22 Q. And did that tell you anything?

23 A. It didn't tell us anything.

24 Q. What did you do after you were unable to make
25 contact with the front door?

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1 A. We began to walk around the house. At this point,
2 Detective -- or he's now a detective. But Deputy
3 Alexander and I had split up and he went to the left of
4 the house and I went to the right.

5 Q. And what happened after you went around to the side
6 the house?

7 A. I noticed some vehicles in the driveway that had
8 some information on them, that I called in to dispatch.
9 I also noticed a side door with a similar lock on it.

10 Q. When you say similar lock, it did not have a
11 doorknob or door lever?

12 A. That's correct. No doorknob, but the key deadbolt.

13 Q. Did you ever work your way around to the back of the
14 home?

15 A. I did. Deputy Alexander had gotten to the back and
16 he had called on the radio for me to meet him. He got
17 there first, so he called me to meet him, and said that
18 he had a door unsecured. So I went to the back and met
19 with him.

20 Q. And what do we see in this picture?

21 A. This is the sliding-glass door at the back of the
22 home that Deputy Alexander had located and was partially
23 unsecured.

24 Q. Now, you testified that it was partially unsecured.
25 Is this how it looked when y'all approached it?

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1 A. No.

2 Q. Did that mean anything to you, the fact that it was
3 unsecured?

4 A. Not necessarily, in particular. Most of the time
5 people's houses during the middle of the day don't have
6 doors that are partially opened.

7 And that it was partially opened could have meant
8 any number of things. Somebody could have ran from it.
9 But it -- the house wasn't secure the way we would have
10 expected.

11 Q. Did that mean that someone could be inside at that
12 point?

13 A. It did. It could have been.

14 Q. So you're standing there at this door, on a heated
15 domestic call, that's unsecured. I think your testimony
16 at this point has been you all don't know whether someone
17 is inside the house. What did you do next?

18 MR. DAVIS: Your Honor, I'm going to object. Note
19 my previous objection to this testimony.

20 THE COURT: That's been argued at a previous
21 hearing?

22 MR. DAVIS: Yes, Your Honor.

23 THE COURT: Very well. This testimony, the
24 objection has been preserved. It's subject to the
25 objection previously made on the record in this

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1 proceeding and previously argued and ruled on. Thank
2 you. You may proceed.

3 Q. [Mr. Sowards] So what did you do next after you
4 approached this door and found it unsecured?

5 A. We began calling out to see if we could make
6 contact. Once we were unable to make contact, we advised
7 that we had found an unsecured door. We asked that the
8 radio be placed in emergency status, and we made entry.

9 Q. I want to ask you a couple of questions about what
10 you did with the radio. You requested that you place it
11 in emergency -- you asked that it be placed in emergency
12 status. What does that mean?

13 A. So in emergency status -- our radio channel at any
14 one time handles typically around twelve deputies on what
15 we would call the west channel that handles everything
16 from West Ashley to Johns Island, James Island, and the
17 Edisto-Hollywood districts. So there's a number of us on
18 the channel.

19 Whenever we're in a particularly heightened
20 situation that could be particularly dangerous, we'll ask
21 for the radio to be placed in emergency status.

22 And what that does is puts all the other deputies on
23 notice that they need to keep the radio traffic clear for
24 our use or whoever has requested it. And it also sets up
25 a series of beeps that lets -- in case a detective just

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1 turned their car on, it lets them know the radio is in
2 emergency status and not to broadcast any nonemergency
3 traffic.

4 Doing that allows us full access to the radio in
5 case an immediate emergency comes up we don't have to
6 wait for it to clear.

7 Q. And in your answer you referenced a potentially
8 dangerous situation. Given what you knew at the time did
9 you believe this to be a potentially dangerous situation?

10 A. Yes, we did.

11 Q. And why did you believe that?

12 A. We had been dispatched to a heated domestic. Any
13 time we're dispatched -- our training, as far as
14 domestic, responding to domestic violence situations,
15 emotions can be heightened in those responses.

16 We believe there to be at least typically two people
17 on scene, a complainant and somebody that the complainant
18 is typically calling that has assaulted them, or at least
19 an argument involved.

20 So with the heightened situation and our training
21 also says that officers have often been assaulted on
22 domestic calls. And we review that in training.

23 And in this case we had what was described as a
24 heated domestic with a person who had stated that she
25 locked herself in a room because she was in fear for her

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1 safety. And so we were going to look for that person and
2 see if they needed any assistance, or if there were any
3 offenders present. So that was a very emergent,
4 dangerous situation for us.

5 Q. And what did you do after you made entry into the
6 home?

7 A. We began to do what we call a protective sweep,
8 essentially a quick search of the house, looking for
9 either people who need assistance or any suspects who
10 might be on scene.

11 Q. Could you take us through the process, as best you
12 recall, of clearing this house at [REDACTED] Old Fort Avenue?

13 A. Yes. So as I said, we always call out before we
14 make entry because we want anybody in the house to know
15 that we're police officers coming in, not just say a
16 burglar. So we always call out.

17 And if we can get somebody to come out to us, that's
18 safer for us. In this case we didn't get any response so
19 we entered the house. And we generally stay together as
20 we search so that, if need be, one officer can watch an
21 area while the other officer looks for a person.

22 In this house, we went to the right and there were
23 two bedrooms. We searched those two -- two bedrooms and
24 a bathroom in between. We searched those areas and
25 didn't find anybody. We continued our search on through

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1 the house, eventually finding a master bedroom, master
2 bathroom, kitchen, and a bonus room upstairs.

3 Q. And what was your primary goal in performing this
4 protective sweep of the home?

5 A. We were looking for anybody who might be injured,
6 might need assistance. We were also looking to see if
7 there were any suspects or any persons of interest still
8 on scene that we should talk to.

9 Q. Did you open up drawers?

10 A. No, we didn't.

11 Q. Did you open up cabinets?

12 A. We did not.

13 Q. Did you rummage through mail?

14 A. No.

15 Q. While you were inside the home, did you notice
16 anything else of interest in the house?

17 A. We did. So as we were moving through the home, in
18 the master bathroom, laying out on the counter, I noticed
19 a set of scales with -- not a set -- a digital scale with
20 a white-powder residue on it.

21 When we looked in the closet in the master bedroom
22 we noticed a safe just inside the door, but strewn out in
23 front of the safe were a series of bills, of currency.
24 Also in that same room was a bank type bag, like a
25 deposit bag from a bank that was open that had a large

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1 stack of cash in it. We looked under the bed in the
2 master bedroom, because that's one of the places we're
3 trained people can hide, and we saw several guns laying
4 out on the carpet.

5 Q. When you noticed these items, did you stop your
6 search?

7 A. No, we didn't.

8 Q. At the conclusion of your search of the home, did
9 you find any persons inside the residence?

10 A. We did not.

11 Q. Did you do anything with that information regarding
12 the scale, the guns, and the cash that you found?

13 A. Yes. I contacted my supervisor. And she was
14 already in route because of the nature of the call. But
15 I contacted her and let her know that we definitely
16 needed her at the scene because I had found those items.

17 Q. And you testified that on the scale you noticed some
18 white-powder residue. At that time, what did you think
19 that residue was?

20 A. I thought it was drug-related cocaine.

21 MR. SOWARDS: Your Honor, may we approach?

22 THE COURT: Sure.

23 [Whereupon, an off-the-record bench conference is
24 held]

25 THE COURT: Ladies and gentlemen, what we've been

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1 having is a bench conference, obviously, and it's been
2 out of your hearing intentionally. It's a matter for my
3 concern. It deals with the admissibility of evidence,
4 and that's one of the -- one of my rulings that I have to
5 do as my job as a trial judge. You have nothing to do
6 with that because that's a matter of law. Sometimes we
7 can resolve that by doing what we've just done, but
8 sometimes we need to place something on the record.

9 So in order to facilitate that, I need to excuse
10 you. I generally try to take a break about an hour and a
11 half. That's been my sitting capability. And I just
12 transfer that to you. But by the way, if you need a
13 break sooner than that, please don't hesitate to raise
14 your hand or let me know.

15 But I'm going to go ahead and take a break now and
16 that way we can accomplish what we need to accomplish on
17 the record and then take our break, as well, and we'll be
18 with you as quickly as we can. Do not begin your
19 deliberations. Don't discuss the case. Thank you.

20 [Whereupon, the jury exits at 10:41 a.m.]

21 THE COURT: All right. We've had a discussion at
22 the bench. At this point I think the Solicitor is
23 desirous of entering into evidence certain photographs,
24 one of which is the guns under the bed. He's described
25 the guns under the bed. I assume that there's going to

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1 be testimony of what they found. Do you have the guns?

2 MR. SOWARDS: We do, Your Honor.

3 THE COURT: Are you going to put those into
4 evidence?

5 MR. SOWARDS: Yes, Your Honor. It is our intention
6 to try to put all five of them.

7 THE COURT: I understand that. We'll deal with
8 those one by one. No problem with that. But the
9 photograph would be cumulative of the guns themselves.

10 MR. SOWARDS: I think if ---

11 THE COURT: --- listen, I understand. And quite
12 frankly, at this juncture the prejudice of drawing
13 inferences that are not really -- they could go either
14 way, outweighs the probative value because it really
15 doesn't have any probative value, the picture, other than
16 the fact that it caused him concern, enough concern; that
17 together with the scales.

18 You can -- I don't know whether you're going to ask
19 him why he was concerned about that. That's up to him
20 and up to you. But from the standpoint that's the
21 testimony, that's better than the photographs because it
22 gives you what he's doing. But the most important thing
23 is it triggers what he's already testified to: I want my
24 supervisor here. And that person I assume is going to
25 testify. So all of that said, I don't also know what the

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1 State -- how the defendant going -- what they're going to
2 do concerning this witness. There are lots of things
3 that can open doors. And you have redirect and there's
4 nothing to stop you from introducing that on redirect,
5 should it become necessary through cross-examination.

6 So at this point, I'm going to not allow you to
7 introduce the photograph of the firearm. I think it
8 would be better to protect the record, to be honest with
9 you, Solicitor, because it's just not that critical at
10 this point. Obviously, the scales, you're going to
11 introduce that and you're going to introduce what was on
12 them.

13 So I think out of an abundance of caution, the
14 better thing is to just at this point sustain it. But
15 understand fully that I'm not bound by that, should
16 something come up that would just justify and warrant
17 your introducing it.

18 Now, with respect -- we were talking about some
19 other things that you were going to do.

20 MR. SOWARDS: Your Honor, I think Detective Bowen
21 would testify that after they've cleared the house, the
22 home phone rang twice. So they completed the sweep. And
23 the home phone rings twice. The first call is from a
24 number that has caller ID. He speaks to I think it's a
25 male voice the first time that identifies himself as

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1 Mark. Detective Bowen will testify that he advised the
2 guy that his house had been burglarized. A subsequent
3 call from a blocked number comes right after that and he
4 asked that person, is this Therron Richardson, and that
5 person affirms. That's all I'm trying to get in. I
6 don't think he can testify that it was, in fact, Mr.
7 Richardson. He was not physically present.

8 THE COURT: What's the objection?

9 MR. DAVIS: Lack of personal knowledge. There's no
10 evidence, no foundation, that they've ever spoken before
11 and they can identify the voice. And then we would argue
12 that it is the whole balancing test more probative than
13 -- or more prejudicial than probative. Because the
14 reason they're having the testimony is for them to assume
15 it was our client, and there's just no way to
16 substantiate that by this witness.

17 THE COURT: Well, how do we get around something
18 else that gives me pause, is if it's -- obviously, if
19 it's the defendant, we've eliminated the obvious problem.
20 The obvious problem is its hearsay, what somebody said.
21 And I don't know of any exception to the hearsay rule
22 that would allow you -- you could say he had a call and
23 he can say what he responded as a result of that. But
24 unless we know that's the defendant, I don't know how
25 that comes in, as well. So I'm -- they're concerned

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1 about that part of it. And at this point, I'm reading
2 the testimony. I've read some of the testimony but I'm
3 getting through the testimony of the witness that's going
4 to testify under 804. You've got that issue already with
5 evidence of somebody's, I saw him come in, he came here
6 and left, as I understand that testimony.

7 So this testimony really and truly -- the danger,
8 Solicitor, again -- and I'm going to be candid with you.
9 There may have been times -- there may be times even in
10 the future that I may allow that. There's an issue here
11 that needs to be preserved and needs to be the focal
12 point, and we sure don't need to give them anything else.
13 And this gives me concerns for those reasons.

14 So I'm going to err on the side of caution here and
15 I'm going to say that the prejudice outweighs the
16 probative value. Plus the fact I'm not even sure it's
17 admissible in the first place. So I would sustain the
18 objection to that.

19 You can say, he got a call, I answered it. Did the
20 caller identify themselves? Yes. And what did you tell
21 them, what was your response, as a result of that, what
22 did you tell them. That's fine. You can testify to what
23 he said. But he can't say, because he said this is my
24 house, or anything of that. You can say the house has
25 been burglarized. The jury can infer what they want to

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1 with that. Okay?

2 MR. SOWARDS: Okay.

3 THE COURT: Alright. Thank you. Are there any
4 other issues?

5 MR SOWARDS: Not at the moment, Your Honor.

6 THE COURT: Very good. Thank you.

7 MR. DAVIS: Just a moment, Your Honor.

8 THE COURT: Sure.

9 [Whereupon, Mr. Davis and Mr. Summa confer]

10 MR. DAVIS: Thank you, Your Honor.

11 THE COURT: Alright. Anything else from the
12 defendant?

13 MR. DAVIS: No, Your Honor.

14 THE COURT: Alright. We'll be at ease. Detective,
15 you may step down. I would just ask you not to have any
16 conversation with any of the attorneys, please.

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: We'll be at ease for about ten minutes.
19 Thank you.

20 [Whereupon, Court is in recess from 10:40 a.m. to
21 11:05 a.m.]

22 THE COURT: Please be seated. Thank you.

23 [Off the record momentarily]

24 THE COURT: Are we ready to continue?

25 MR. SOWARDS: We are, Your Honor.

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1 THE COURT: Ready?
2 MR. DAVIS: Yes, Your Honor.
3 THE COURT: Thank you-all.
4 THE LAW CLERK: Are you ready for the jury, Judge?
5 THE COURT: I am.
6 [Whereupon, the jury enters the courtroom at 11:09
7 a.m.]
8 THE BAILIFF: All jurors are present.
9 THE COURT: Thank you. Thank you, ladies and
10 gentlemen. I appreciate that. We're ready to continue.
11 Solicitor, you may resume your examination, sir.
12 DIRECT EXAMINATION (resumes)
13 BY MR SOWARDS:
14 Q. Detective Bowen, after you finished your protective
15 sweep of the residence, did you remain in the home?
16 A. We did.
17 Q. And did you answer any phone calls to the home
18 phone?
19 A. Yes, we did.
20 Q. And did you advise the person you spoke with of
21 anything?
22 A. Yes. There was two. And on the first phone call we
23 initially advised that we were there because there had
24 been a burglary and we wanted to try to locate the owner
25 of the residence.

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1 Q. You testified you've been in law enforcement for
2 sixteen years?

3 A. Yes.

4 Q. And in your career as a law enforcement officer,
5 have you ever gone through what I think is commonly
6 understood as a Gary [phonetic] and truthfulness
7 investigation?

8 A. Yes, I have.

9 Q. And would you tell the jury about that
10 investigation?

11 A. Yes. So I believe it was in 2012 or '13, I was --
12 my position was with the detective's office handling the
13 sex offender registry. Just prior to that, as I
14 mentioned, I had been a school resource officer.

15 As part of that position, they gave us essentially a
16 master key that would work any school in Charleston
17 County. When they downsized the school resource officer
18 unit and reassigned several of us, they didn't come back
19 and get the key and other equipment necessarily for that
20 job.

21 And I kept the key while I was on patrol with the
22 idea that if I ever had to respond to an emergency at a
23 school, I would have immediate access to it.

24 I have a son, and at the time he was in elementary
25 school. And I think he was about third grade at the

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1 time. And he had forgotten his homework several days in
2 a row. And I pick him up from the afterschool program.
3 And on one of those days when I picked him up, he didn't
4 have his homework.

5 And I went and I used the key that I had, the master
6 key, to access the school building and I went in his
7 classroom to see if I could find his homework. And while
8 I was doing that, a custodial staff member saw me in the
9 school and was kind of surprised but didn't say anything.

10 It happened to be that I had already had a meeting
11 set up with the principal on some unrelated stuff that we
12 were doing at the school, and during that meeting it came
13 up that I had accessed the school.

14 And initially I told the principal that I had found
15 a door that was unlocked and used that to go in. And
16 almost immediately after, and before the meeting was
17 over, I corrected it and I told him that that was not the
18 correct information, that I had, in fact, used the master
19 key that I had.

20 And as soon as that meeting was over -- and I
21 believe I turned that key over to him as a school
22 official during the meeting.

23 As soon as the meeting was over, I called my
24 supervisor and briefed them on the meeting and told them
25 I had given some incorrect information but that I had

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1 corrected it during the meeting. And my supervisor
2 opened the investigation within the sheriff's office.

3 Q. Now, I want to go back to this issue of the open
4 door at [REDACTED] Old Fort Avenue. Would you have gone inside
5 that house even if the door had not been ajar?

6 A. Yes, we would have.

7 Q. Why?

8 A. With the call coming out the way that it had, being
9 a heated domestic and a person having locked themselves
10 away from a reported assailant, we have a duty to make
11 sure that nobody needs any assistance.

12 From the time that the call came in to the time that
13 it took us to get to the house, somebody could have been
14 injured, killed, or the suspect could have left or could
15 still be waiting inside knowing that a victim called 911
16 and that we were on the way.

17 So we basically had a duty to go in and make sure
18 that nobody needed any assistance.

19 Q. Did you at that time have any information about the
20 caller's location, other than [REDACTED] Old Fort Avenue?

21 A. No, we didn't; just what dispatch gave us.

22 Q. And if you had had conflicting information, would
23 you still have gone in the house?

24 A. Yes, we would have.

25 Q. Why?

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1 A. That was the address we were given. And that's the
2 most reliable source of information, particularly at the
3 time with -- at that time, cell phone GPS coordinates
4 were not nearly as readily available or reliable.

5 MR. SOWARDS: Beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 [Whereupon, Mr. Sowards and Ms. Frierson confer]

8 MR. SOWARDS: No further questions from the State,
9 Your Honor.

10 THE COURT: Very well. You can cross-examine.

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1 CROSS-EXAMINATION

2 BY MR. DAVIS:

3 Q. Deputy Bowen, let me get some housekeeping things

4 out of the way. You're unit 133; is that right?

5 A. That's correct. That's my radio number.

6 Q. So that if that number is heard being broadcast on

7 the dispatch recording, that's going to be you talking

8 that says 133?

9 A. That's correct.

10 Q. And, now, on that: you've had the opportunity to

11 listen to the entire dispatch recording in preparation

12 for your testimony today?

13 A. Yes, I have.

14 Q. A couple of other things. Do you recall at the time

15 your supervisor -- I believe at the time her rank and

16 last name, she's married now. But her rank and last name

17 was Sergeant York at the time?

18 A. Yes.

19 Q. And she was unit 72?

20 A. That's correct.

21 Q. Unit 273 do you recall being Deputy Riley?

22 A. Yes.

23 Q. And 254 being Deputy Alexander?

24 A. That's correct.

25 Q. And Alexander is the one that responded about the

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1 same time as you did to this incident location?

2 A. That's correct.

3 Q. In addition to the other things you've told the jury
4 that you heard from dispatch, they also indicated to you
5 that they were not able to connect with the initial call?

6 A. Yes. That's -- after the initial call, they were
7 unable to reconnect.

8 Q. Reconnect. I apologize. When -- after there was no
9 response at the front door and you and Detective --
10 Deputy Alexander split up, I believe you went to the
11 right of the residence; is that correct?

12 A. That's correct.

13 Q. And to the right is the driveway to the residence?

14 A. Yes.

15 Q. And you observed a pickup truck of some sort in that
16 driveway?

17 A. I did.

18 Q. It was wrapped with an advertisement?

19 A. Yes, it was.

20 Q. It had a phone number on it?

21 A. Yes.

22 Q. You called that phone number into dispatch?

23 A. I radioed it in to dispatch, yes.

24 Q. I apologize. Let me be correct about that, because
25 you can call dispatch on the phone or you can radio in

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- 1 over your mic?
- 2 A. Correct.
- 3 Q. You radioed in the number from the ad on the truck;
- 4 is that right?
- 5 A. Yes, it is.
- 6 Q. You also radioed in the tag from the truck?
- 7 A. Yes, I did.
- 8 Q. It was a personalized license plate; it was [REDACTED]
- 9 [REDACTED]; right?
- 10 A. Yes.
- 11 Q. And this appeared to be a lawn care, landscape type
- 12 advertisement on the truck?
- 13 A. It did.
- 14 Q. In fact, there was some landscaping equipment, mower
- 15 or something, nearby; do you recall that?
- 16 A. There was.
- 17 Q. There was also a cage there with a dog in it,
- 18 outside; do you recall that?
- 19 A. Yes, there was.
- 20 Q. As you're making your way around that right-hand
- 21 side and radioing in that information about that vehicle,
- 22 that's when you hear dispatch, a radio call from 254
- 23 Alexander, indicating 254, that would be him, 133 calling
- 24 to you; right?
- 25 A. Correct.

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1 Q. Come around back, I've got an open sliding-glass
2 door. Do you recall that?

3 A. I do.

4 Q. And sometime subsequent to this incident, you would
5 have created an incident report describing what you're
6 testifying to now; is that right?

7 A. That's right.

8 Q. It was closer in time to the incident?

9 A. What was?

10 Q. The creation of the report.

11 A. Yes.

12 Q. You've also reviewed that report in preparation for
13 your testimony today?

14 A. I have.

15 Q. Do you recall in your report, on the first page you
16 used the term unsecured door describing the back door?

17 A. Yes.

18 Q. And do you recall in prior testimony you were unsure
19 as to whether you saw the door open or whether it was
20 simply unlocked?

21 A. That's correct. I was relying on Deputy Alexander.

22 Q. You described earlier when you were responding to
23 the heated domestic and you're not getting a response and
24 you're concerned about your victims or suspect -- there
25 are some goals. Obviously, helping out any potential

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- 1 victim, correct?
- 2 A. That's correct.
- 3 Q. Finding any suspect or perpetrator if one exists;
- 4 correct?
- 5 A. That's correct.
- 6 Q. Also, safety to you and any other officers on the
- 7 scene?
- 8 A. Yes. That's correct.
- 9 Q. And you recall, this residence was -- the majority
- 10 of the rooms were on one floor and there was a loft up
- 11 above?
- 12 A. Yes. That's correct.
- 13 Q. Rather open. Is that a fair characterization?
- 14 A. It is.
- 15 Q. And it's your testimony you checked every room in
- 16 the house?
- 17 A. Yes.
- 18 Q. Once you completed that -- let me back up. When you
- 19 started in, you called for the emergency channel and you
- 20 radioed in through the emergency channel; correct?
- 21 A. We did.
- 22 Q. Once you had searched the entirety of the house, you
- 23 radioed in. You can clear the radio. There doesn't
- 24 appear to be anyone here; right?
- 25 A. We did. Or I did, actually, yes.

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1 Q. So you're familiar with what a CAD report is; right?

2 A. Yes.

3 Q. So the CAD report documents the time of the start of
4 the emergency to the time of the all clear from you.

5 That'll correspond to how long you swept the house;
6 right?

7 A. Yes, it should, roughly.

8 Q. Empty house, goals -- those three goals completed;
9 right?

10 A. That's correct.

11 Q. No broken furniture?

12 A. No.

13 Q. No blood?

14 A. No blood.

15 Q. No one at home?

16 A. No.

17 Q. I believe you've testified previously that you don't
18 recall whether an alarm, security alarm, in the house
19 activated while you were there or not?

20 A. I didn't -- no, I don't recall.

21 Q. It's fair to say in your incident report you don't
22 indicate that alarm went off at all?

23 A. That's correct. I did not.

24 Q. You talked about a -- and I don't mean to say this
25 incorrect either -- a call or calls that came in, you

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- 1 actually answered; correct?
- 2 A. I did. That's correct.
- 3 Q. You've previously testified you don't recall a call
- 4 to the house that the answering machine caught. You
- 5 don't recall that?
- 6 A. I do not.
- 7 Q. Even though your goals had been met on protective
- 8 sweep, you don't remain inside the house with Deputy
- 9 Alexander?
- 10 A. Yes. We did.
- 11 Q. Sergeant York shows up and enters the house?
- 12 A. Yes.
- 13 Q. So the jury saw some money outside of a safe,
- 14 correct, in plain view?
- 15 A. After we saw the white powder. Yes.
- 16 Q. I apologize. Let's do it in sequence, then. While
- 17 going through the bathroom it's your testimony that you
- 18 see digital scales, white powder, razor?
- 19 A. I didn't testify to a razor. I remember the scales
- 20 and the white powder.
- 21 Q. Okay. Residue?
- 22 A. Correct. Well, no, it wasn't just a residue. It
- 23 was powder that you could see.
- 24 Q. Let me -- less than a gram?
- 25 A. Less than a gram, yes.

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1 Q. And then you also see weapons under a bed, under the
2 bed, master bed ?

3 A. We saw the powder, the money, and then we saw
4 weapons.

5 Q. And the money was in the closet to that bedroom?

6 A. It was in the closet on the floor directly in front
7 of the safe. And then just outside of the closet was the
8 bank bag that was open with a considerable amount of
9 money in it.

10 Q. The bank bag had Lazy Man on the side of it; right?

11 A. I don't remember what was on it.

12 Q. While remaining in the house, you accepted a call
13 from a representative of ADT?

14 A. I believe I did, yes.

15 Q. And Deputy York was there the entire time; correct?

16 A. No response.

17 Q. Pretty quickly? Once she arrived, she remained on
18 the scene with you?

19 A. Yes.

20 Q. You already testified that you spoke on the landline
21 phone and said that -- advised there may be a burglary,
22 may have been a burglary; is that right?

23 A. That's correct.

24 Q. This house isn't ransacked; correct?

25 A. No.

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1 Q. There's not items ripped off walls?

2 A. That's correct.

3 Q. There's a computer desk right when you go in that
4 back door to the left. It's still there.

5 A. It was.

6 Q. Over dispatch there's radio communication between
7 you and Detective Plyler?

8 A. Yes.

9 Q. During that communication he radios, he says over
10 dispatch for you to call him, call him on the phone?

11 MR. SOWARDS: Objection. Hearsay, Your Honor.

12 THE COURT: Sustained.

13 Q. [Mr. Davis] Did you call Detective Plyler twice?

14 A. Yes.

15 Q. And you would have described to him what you had
16 found?

17 A. Yes. When we make that phone call, I would have
18 described the house, particularly the front of the house,
19 what it looked like, and given him any information that
20 we found for him to be able to put in a search warrant.

21 It would also afford me the opportunity to answer
22 any questions that he might have.

23 Q. In addition to the description of the house -- so
24 they know the particular address -- you described the
25 items that were suspicious to you that you observed?

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1 A. I did.

2 Q. The residue, the money, the guns?

3 A. That's correct.

4 Q. You would have told Detective Plyler that the powder
5 on the scales saw that in plain view?

6 A. That's correct. It was laying on top of the
7 bathroom counter.

8 MR. DAVIS: Your Honor, could I have one moment?

9 THE COURT: Sure.

10 [Whereupon, Mr. Davis and Mr. Summa confer]

11 Q. [Mr. Davis] A little bit more housekeeping.
12 Detective Plyler, he would be unit 313?

13 A. Yes. He was at the time.

14 Q. You recall requesting from radio to dispatch, so
15 that you could complete your report, your dispatch time
16 and arrival time asking for that?

17 A. Yes. That's something that we ask for on every
18 report.

19 Q. And do you recall that was 11:15 to 11:24?

20 A. That's correct. 11:15 would be the time that they
21 dispatched us and 11:24 would be my arrival time.

22 Q. Just to be clear, in the morning? A.M.?

23 A. A.M. Yes.

24 Q. As to the separate issue about you going into the
25 school. Following that investigation, you were suspended

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- 1 two days from the Sheriff's Office; correct?
- 2 A. Yes, I was.
- 3 Q. And then finally there was a separate incident
- 4 investigated involving you and three other -- two other
- 5 deputies; do you recall that?
- 6 A. Vaguely. Many years prior to that. And that
- 7 incident I didn't recall until these proceedings. We had
- 8 actually not been made aware that it was even made a part
- 9 of our personnel file prior to these proceedings.
- 10 Q. And to be clear on that, there was no finding of
- 11 wrongdoing, no suspension?
- 12 A. Correct.
- 13 Q. However, in that case you had, as a police
- 14 technique, told a homeowner you were investigating a
- 15 business next door, as to not alert them to the real
- 16 reason you were there?
- 17 A. That's correct. We had been given a tip of some
- 18 stolen property. The home was next to a business that
- 19 was publicly accessible.
- 20 And so we were on the premises of the business so
- 21 that we could gain a vantage point into the back yard to
- 22 try to see the stolen property. We didn't go anywhere
- 23 that the general public might have had access to.
- 24 Q. But you indicated to the homeowner that you were
- 25 investigating the property next door, an alarm going off,

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1 when in fact there was no alarm going off?

2 A. That's correct. The homeowner had come out while we
3 were there and asked what was going on and if they could
4 help.

5 We didn't want to alert them that we were looking
6 for stolen property so we told them that there was an
7 alarm had gone off at that business.

8 Q. And that wasn't true?

9 A. That was not true.

10 Q. Detective Bowen, thank you so much. No other
11 questions.

12 MR. DAVIS: Thank you, Your Honor.

13 THE COURT: Redirect.

14 MR. SOWARDS: Briefly, Your Honor.

15 THE COURT: Sure.

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REDIRECT EXAMINATION

BY MR. SOWARDS:

Q. Detective Bowen, as part of that investigation into the incident, the investigation that Mr. Davis just referred to, did the investigators at the Sheriff's Department make any determination regarding your use of deception in that case?

A. No. They -- not that I recall anything about any use of deception. As police officers, we are allowed to use deception when we deem necessary. And that's actually part of what I do on a regular basis with ICAC.

Q. And Detective Bowen, Mr. Davis asked you a question about whether you were able to reconnect the caller. I think your testimony was that that call had been disconnected.

Were you privy to that information when you arrived at the home, that the caller had been disconnected?

A. I think you mean the original 911 call?

Q. The 911 call, yes. Sorry.

A. No. We did not have -- I don't remember that we had that information at the time when we were at the house.

Q. And Mr. Davis asked you about whether the door was open or unsecured. You made entry into the door, I think was your testimony previously. How did you open the door?

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1 A. We pulled the door. We didn't have to force any
2 kind of entry.

3 Q. And in your sixteen years as a law enforcement
4 officer, have you responded to alarm calls before?

5 A. I have.

6 Q. Have you responded to alarm calls where there was an
7 audible alarm inside of the place you were responding to?

8 A. Yes, we have.

9 Q. And have you responded to alarm calls where there's
10 a silent alarm?

11 A. Yes, we have.

12 MR. SOWARDS: Beg the Court's indulgence.

13 THE COURT: Certainly.

14 [Whereupon, Mr. Sowards and Ms. Frierson confer]

15 MR. SOWARDS: No further questions from the State,
16 Your Honor.

17 THE COURT: Recross?

18 MR. DAVIS: If I could have just one moment, Your
19 Honor.

20 THE COURT: Sure.

21 [Whereupon, Mr. Davis reviews documents]

22 MR. DAVIS: No other questions, Your Honor. Thank
23 you.

24 THE COURT: Very well. You may come down. Thank
25 you, Detective Bowen.

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1 MR. DAVIS: Your Honor, we would ask that Detective
2 Bowen be subject to re-call.
3 THE COURT: Alright. You're not free to leave.
4 Just remain outside.
5 THE WITNESS: Yes, Your Honor.
6 THE COURT: Thank you.
7 [Whereupon, the witness exits the witness stand]
8 MS. FRIERSON: The State calls ---
9 THE COURT: --- call your next witness.
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1 MS. FRIERSON: Thank you, Your Honor. The State
2 calls Julius Alexander.

3 [Whereupon, Mr. Alexander comes forward]

4 CLERK OF COURT: Please place your left hand on the
5 Bible and raise your right hand.

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: For the record, please state your
9 full name, spelling your last name.

10 THE WITNESS: Julius Duane Alexander. A-L-E-X-A-N-
11 D-E-R.

12 MS. FRIERSON: Thank you, Your Honor. May it please
13 the Court?

14 THE COURT: Yes.

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16 JULIUS ALEXANDER,

17 Having Been First Duly Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MS. FRIERSON:

21 Q. Mr. Alexander, could you please tell the jury what
22 your occupation is and who you work for?

23 A. I work with the Charleston County Sheriff's Office.
24 I work in the Major Violent Crimes Unit.

25 Q. And how long have you worked with Charleston County?

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- 1 A. Been ten years.
- 2 Q. What's your current assignment?
- 3 A. I basically work homicides, armed robberies,
4 attempted burglaries, stuff like that.
- 5 Q. Are you a detective?
- 6 A. Yes.
- 7 Q. And have you worked in any other units during your
8 time at the Charleston County Sheriff's Office?
- 9 A. Just the patrol division, which is the uniform guys
10 that drive around to your neighborhood, patrol your
11 neighborhood.
- 12 Q. And what was your assignment back on October 17th,
13 of 2010?
- 14 A. I was in the patrol division working B Squad, which
15 is a rotating shift.
- 16 Q. And were you dispatched to a call at [REDACTED] Old Fort
17 Avenue?
- 18 A. Yes, I was.
- 19 Q. Do you recall what type of call it was?
- 20 A. It was a heated domestic disturbance between a male
21 and a female.
- 22 Q. Could you tell the jury a little bit about what it
23 means as a responding deputy to respond to a call of a
24 heated domestic?
- 25 A. Basically as a patrol deputy, when we receive like a

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1 911 call we want to get there as quickly as possible to
2 try to eliminate any threats, to see if anybody's harmed,
3 so we can render aid.

4 Q. Are domestic violence calls -- where do they rank
5 generally in terms of dangerousness to the officer?

6 A. Number one.

7 Q. And as such, do you respond differently in regards
8 to what you take in and observe while you're on scene?

9 A. Yes.

10 Q. What do you -- what would you do differently when
11 responding to a domestic violence call?

12 A. Basically, well, you know, from my training and
13 experience, being as it's number one, if you'll -- cop
14 killer.

15 Basically, we would go there, try to get there as
16 quickly as possible to locate the caller or victim, try
17 to see if anybody's injured or anything like that.

18 Try to apprehend the suspect, if there is a suspect,
19 and obtain witnesses and statements from victims and
20 witnesses and stuff like that.

21 Q. Did you have a lot of information going into this
22 call?

23 A. No, we did not. The only information we obtained
24 from dispatch was they received a 911 call from a female
25 who apparently was being fought by a male party and she

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1 was going to lock herself in a bathroom to get away from
2 him.

3 Q. And do you recall if dispatch had lost contact with
4 the female caller?

5 A. They did lose -- they did lose contact with the
6 female and couldn't get her back on the line.

7 Q. Is that of any significance to you as the responding
8 deputy?

9 A. Yes. It -- I mean, there's definitely a red flag
10 there that maybe he had taken the phone from her. You
11 know, it could be all kind of different possibilities up
12 and to death.

13 Q. In your experience, do -- when you're dispatched to
14 a call with a live 911 call, somewhere where you're
15 actually getting a call from that location, are you
16 required to go there and check it out?

17 A. Yes.

18 Q. And what was your understanding of where the caller
19 was?

20 A. The caller was supposedly locked inside of a
21 bathroom in the residence.

22 Q. Now, when you arrived on scene, could you tell the
23 jury a little bit about your initial observations?

24 A. Basically, when we got there, me and Deputy Jason
25 Bowen were there, we were the only two there. And we saw

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1 a vehicle in the driveway. Nobody else was outside.

2 Didn't hear anything, didn't see anything else.

3 Q. Did you approach the front door?

4 A. Yes. We approached the front door and it seemed
5 kind of strange that it only had a deadbolt lock without
6 a knob on it.

7 Q. Do you typically see that when you respond to calls?

8 A. No. That was very unusual for us.

9 Q. What about any other doors to the residence? Did
10 you locate any?

11 A. I located a sliding-glass door on the back side of
12 the house while Jason was securing the other side of the
13 residence. Usually we split up, try to gain as much
14 coverage of, you know, the land as possible.

15 And I got to the back sliding-glass door and saw
16 that there was like an opening. The door was ajar about
17 that much [indicates], half an inch.

18 Q. So what did you do next?

19 A. I then got on the radio and advised Deputy Bowen
20 that I had an open door, and basically I asked him to
21 come back to the open door where I was.

22 Q. When the two of you were back there and you opened
23 the door, did you call out into the residence?

24 A. We did before we entered the residence. That's just
25 common practice when we're going in there because we want

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1 to alert anybody that's inside that we're not a burglar,
2 you know, because sometimes you can have
3 miscommunications and they may think that they're being
4 burglarized. So we usually do that.

5 Q. And did you do anything in particular with your
6 radios?

7 A. We -- basically what we do is when we have an
8 emergency situation, we ask dispatch to put it in
9 emergency status. And that basically -- like everybody
10 else is listening on the radio, they know not to speak on
11 the radio.

12 And only dispatch and that officer who put it into
13 emergency status are able to talk. They also have a
14 channel marker, which makes a beep noise every ten
15 seconds, to alert like a newcomer on the radio so they
16 would know that it's in emergency status and not to talk.

17 Q. What was the purpose of putting it in emergency
18 status?

19 A. Just so -- you know, just say if we get inside the
20 residence and we get in a confrontation, we need backup
21 immediately, we need to be able to get -- it needs to be
22 available so we can get on the radio right away.

23 And, you know, sometimes if you don't do that,
24 there's other people, other deputies, talking on the
25 radio that could be holding it up and it would delay the

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1 process and someone could get hurt.

2 Q. And what would be the purpose, in this particular
3 incidence, of clearing that residence?

4 A. The purpose of clearing the residence is to first
5 find the female caller that was in the residence to make
6 sure she's not hurt or even dead.

7 And then we -- as far -- we look for any suspects,
8 like I said, to apprehend them if need be, any potential
9 witnesses that may have seen anything to question them,
10 and gather information.

11 Q. And just to be clear. Prior to entering the
12 residence to clear it, prior to putting the radio on
13 emergency status, the only information you had from
14 dispatch was that there was a woman inside that had
15 locked herself in?

16 A. Yes, ma'am.

17 Q. Did you locate anybody inside?

18 A. No one was inside.

19 Q. Did you locate anything in the residence of
20 significance?

21 A. In the ---

22 MR. DAVIS: --- Your Honor, we're going to object.
23 Previous objection.

24 THE COURT: Based on the objections previously made
25 to this line of questions in a previous hearing, and the

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1 reasons stated therefore, the objection is overruled on
2 the basis of the Court's rulings at that time. Thank
3 you. The objection is made and the issue is preserved.
4 Thank you.

5 Q. [Ms. Frierson] You may go ahead.

6 A. So we try to clear the residence methodically as
7 much as possible for people, which is called a protective
8 sweep. And we're just basically looking for people, you
9 know, so we don't get harmed.

10 So we take our -- we pull out our guns, draw them
11 out, call out saying that we're the Sheriff's Office, and
12 we basically clear the room as we come to each room.

13 We got to the master bedroom and then we get to the
14 master bath. In plain view on the bathroom counter there
15 was like a scale next to like some white-powder
16 substance, which was later field tested presumptively
17 positive for cocaine.

18 Located a safe in the room, as well as there were
19 like fresh twenty-dollar bills still on the top. There
20 was an open bag full of money. There was -- looked under
21 the bed for a person and that's when we saw guns under
22 the bed.

23 Q. Do you open drawers?

24 A. No. When we do a protective sweep, that's not where
25 a person can hide so we won't look in those areas.

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1 Q. So you don't go snooping around?

2 A. No.

3 Q. What did you do when you and Detective Bowen -- or
4 excuse me -- at the time Deputy Bowen observed that --
5 the guns and the drugs and the white-powder residue on
6 the digital scale?

7 A. Basically we alert -- we alerted our supervisor,
8 letting her know what we had. She then came to the
9 residence and that's when the actual powdery substance
10 was field-tested.

11 MS. FRIERSON: Court's indulgence, Your Honor.

12 THE COURT: Certainly.

13 [Whereupon, Ms. Frierson and Mr. Sowards confer]

14 Q. [Ms. Frierson] You testified you're a detective
15 now?

16 A. Yes, ma'am.

17 Q. But back then you were a road deputy?

18 A. Yes, just a road deputy.

19 Q. And so after you cleared from this call, did you
20 have any further involvement?

21 A. No. Basically, we'll call the detectives, which
22 they work with the Metro Narcotics Unit, and they would
23 get a search warrant and then they would take over the
24 scene and then basically we're released from that scene
25 and we respond to other calls throughout the day.

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- 1 Q. And were you the first deputy on scene?
- 2 A. I don't recall. I think it was either me or Deputy
3 Bowen at the time.
- 4 Q. And typically in a case like this, where you have
5 two deputies on scene and a report needs to be taken,
6 does everybody write a report?
- 7 A. Not necessarily. Because we were there in the same
8 setting, we knew everything we did. Everything -- it was
9 an accurate depiction of what happened. Basically, if I
10 would have written a report, it would have just been
11 redundant so we felt like what he put in the report
12 sufficed.
- 13 Q. And did he stay on scene after you left?
- 14 A. I believe he did.
- 15 Q. And so was he the one to write the report?
- 16 A. Yes.
- 17 Q. And what did you do? Did you get back in service to
18 answer calls?
- 19 A. I got back in service and responded to other calls
20 that, you know -- because I was available and he wasn't.
- 21 Q. And you had no further involvement in this case?
- 22 A. No further involvement.
- 23 Q. I don't have any further questions at this time.
24 Please answer any the defense may have.
- 25 THE COURT: Cross-examine.

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1 CROSS-EXAMINATION

2 BY MR. DAVIS:

3 Q. You testified twice on the record that the
4 information you had when you arrived on the scene is that
5 a female had locked herself in the bathroom; is that
6 right?

7 A. Yes, sir.

8 Q. Did you have the opportunity to listen to the entire
9 dispatch tape of this incident before you testified?

10 A. No, sir.

11 Q. If the dispatch indicated bedroom, not bathroom,
12 would that surprise you?

13 A. Bedroom?

14 Q. Yes.

15 A. I'm not sure.

16 Q. Would it surprise you it was front bedroom on
17 dispatch?

18 A. I'm not sure what you're really asking.

19 Q. Okay. Well, you've testified twice to this jury on
20 direct examination that you were told look for a suspect
21 locked in the bathroom. You said that twice.

22 Now I'm asking you if, since you didn't listen to
23 the dispatch recording prior to testifying, if the
24 dispatch recording says bedroom, not bathroom, would that
25 surprise you?

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- 1 A. It would surprise me.
- 2 Q. Okay.
- 3 A. Yes.
- 4 Q. If it said, in fact, front bedroom, would that
5 surprise you?
- 6 A. Yes.
- 7 Q. If it said the first bedroom, would that surprise
8 you?
- 9 A. Yes.
- 10 Q. I don't think you testified about this specifically
11 on direct. But when you and Detective Bowen split up,
12 you went around different sides of the residence; is that
13 right?
- 14 A. Yes.
- 15 Q. Which side did you go around?
- 16 A. I believe I went around to the right side of the
17 residence.
- 18 Q. That's the side with the driveway?
- 19 A. The opposite side.
- 20 Q. I want to make it clear. I think in the last part
21 you may have. But you left before Deputy Bowen left the
22 residence?
- 23 A. Yes.
- 24 Q. Sergeant -- at the time, her rank and name was
25 Sergeant York. She was in the residence when you left,

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1 as well?

2 A. Before I left. Yes.

3 Q. And when you left, the two of them remained?

4 A. I believe so, yes.

5 Q. She was y'all's supervisor?

6 A. Yes.

7 Q. She was in charge?

8 A. Yes.

9 Q. Now, you've testified previously that you're unsure
10 about whether any alarm went off while you were sweeping
11 the house. You just don't recall, do you?

12 A. I don't recall that.

13 Q. You also testified previously that you don't recall
14 a call coming in the house that was answered by the
15 answering machine?

16 A. I don't recall.

17 Q. You do recall Detective -- or I'm sorry -- Sergeant
18 York doing a presumptive test on the residue; right?

19 A. Yes.

20 Q. And she would have been the one to suggest
21 coordination with narcotics Detective Plyler?

22 A. Yes.

23 Q. You saw the scales with the residue ---

24 A. --- yes ---

25 Q. --- in the bathroom?

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1 A. Yes.

2 Q. Enough to observe, but less than a gram?

3 A. I don't recall the amount. I don't want to put
4 numbers in something.

5 Q. It wasn't much?

6 A. It was a little bit on the counter.

7 Q. In the reports you only use the term residue; is
8 that fair?

9 A. I think it was more than residue.

10 Q. There was also, you indicated, a razor also?

11 A. Yes.

12 MR. DAVIS: Just one moment.

13 THE COURT: Okay.

14 [Whereupon, Mr. Davis and Mr. Summa confer]

15 MR. DAVIS: Thank you, Your Honor.

16 Q. [Mr. Davis] Thank you, Deputy. I have no other
17 questions.

18 THE COURT: Redirect, Ms. Frierson?

19 MS. FRIERSON: Thank you, Your Honor.

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1 REDIRECT EXAMINATION

2 BY MS. FRIERSON:

3 Q. So Deputy Alexander, would it have mattered to you
4 whether you received information that this potential
5 victim was in the bathroom or bedroom?

6 A. No.

7 Q. Would it have changed your approach if she was in
8 the linen closet or dog cage?

9 A. No.

10 Q. Now, because the call you had was an in-progress
11 heated domestic?

12 A. Yes.

13 Q. And when you got there, your testimony was that you
14 see this weird kind of door with no handle?

15 A. Yes.

16 Q. And then I believe your testimony was you go to the
17 back door and it was ajar?

18 A. Yes.

19 Q. And so in light of all that information, regardless
20 of where this woman was potentially located in the house,
21 were you going to go in?

22 A. Yes.

23 Q. And what was the purpose again?

24 A. To make sure we secure her safety, or anyone else's
25 safety, in the house. And potentially, if there was a

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1 suspect, obtain -- apprehend the suspect and gain further
2 information.

3 MS. FRIERSON: Thank you. I have no further
4 questions.

5 THE COURT: Recross?

6 MR. DAVIS: No, Your Honor. Thank you.

7 THE COURT: Thank you very much. You may step down.
8 Do you wish the witness to be excused?

9 MS. FRIERSON: We're fine with him being excused,
10 Your Honor.

11 THE COURT: Do you need him to be retained?

12 MR. DAVIS: I do not. Thank you, Your Honor.

13 THE COURT: Alright. You are free to leave. Thank
14 you very much.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

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1 THE COURT: Alright. At this point, ladies and
2 gentlemen -- now, of course, it's twelve o'clock. We'll
3 take our recess for lunch. Do not begin your
4 deliberations. Do not discuss the case among yourselves.
5 And while you're out, certainly do not permit anyone to
6 talk with you about this case or talk about it in your
7 presence.

8 Please return to your jury room by 1:30. Thank you.
9 We'll be at ease.

10 [Whereupon, the jury exits at 11:56 a.m.]

11 THE COURT: Alright. Is there anything from the
12 State before we recess, Solicitor?

13 MR. SOWARDS: No, Your Honor.

14 THE COURT: Anything from the Defendant?

15 MR. DAVIS: No, Your Honor.

16 THE COURT: Very well. We'll be at ease until 1:30,
17 please.

18 [Whereupon, Court is in recess from 11:59 a.m. to
19 1:28 p.m.]

20 THE COURT: Is the State ready to proceed?

21 MR. SOWARDS: Yes, Your Honor, we are.

22 THE COURT: Defense ready to proceed?

23 MR. DAVIS: Judge, yeah. We believe the next
24 witness will be a...

25 MR. SOWARDS: It's essentially the evidence

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1 custodian who provided everything.

2 MR. DAVIS: So we're looking at the photos. They've
3 introduced several, approximately -- it's probably about
4 fifty, but I think we'll be able to get through them. So
5 we were looking through them. If we could have just a
6 moment ---

7 THE COURT: --- sure ---

8 MR. DAVIS: --- if we were to see any that ---

9 THE COURT: --- sure. Absolutely. Take your time
10 ---

11 MR. DAVIS: --- we may need to take up in camera.

12 THE COURT: No problem. Take your time.

13 MR. DAVIS: Thank you, Judge.

14 [Off the record as all counsel view photos]

15 MR. DAVIS: Your Honor, we're ready.

16 THE COURT: You're ready?

17 MR. DAVIS: Yes, sir. We've got some issues with
18 some of the proposed photographs the State intends to
19 introduce. I believe we'll be able to hand them to you
20 when we have issue with them.

21 State's premarked number 23. In the photographs,
22 some paperwork there's nothing in that photograph that
23 connects my client, nor drugs, nor guns. I would argue
24 that it's irrelevant and confusing. There's another
25 person's address and name on there. It could maybe be a

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1 business or a receipt. But the relevance is lost to me.

2 THE COURT: Alright. What's the relevance,
3 Solicitor?

4 MR. SOWARDS: Your Honor, one of the things that
5 they found in the home was a residential lease, dating
6 back to 2008, in the name of the Defendant. And on it,
7 it tells him where to send payment. And I have the lease
8 right here. That's the same as that envelope
9 [indicates]. And I think it just shows that he continues
10 to make payments on ---

11 THE COURT: --- well, the lease in whose name? His
12 name?

13 MR. SOWARDS: It's in his name.

14 THE COURT: Well, this is Cathy Campbell. What's
15 that got to do with anything?

16 MR. SOWARDS: That -- Your Honor, Cathy Campbell is
17 who they were sending payment to. According to the
18 lease, they are to remit payment to that address.

19 THE COURT: And this was found in an envelope, what,
20 the mail?

21 MR. SOWARDS: Yes, sir.

22 THE COURT: Do you wish to be heard further?

23 MR. DAVIS: Judge, I just think the best evidence is
24 the lease. They can get that in.

25 THE COURT: 23 is admitted, subject to the objection

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1 of counsel. I think it's relevant. It's connected.

2 [Whereupon, State's Exhibit Number 23 is admitted
3 into evidence by the Court]

4 THE COURT: I assume you're going to introduce the
5 lease?

6 MR. SOWARDS: I am. Yes, sir.

7 THE COURT: Okay. That's fine.

8 MR. DAVIS: Judge, 28 and 29 ultimately are photos
9 of the same thing. 28, if I recall correctly and I'll
10 look at them in just a moment. 28 is a blurry version of
11 29. I think maybe even they're slightly moot. I would
12 argue that the better evidence there is 29. It's
13 clearer, separated indicating it's two weapons, where 28
14 is blurry and I think they're laying on top of each
15 other. When I personally looked at 28, I thought maybe
16 ---

17 THE COURT: --- well, let me ask a question. Is 28
18 and 29 pictures, photographs, of the same weapon or are
19 they different?

20 MR. SOWARDS: There are two weapons.

21 THE COURT: I understand that.

22 MR. SOWARDS: They aren't the same in each picture.

23 THE COURT: Well, I'm just saying, the weapons shown
24 in 28 are the same weapons shown in 29?

25 MR. SOWARDS: That's correct.

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1 THE COURT: 28 is not discernible. 29 is the one.

2 MR. SOWARDS: Okay.

3 THE COURT: I sustain the objection to 28. And it's
4 cumulative in addition to 29 being the clear one.

5 THE COURT REPORTER: So are you admitting 29?

6 THE COURT: 29 --

7 MR. DAVIS: Without objection, Your Honor.

8 THE COURT: --- without objection. 28 is --

9 MR. DAVIS: Without -- no new objection. All of
10 these obviously subject to Thursday.

11 THE COURT: Right.

12 [Whereupon, State's Exhibit Number 29 is admitted
13 into evidence by the Court]

14 MR. DAVIS: On 31, 31 is going to come back to the
15 weapon we've kind of hit on a few times in the pretrial.
16 So 31 is a photo of ---

17 MR. SOWARDS: --- I already had that one separated
18 out.

19 THE COURT: So do you plan to try to introduce that?

20 MR. SOWARDS: Well, I think you've already ruled
21 that I can't.

22 THE COURT: Yeah. At least at this stage. Now,
23 let me say this to you, because I was thinking about this
24 from the standpoint of strategies. Typically -- not with
25 you, Mr. Davis, but it's not uncommon for me to hear,

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1 when investigations are done, argument to the jury where
2 are the pictures or the photo, they say they saw these
3 firearms, where are they? Well, if you want to try this
4 thing again, you argue that because I'm keeping these
5 out. That's not going to be argued, I assume.

6 MR. DAVIS: No, Judge. In fact, the 28 you just did
7 prior to my subject objection ---

8 THE COURT: --- No, no. No, no. I'm talking about
9 the clip.

10 MR. SOWARDS: 31 ---

11 THE COURT: --- 31.

12 MR. DAVIS: Specifically, correct. I will not, Your
13 Honor.

14 THE COURT: All right. And unless something changes
15 to make that pertinent, I mean, you've got multiple
16 firearms, obviously. We've got trafficking with
17 possession. And possession is having it in your
18 possession, period, as I understand it.

19 MR. SOWARDS: Right.

20 THE COURT: So really, it's cumulative. And because
21 it's cumulative, Solicitor, I think that's where the
22 possible downside of that outweighs the probative value
23 because you really don't need it for the purposes of any
24 of these crimes.

25 MR. SOWARDS: And, I mean, I totally understand your

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1 ruling and I'm not arguing with you. But just that when
2 I'm up there making sure that I'm not going past the --
3 now the gun is separated from the magazine. I assume in
4 the prior trial they admitted both. Would I be permitted
5 to enter the gun and the bullets?

6 THE COURT: Well, let me ask you a question so that
7 I can understand why it's just not cumulative and the
8 prejudice part. Why is it necessary to get that firearm
9 in when you have two others?

10 MR. SOWARDS: Four others.

11 THE COURT: Four others. Excuse me.

12 MR. SOWARDS: I think ---

13 THE COURT: --- four others.

14 MR. SOWARDS: I don't think it's that firearm in
15 particular. I think it -- I really don't. I think it
16 makes it less likely that if -- let's say the argument's
17 that they are planted. I think it's less likely that
18 somebody planted five.

19 THE COURT: I think -- well, first of all, that
20 planted argument is kind of nuts. But, anyway, we'll see
21 what the jury says. I wouldn't -- they did a heck of a
22 lot of work in a short period of time to do all that.
23 But be that as it may, that argument is there. What
24 difference would it make five and they've thrown
25 together. Again, we're not going to talk about -- the

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1 firearms are there. For all intents and purposes and the
2 inference to be drawn is that those are the firearms. So
3 there's nothing else to argue about another one. I don't
4 think five versus four makes that big a difference. So I
5 appreciate your attempt, but I'm not going to allow it at
6 this point.

7 MR. SOWARDS: Okay.

8 THE COURT: Okay?

9 MR. DAVIS: Judge, number 68 --

10 THE COURT: Again, let me add this because more
11 thought about this at lunch. One of the things I learned
12 from my death penalty trials experience is sometimes its
13 better, when you get to these little close questions, to
14 give in to the defense because it avoids an issue. And
15 one that pops in my head, and I'll still never understand
16 to this day, it's the only time that Justice Pleicones --
17 he was one of my teachers when I sat with him.

18 The only time in my career that he ever called me,
19 it was a week after he signed the decision reversing the
20 Patrell [phonetic] case because I didn't charge voluntary
21 manslaughter when requested as a lesser included offense
22 when the Defendant point-blank shot the police officer in
23 the face with a .44. And the reason, the provocation,
24 was he touched him on the shoulder to detain him and that
25 was interfering with his rights and therefore would be

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1 sufficient provocation to shoot somebody in the face.
2 He called me to find out how I was, just checking on you,
3 just seeing if everything is going alright. And you know
4 what I always thought that was? You feel guilty about
5 what you did.

6 But my thought was -- after that, I battled with
7 Bill Nettles about that, and I should have just charged
8 it. Because the jury would never in a million years come
9 back with a verdict other than guilty of murder in that
10 situation. My bad.

11 I said, self, don't make that mistake again, don't
12 get hung up in your own interpretation and trying to
13 fight through and say, you know what, that should be
14 done. So that's what I'm doing here. So please
15 understand that.

16 MR. SOWARDS: I understand.

17 THE COURT: I don't fault your reasoning and I don't
18 fault -- I think there's merit to what you're asking me
19 to do. I think there's merit for the gun because, quite
20 frankly, if a jury wants to conclude he's a big time
21 dealer -- I don't know what the jury is going to do --
22 yeah, that firearm would be something you would see in
23 those situations for sure. And so it goes to that. But
24 we're going to try this case on the possession of drugs,
25 which is all you really have to have. And, of course, we

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1 also have -- if the jury wants to infer -- I don't know
2 what their conclusions is going to be about all the money
3 flying around and everything, cash. The inference to be
4 drawn on that is this is a pretty big-time operation
5 here. But, anyway, that's just my spin on that right
6 now. And there will be another spin that Mr. Davis will
7 give us, also. So, anyway. Thank you, Mr. Davis.
8 What's the next one?

9 MR. DAVIS: Number 68, Your Honor. It's a framed
10 document, and it's so blurry I don't -- if there's
11 testimony about this, so be it, but I don't think that
12 document should be used.

13 MR. SOWARDS: It is a paternity test in the name of
14 the Defendant confirming the maternity of his son, which
15 he had framed on the wall. Just another item which
16 proves his connection to the house.

17 THE COURT: Well, we've got a lease; we've got a
18 neighbor that's going to testify.

19 MR. DAVIS: There's mail.

20 THE COURT: The mail ---

21 MR. DAVIS: --- with addresses on them.

22 THE COURT: You know, I don't know yet what the
23 Defendant is going to do. Great material for cross-
24 examination, should he take the stand. I don't -- you've
25 got the -- I mean, they've got to basically agree with

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1 your testimony I looked at this and had it. I assume
2 somebody looked at it and...

3 MR. SOWARDS: Correct.

4 THE COURT: Made it a little bit lighter; there was
5 some things done. For that reason, I'll grant the
6 objection at this point. But of course that's free game
7 for later, should that come about.

8 MR. SOWARDS: Okay.

9 MR. DAVIS: Judge, the final grouping, there are
10 photos that I believe the Solicitor will correct me. But
11 I believe these next, 75, 76, 77, 78. I believe these
12 are all photos of the weapons taken at the Sheriff's
13 Office once he completed everything.

14 My only concern is if they're going to actually
15 introduce the weapons, then this is cumulative. Or if
16 they're not going to introduce the weapons for safety
17 reasons or whatever, and they just want to show those
18 photos. I'd just like a little guidance on -- I don't
19 think we need those photos and the actual weapons.

20 THE COURT: Well, what's the plan?

21 MR. SOWARDS: And we intend to introduce the
22 weapons, so I'm fine not putting in the pictures.

23 THE COURT: All right. So we're not going to
24 substitute that for purposes of at a later date so you
25 don't have to keep the weapons and send them up to the

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1 Court of Appeals? I mean, that's the only reason that
2 I've seen that. Not necessarily with weapons. But if
3 you could by agreement substitute it, then that's fine.

4 But at this point if you're going to put the weapons
5 in that's fine, but they're not going back to the jury.
6 This would go back to the jury, if you want to.
7 Different ball game. I don't let weapons go back to the
8 jury, even if they're sufficiently secure.

9 MR. SOWARDS: I'll think about it. I'll do one or
10 the other.

11 THE COURT: Well, I mean, you can show them the
12 weapon for identification and just introduce the picture.

13 MR. SOWARDS: Okay.

14 THE COURT: That's one way of doing that, if you
15 want to because obviously the weapon has its own impact,
16 so to speak, to a jury. But I don't have any problem
17 with having the photograph of the ID itself, but the gun
18 doesn't go into evidence.

19 MR. DAVIS: The final thing on that is 78, again, is
20 the one particular weapon.

21 THE COURT: Right. Well, again, we --

22 MR. DAVIS: So we'll see how the State deals with
23 it. But ---

24 THE COURT: --- that's fine. Now, that being said,
25 you agree that those photographs are the weapons

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1 themselves? You don't --

2 MR. DAVIS: We're not going to dispute that.

3 THE COURT: You're not going to challenge that?

4 Okay. That's fine. I mean, not themselves, but they are
5 the weapons that they purport to be. Okay. All right.
6 Anything else?

7 MR. DAVIS: Judge, we'll take the last opportunity
8 in camera to say the State is going to call Deputy
9 Ferguson, who's the -- collected everything. Of course,
10 he doesn't collect it except for how they got in. So I
11 would, if I could, make my objection now
12 contemporaneously, right before he starts his testimony,
13 rather than --

14 THE COURT: That's fine. The objection will be
15 noted. And, again, so that it's consistent, this is to
16 preserve the objection you made to the obtaining all
17 evidence in this trial?

18 MR. DAVIS: The initial entry, the outside the
19 scope, and the protection under the DV statute.
20 Everything we argued on last Thursday.

21 THE COURT: Now, the bottom line is there was a
22 search warrant issued, as well. Was there a challenge to
23 the search warrant? I don't recall seeing that.

24 MR. DAVIS: At this time, not. No, Your Honor.
25 We've not made any motions at this time.

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1 THE COURT: So there's no -- the objections are
2 based solely on the fact that this was obtained, all of
3 which was argued before Judge Young. And his ruling is
4 he denied the Motion to Suppress.

5 MR. DAVIS: That's correct, Your Honor ---

6 THE COURT: --- for the reasons stated.

7 MR. DAVIS: Yes, Your Honor.

8 THE COURT: But there was no motion made to
9 challenge -- at that hearing to challenge the search
10 warrant.

11 MR. DAVIS: That's correct, Your Honor.

12 THE COURT: Okay. My ruling then is the objection
13 as to those reasons raised in the -- and this will be for
14 everyone that we've just said -- the prior decision. The
15 reasons that were addressed by Judge Young are supported
16 by and confirmed and protected by this objection. But
17 there are no additional reasons rendered at this point.
18 And so when I overrule that objection, I am relying on
19 the record. That's the basis of my decision. Okay?

20 MR. DAVIS: Yes, Your Honor.

21 THE COURT: I'm not addressing any other reasons
22 that may warrant allowing admission.

23 MR. DAVIS: Yes, sir.

24 THE COURT: Okay. That's good.

25 MR. DAVIS: Thank you, sir.

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1 THE COURT: Thank you. All right.

2 MR. SOWARDS: I guess just one more quick matter for
3 the prior testimony. I just spoke with Mr. Davis and
4 he's okay with this arrangement. And if you are, we're
5 going to ask if Alex Zeigler, from our office ---

6 THE COURT: --- that's fine ---

7 MR. SOWARDS: --- sit on the witness stand and --

8 THE COURT: --- he'll do it just like what I've seen
9 done every time. No problem. He'll just read it
10 verbatim. And there's only one -- but as I understand --
11 I'm not trying to create something. Only one question or
12 answer was, that was two years ago, in his testimony.

13 So that puts a date of a trial or some testimony at
14 that time. If you want to delete that so that there's
15 not any reference to anything other than, this was done
16 in some point and time, I wouldn't oppose. But I'm not
17 going to sua sponte to that.

18 MR. SOWARDS: We'll excise that part out, Judge.

19 THE COURT: All right. Do you agree with that, Mr.
20 Davis?

21 MR. DAVIS: Yes, Your Honor. And I believe we
22 agreed to testified at a prior proceeding, or testified
23 earlier ---

24 THE COURT: --- just prior testimony under oath,
25 something to that -- wish to submit prior testimony under

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1 oath, pursuant to Rule 804. And clearly, he -- you don't
2 challenge the obituary, do you?

3 MR. DAVIS: No, Your Honor.

4 THE COURT: All right. We'll go ahead and make that
5 Court's Exhibit 3 or 2?

6 THE COURT REPORTER: Two.

7 THE COURT: Two?

8 THE COURT REPORTER: Yes, sir. That will be number
9 two.

10 THE COURT: All right. Two will be the obituary for
11 Robert Hess, whose testimony will be presented at a later
12 point during this proceeding pursuant to Rule 804, as
13 being an unavailable witness.

14 [Whereupon, Court's Exhibit Number 2 is marked by
15 the court reporter]

16 THE COURT: Okay. Any other things?

17 MR. SOWARD: No, Your Honor.

18 THE COURT: Good. Thank you all. I appreciate it.
19 Let's bring in our jury.

20 [Whereupon, the jury enters at 1:58 p.m.]

21 THE BAILIFF: Jurors are all present, Your Honor.

22 THE COURT: Thank you very much, Mr. Williams.

23 Thank you, ladies and gentlemen. I hope you had a
24 good lunch. And I know we said we would start at 1:30
25 but we had lunch brought in and we were eating our

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1 dessert and it took a little longer. I'm just teasing.
2 We had some matters of law that we needed to take up, and
3 that's what we've been doing, to try to move things with
4 the next witness.

5 So appreciate your patience with us but hopefully
6 things will flow now a little quicker and a little
7 smoother for you. But thank you very much. If you'll
8 give your attention now to the next witness.

9 Solicitor, you may call your next witness.

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1 MR. SOWARDS: Thank you, Your Honor. The State
2 calls Lieutenant Fletcher Ferguson.

3 [Whereupon, Mr. Ferguson comes forward]

4 CLERK OF COURT: Please place your left hand on the
5 Bible and raise your right hand.

6 [Whereupon, Mr. Ferguson is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: For the record please state your
9 full name, spelling your last name.

10 THE WITNESS: Lieutenant Fletcher Ferguson.
11 Ferguson is F-E-R-G-U-S-O-N.

12

- - - - -

13 FLETCHER FERGUSON,

14 Having Been First Duly Sworn,

15 was Examined and Testified as Follows:

16 DIRECT EXAMINATION

17 BY MR. SOWARDS:

18 Q. Good afternoon, Lieutenant Ferguson.

19 A. Good afternoon.

20 Q. Where do you currently work?

21 A. The Charleston County Sheriff's Office.

22 Q. And what is your role there, currently?

23 A. I'm currently a lieutenant over the training
24 division.

25 Q. And how long have you been at the Sheriff's

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1 Department?

2 A. Just over fifteen years, going on sixteen.

3 Q. What about law enforcement in general?

4 A. The same time. I started with the Sheriff's Office.

5 Q. And could you please describe for the jury your
6 education, training and experience?

7 A. Yes, sir. I have a bachelor's degree from the
8 Citadel. I then went through a program called the South
9 Caroline Police Corps, which was a police academy but it
10 had an expanded emphasis on community oriented policing.

11 So it was actually two summers' worth at the time
12 when I was a cadet at the Citadel. I then started the
13 Sheriff's Office, working the patrol division, for
14 approximately four years before going into the Narcotic
15 Division for approximately six.

16 Was promoted to sergeant from there. And spent a
17 year on the road, came back to Narcotics to Metro as a
18 Sergeant. And eventually went to Internal Affairs for
19 two and a half years.

20 I was promoted to Lieutenant in the winter of last
21 year, 2013 -- excuse me -- 2018. And I just transferred
22 to the training division back in October.

23 Q. And what was your role in October of 2010?

24 A. I was a narcotics detective at the Sheriff's Office.

25 Q. And what does it mean to be a narcotics detective?

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1 A. My job at that time was to investigate narcotics
2 complaints and investigations, whether they be small or
3 large, throughout Charleston County.

4 We also worked vice cases, which handled gambling,
5 prostitution, alcohol enforcement. But generally, just
6 as a narcotics investigator, any type of narcotics case
7 we investigate.

8 Q. And in your time as a law enforcement officer,
9 specifically as a narcotics detective, have you received
10 specific training on narcotics investigations?

11 A. Yes, sir.

12 Q. And what type of training have you received?

13 A. I've been through basic narcotics investigators
14 school, interview and interrogation, domestic
15 interdiction, standard interdiction techniques,
16 analytical investigations, financial manipulation
17 investigations, surveillance undercover techniques,
18 undercover enforcement, high-risk event planning, special
19 operations supervisor training, meth lab and a hazmat
20 technician, gang investigations, counterfeit, product
21 investigations, various different SWAT courses in
22 tactical training.

23 Q. And did you have the occasion to become involved in
24 this case, State versus Therron Richardson?

25 A. Yes, sir.

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1 Q. And when did you become involved in this case?

2 A. On the day in question I was the call, one of the
3 call-out detectives with Detective Plyler, and we were
4 called out to this residence.

5 Q. And what was your purpose in going to the residence?

6 A. At the time, I was a co-case agent. Our purpose was
7 to go there and support the patrol division who requested
8 our assistance and execute a search warrant.

9 Q. And did you, in fact, execute a search warrant at
10 the residence?

11 A. Yes, sir.

12 Q. And what was your role in the execution of the
13 search warrant?

14 A. I collected evidence. I was the evidence
15 technician. I was also the co-case agent.

16 Q. Evidence technician? What does that mean?

17 A. It was my job, as the search is conducted -- as
18 items of evidentiary value are located, it's my job to
19 photograph them, physically collect them, make sure
20 they're recorded on the return, and then return it to our
21 office where due processing and narcotics evidence will
22 process it by doing a presumptive test, obtain a weight,
23 and package it, and transport it to our headquarters
24 forensic storage area, and submit it for evidence.

25 Q. And could you just briefly describe for the jury the

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1 process of submitting something into evidence?

2 A. Yes, sir. So when we return to our office, we'll
3 take the -- again, the seized items as narcotics. We
4 will weigh it so we get an initial weight for the
5 property we have. We'll conduct a presumptive test.

6 We'll then make sure that the weight's recorded so
7 that we can start pursuing charges. We then package it.
8 And at the time I'm the only person that handles that. I
9 will make sure it gets transported over to our
10 headquarters.

11 And we have an evidence locker that we'll place it
12 in and secure it until an evidence technician takes it
13 out. And then...

14 Q. I'm sorry. I didn't mean to interrupt.

15 A. No, no, no. I was just saying once they have it, is
16 they handle it from there. I'm done with it at that
17 point.

18 Q. Items that were collected at the scene, did anyone
19 other than yourself have custody of those items?

20 A. No, sir. Once a detective identifies it needs to be
21 collected, I go and physically collect it. I physically
22 transport it to our office and I take it to our evidence
23 compound.

24 Q. And was it also your role in the search warrant to
25 take photographs?

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1 A. Yes, sir.

2 MR. SOWARDS: May I approach the witness, Your
3 Honor?

4 THE COURT: You may.

5 Q. [Mr. Sowards] Lieutenant Ferguson, I'm going to
6 hand you a batch of photographs and I'll just ask if
7 you'll look at each of them and tell me whether you
8 recognize them.

9 It is State's 11, 12, 14, 15, 16, 17, 18, 19, 20,
10 21, 22, 23, 24, 25, 26, 27, 28, and 30. If you could
11 just have a look at those, please.

12 A. Yes, sir.

13 [Whereupon, the witness views photographs]

14 A. Yes, sir --

15 THE COURT REPORTER: I'm sorry. I didn't hear you.

16 A. I do recognize these photographs. I'm sorry.

17 Q. [Mr. Sowards] I'm going to hand you one more. Let
18 me know if you recognize that one, as well.

19 A. Yes, sir.

20 [Whereupon, the witness is shown photograph]

21 THE COURT: What number is that?

22 MR. SOWARDS: That would be 29.

23 THE COURT: 29? Okay.

24 MR. SOWARDS: I'm sorry.

25 THE COURT: No problem.

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1 Q. [Mr. Sowards] Did you take those photographs?

2 A. Yes, sir.

3 Q. And what are they photographs of?

4 A. Those are various photographs from the processing of
5 the search warrant at the residence.

6 Q. Are they a fair and accurate depiction of the scene
7 as you recall it on that day?

8 A. Yes, sir.

9 MR. SOWARDS: Your Honor, at this time the State
10 would seek to admit the photographs that I just handed
11 Lieutenant Ferguson.

12 THE COURT: Any objection, other than those
13 previously argued before the jury came out?

14 MR. DAVIS: No new objections.

15 THE COURT: Very well. I think I -- 11, 12, 14 --
16 you want to check yours?

17 MR. SOWARDS: Yes, sir.

18 THE COURT: 11, 12, 14, 15, 16, 17, 18, 19, 20, 21,
19 22, 25, 23, 24, 26, 27, 29 and 30.

20 MR. SOWARDS: That's fine.

21 MR. DAVIS: The only one, Judge, is 23.

22 THE COURT: 23 is subject to the objection
23 previously argued, in addition to that other objection
24 that's been placed on the record.

25 MR. SOWARDS: And may the State publish those?

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1 THE COURT: You may publish them.

2 MR. SOWARDS: Thank you.

3 THE COURT: But all of those are admitted. Other
4 than 23, all are admitted without objection other than
5 global objection.

6 [Whereupon, State's Exhibit Numbers 11, 12, 14, 15,
7 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 and 30
8 are admitted into evidence by the Court]

9 [Whereupon, photographs are published for the jury]

10 Q. [Mr. Sowards] What are we looking at in this
11 photograph?

12 A. It appears to be a photograph of a safe with U.S.
13 currency in front of it.

14 Q. How about State's 11?

15 A. This is a -- this is a bathroom. Or it's the master
16 bathroom. As you see here [indicates] is a digital
17 scale. Up here [indicates] is that white-powder residue.

18 Q. And State's 14?

19 A. This is a view down into the main, I believe, family
20 area from a balcony above on the second floor.

21 Q. And State's 15?

22 A. This is a computer in the corner of that same room
23 from the last picture.

24 Q. How about State's 16?

25 A. It's a table, from I believe the same room that

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1 contained photographs, and it appears to be a document, a
2 framed document, and there is a copy of our search
3 warrant.

4 Q. And State's 17?

5 A. This is a picture of another I believe family-room
6 area, two couches and various photographs. This is the
7 kitchen area.

8 Q. And State's 19?

9 A. Another photograph of the kitchen area, the
10 refrigerator.

11 Another photograph of the kitchen area.

12 That's another picture of I believe the kitchen
13 area, and this [indicates] is a vacuum sealer.

14 Q. Does the fact there was a vacuum sealer, did that
15 mean anything to you?

16 A. Yes, sir. You know, obviously vacuum sealers have
17 different uses. But in the drug trade, typically those
18 attempt to conceal the presence of narcotics. They will
19 use a vacuum seal bag as a theory they can secure the
20 scent inside the bag, make it less detectable.

21 Q. I'm going to hand you what has been premarked as
22 State's 108.

23 MR. SOWARDS: May I approach the witness, Your
24 Honor?

25 THE COURT: You may.

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1 Q. [Mr. Sowards] Do you recognize this item?
2 [Whereupon, the witness is shown exhibit]
3 A. Yes, sir.
4 Q. And what is that?
5 A. That's a Seal-A-Meal vacuum sealer.
6 Q. And is that the vacuum sealer that you seized from
7 [REDACTED] Old Fort Avenue?
8 A. Yes, sir.
9 MR. SOWARDS: Your Honor, at this time the State
10 would seek to admit Exhibit 108.
11 THE COURT: Without any additional objection?
12 MR. DAVIS: No new objection, Your Honor.
13 THE COURT: Very well. Without additional
14 objection, it's admitted.
15 [Whereupon, State's Exhibit Number 108 is admitted
16 into evidence by the Court]
17 Q. [Mr. Sowards] And State's 23?
18 A. Yes, sir. That's a -- appears to be an organizer
19 for bills, with a it looks to be a premarked bank
20 envelope.
21 And there's a form behind it that has the address of
22 the residence, [REDACTED] Old Fort, and Mr. and Ms. I believe
23 Richardson.
24 Q. And State's 24?
25 A. It's a photograph leading up the stairs to that

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1 sitting area that overlooks the family room, family area.
2 Q. And State's 25?
3 A. That's a photograph of the -- that same room that
4 overlooks from the balcony into the rest of the house.
5 Q. And what was that -- what is that in the upper
6 right-hand corner?
7 A. It appears to be a cage for some sort of a small
8 animal.
9 Q. And State's 26?
10 A. That's the bed from the master bedroom.
11 Q. And 27?
12 A. That's an up-close shot of the master -- the bed in
13 the master bedroom.
14 Q. And how about State's 29?
15 A. These are two handguns that were located under the
16 pillows on the master -- in the bed in the master
17 bedroom.
18 MR. SOWARDS: May I approach the witness, Your
19 Honor?
20 THE COURT: You may.
21 Q. [Mr. Sowards] At this time I will hand you what has
22 been premarked as State's 32, 33, 34, 35, 36, 37, 38, 39,
23 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49, and I'll ask
24 if you can take a look at those and see whether you
25 recognize them.

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1 A. Yes, sir.

2 [Whereupon, the witness views photographs]

3 A. Yes, sir, I recognize these photos.

4 Q. [Mr. Sowards] Are those pictures that you took?

5 A. Yes, sir.

6 Q. And are they a fair and accurate depiction of what
7 you observed at [REDACTED] Old Fort Avenue?

8 A. Yes, sir.

9 MR. SOWARDS: Your Honor, at this time the State
10 would seek to admit State's 32 through 49 and publish
11 them to the jury.

12 THE COURT: Any additional objection?

13 MR. DAVIS: No, Your Honor.

14 THE COURT: Without additional objection, they're
15 admitted.

16 MR. SOWARDS: Thank you, Your Honor.

17 [Whereupon, State's Exhibit Numbers 32, 33, 34, 35,
18 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49
19 are admitted into evidence by the Court]

20 [Whereupon, photographs are published for the jury]

21 Q. [Mr. Sowards] Let's start off with State's 32. What
22 is this?

23 A. That appears to be a clear plastic container filled
24 with rice, and clear plastic bags containing white
25 powder.

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1 Q. And where did you locate this bin?

2 A. This was under the master -- in the master bedroom
3 under the bed.

4 Q. What do you make of the fact there's rice in there,
5 if anything?

6 A. Typically, the rice would be used in this fashion to
7 keep that item, the white powder, dry. So it'll take
8 care of any moisture.

9 Q. State's 33?

10 A. This is another photograph of the plastic container
11 and the clear plastic bags containing the white powder.

12 Q. State's 34?

13 A. This is a photograph of the clear plastic -- one of
14 the clear plastic bags, with a presumptive test which
15 shows presumptive for cocaine.

16 Q. State's 35?

17 A. That's a photograph. I believe it's behind the TV.
18 That's a box belonging to an electronic scale which is
19 commonly used for weighing drugs.

20 That's a photograph of a couple of boxes. You see
21 penny rolls and the box on top. Can't see what's in it
22 yet in that photograph.

23 This is a photograph of that same box and now you
24 can see what's contained inside. There's a receipt of
25 some sort, the name of Taki, and a cell phone.

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1 Q. State's 38?

2 A. That's a photograph of a -- this is again in the
3 master bedroom. That's a photograph of a laptop bag and
4 a laptop computer.

5 Q. State's 39?

6 A. This piece of paper was found in that notebook and
7 it had various account password -- or login names and
8 passwords.

9 Q. State's 40?

10 A. That's a bank bag containing money.

11 Q. And where was that located?

12 A. This was in the master bedroom.

13 Q. State's 41?

14 A. That's the same bag that shows the label on the
15 front of it, says Lazy Man.

16 Q. State's 42?

17 A. This is another photograph of the bedroom of --
18 appears to be miscellaneous paperwork.

19 Q. And State's 43?

20 A. That's an up-close photo of the same miscellaneous
21 paperwork, and it's a life insurance form in the name of
22 Therron Richardson.

23 Q. State's 44?

24 A. That's a Lazy Man Lawn Care work shirt, nickname
25 Taki.

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1 Q. State's 45?

2 A. That's a photograph of the safe that we saw in an
3 earlier picture, but this is after we had forced it open.

4 Q. Where was the safe located?

5 A. In the master bedroom closet.

6 Q. And when you say forced open, did you force that
7 safe open?

8 A. I can't remember who forced it open.

9 Q. But somebody on Metro forced it open?

10 A. Yes, sir.

11 Q. State's 46?

12 A. That's another photograph inside the safe, with
13 those numerous bound stacks of U.S. currency.

14 Q. Do you know how much currency was found in the
15 house?

16 [Whereupon, the witness reviews document]

17 A. 21,750 dollars.

18 Q. State's 47?

19 A. That's a social security card and a birth
20 certificate, both in the name of Therron Bernard
21 Richardson.

22 Q. State's 48?

23 A. That's another photograph from the closet, and
24 that's a plastic bag in the center, which should be in
25 the next photograph, as well.

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1 This is an inside view of that bag. It contains
2 numerous glassine baggies. So those bags are used in the
3 drug trade. When you're selling smaller amounts of
4 narcotics, you typically place it in those types of bags
5 and sell it.

6 MR. SOWARDS: May I approach the witness again, Your
7 Honor?

8 THE COURT: You may.

9 Q. [Mr. Sowards] I'll now hand you what have been
10 premarked as State's 50, 51, 52, 53, 54, 55, 56, 57, 58,
11 and 59. Take a look at those and let me know if you
12 recognize them.

13 A. Yes, sir.

14 [Whereupon, the witness is shown photographs]

15 A. Yes sir, I do.

16 MR. SOWARDS: Your Honor, at this time the State
17 would seek to admit 50, 51 through 59.

18 THE COURT: Correct.

19 MR. SOWARDS: And publish for the jury.

20 THE COURT: Any additional objections?

21 MR. DAVIS: No additional objections.

22 THE COURT: Very well. State's 50 through 59 are
23 admitted without any additional objections and subject to
24 objections preserved in the argument previous to our
25 commencing this testimony.

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1 MR. SOWARDS: Thank you, Your Honor.

2 [Whereupon, State's Exhibit Numbers 50, 51, 52, 53,
3 54, 55, 56, 57, 58 and 59 are admitted into evidence by
4 the Court]

5 [Whereupon, photographs are published for the jury]

6 Q. [Mr. Sowards] State's 50?

7 A. This is a photograph of the closet, with a box of
8 Hefty I believe they're zip -- they're Ziploc bags. I'm
9 not sure what size they are, but storage bags.

10 Q. In your experience as a narcotics detective, is
11 there any significance to sandwich baggies?

12 A. They're typically used to help store or transport
13 narcotics in. Typically wouldn't see them in a closet
14 like this if it wasn't being used in such a manner.

15 Q. And 51?

16 A. This is a photograph of the same bathroom from
17 earlier. And you have a closer view of the scale, the
18 electronic scale, on the right.

19 And you can see that there's a presumptive test swab
20 next to it which shows blue, which is presumptive for
21 cocaine. You can also see the blue on the face of the
22 scale, which shows presumptive for cocaine, as well.

23 Q. And 51?

24 A. These are -- these are medicine bottles in the name
25 of Therron Richardson. And they state, let's see, take

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1 one tablet every day, on both bottles.

2 Q. 53?

3 A. This is a photograph of the top drawer in the master
4 bathroom. And you can see a narcotics -- or a scale
5 typically used to measure narcotics, and a bag of clear
6 or a box of clear plastic storage bags; actually, a
7 couple of boxes.

8 At the bottom you can see a spoon. And there is a
9 clear plastic bag with white-powder substance at the
10 bottom corner.

11 Q. And 54?

12 A. That's a close-up photograph of the clear plastic
13 bag white-powder substance next to the scale. And you
14 can also see white-powder residue on the scale.

15 Q. I'll hand you now what's been premarked as State's
16 89, ask if you recognize this item.

17 [Whereupon, the witness is shown exhibit]

18 A. Yes, sir. That's the electronic scale from the
19 photograph.

20 Q. This is the electronic scale that you located in the
21 master bathroom?

22 A. Yes, sir.

23 Q. Is it in the same or significantly the same
24 condition as it was when you collected it?

25 A. Yes, sir.

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1 MR. SOWARDS: Your Honor, at this time the State
2 would seek to admit 89.

3 THE COURT: All right. State's 89 without any
4 additional objection?

5 MR. DAVIS: No objection, Your Honor.

6 Your Honor, I would ask for a brief foundation as to
7 which one. We've had a few in the photos. But no new
8 legal objections other than previously noted.

9 THE COURT: You want give further testimony as to
10 where that scale was located?

11 THE WITNESS: The scale we just talked about?

12 THE COURT: No. Solicitor.

13 THE WITNESS: Oh. I'm sorry.

14 Q. [Mr. Sowards] Lieutenant Ferguson, where did you
15 locate this scale --

16 THE COURT: State's 89.

17 Q. [Mr. Sowards] That I just handed you, State's 89?

18 A. That was in the top shelf in the -- or excuse me --
19 top drawer in the master bathroom.

20 Q. And I'll put back up State's 51 and hand you what
21 has been premarked as State's 90, ask you to take a look
22 at that and see whether you recognize it.

23 [Whereupon, the witness is shown exhibit]

24 A. I believe that's going to be the scale from this
25 photograph, on the far right portion.

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1 Q. State's 90 was located on the vanity in the master
2 bath?

3 A. Yes, sir. On the counter, master bathroom.

4 MR. SOWARDS: Your Honor, at this time the State
5 would seek to admit Number 90.

6 THE COURT: All right. Any objection?

7 MR. DAVIS: No new objections.

8 THE COURT: Other than those previously argued?

9 The State's 89 and 90 are admitted, subject to the
10 objections previously argued. Those objections were
11 overruled on the record.

12 [Whereupon, State's Exhibit Numbers 89 and 90 are
13 admitted into evidence by the Court]

14 Q. [Mr. Sowards] What about State's 55?

15 A. Yes, sir. This is the second drawer down in the
16 same master bathroom. So the last drawer we were looking
17 at, this was the next drawer.

18 Q. And State's 56?

19 A. That's a bottle of Inositol.

20 Q. What is Inositol?

21 A. Inositol is a dietary supplement. But in the drug
22 trade you typically find it used to expand a product so
23 that -- to increase your yield, to increase your profit.

24 Q. I'll hand you now what has been --

25 MR. SOWARDS: May I approach, Your Honor?

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1 THE COURT: You may.

2 Q. [Mr. Sowards] I'll hand you now what has been
3 premarked as State's 93, ask if you recognize that.

4 [Whereupon, the witness is shown exhibit]

5 A. Yes, sir. That's the same bottle from the
6 photograph. And that's, again, the second drawer down in
7 the master bathroom.

8 MR. SOWARDS: Your Honor, at this time the State
9 would seek to admit 93 into evidence?

10 THE COURT: Any additional objection?

11 MR. DAVIS: No additional objections, Your Honor.

12 THE COURT: Without additional objection, State's 93
13 is admitted. Thank you.

14 [Whereupon, State's Exhibit Number 93 is admitted
15 into evidence by the Court]

16 Q. [Mr. Sowards] And State's 57?

17 A. Yes, sir. That's a photograph of a digital CD
18 scale. So it's, again, an electronic weigh scale. I
19 find it typically used in the narcotics trade, especially
20 because it looks like a CD case. So it at times goes
21 undetected as a scale.

22 Q. State's 58?

23 A. That's another -- I believe that's another
24 photograph of an electronic scale box from the master
25 bathroom. And that's an A&W electronic scale. It

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1 appears that that scale is still in the box, partially
2 sticking out.

3 Q. And 59?

4 A. This is another picture from the master bathroom,
5 same set of drawers but below the others, and that's a --
6 it looks like a clear plastic vacuum-seal bag with white
7 powder substance in it. Or residue; sorry.

8 Q. Now I'll hand you what have been premarked as
9 State's 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 21,
10 73 and 74. Do you recognize those photographs?

11 [Whereupon, the witness is shown photographs]

12 A. Yes, sir, I recognize these.

13 Q. [Mr. Sowards] Did you take those photographs?

14 A. Yes, sir.

15 Q. And are they a fair and accurate depiction of what
16 you observed in the home that day?

17 A. Yes, sir.

18 MR. SOWARDS: Your Honor, at this time the State
19 would seek to admit 60 through 74, I think minus...

20 THE COURT: 68.

21 MR. SOWARDS: 68 and publish to the jury.

22 THE COURT: Any objections, other than those
23 previously argued?

24 MR. DAVIS: No new objections.

25 THE COURT: Subject to the previous objections

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1 argued and ruled upon, 60 through 67 are admitted. 69
2 through 74 are admitted.

3 [Whereupon, State's Exhibit Numbers 60, 61, 62, 63,
4 64, 65, 66, 67, 69, 70, 71, 72, 73 and 74 are admitted
5 into evidence by the Court]

6 [Whereupon, photographs are published for the jury]

7 Q. [Mr. Sowards] State's 60?

8 A. Yes, sir. This is a Dodge truck that was parked
9 outside the residence.

10 Q. What was the condition of the truck? Do you recall?

11 A. I believe it was in poor condition. I don't think
12 it cranked up.

13 Q. And 61?

14 A. That's a photograph of the tag from the vehicle. It
15 states [REDACTED], and I believe registered to Mr.
16 Richardson.

17 Q. And 62?

18 A. Appears to be possibly a photograph of a children's
19 bedroom.

20 Q. And 63?

21 A. It looks like another photograph of a bedroom, some
22 sort of a chest of drawers and a TV.

23 That's a photograph of a closet with clothing in it.

24 This is a photograph from inside the residence. I
25 can't say for sure which room that is.

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1 Q. Is that a bathroom at the end of the hall?

2 A. I believe it's a bathroom. It looks like a bath --
3 the edge of a bath in there.

4 Q. And 66?

5 A. That's another room in the residence, an ironing
6 board and an iron.

7 Q. And 67?

8 A. This is a piece of documentation from Charleston
9 County. It's a business license for Lazy Man Lawn Care.

10 Q. And 69?

11 A. This is a piece of documentation for account holder
12 Therron Richardson.

13 Q. And 70?

14 A. That's another piece of documentation in the name of
15 Therron Richardson and Lazy Man Lawn Care.

16 Q. State's 71?

17 A. Another piece of documentation in the name of
18 Therron Richardson.

19 That's additional photographs of the documentation
20 in the name of Therron Richardson.

21 And that's paperwork in the name of Therron
22 Richardson with [REDACTED] Old Fort Avenue.

23 Another piece of documentation in the name of
24 Therron Richardson, [REDACTED] Old Fort Avenue.

25 MR. SOWARDS: Your Honor, may I approach the

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1 witness?
2 THE COURT: You may.
3 Q. [Mr. Sowards] I'll hand you now what has been
4 marked for ID as State's 94. Do you know what that is?
5 [Whereupon, the witness is shown exhibit]
6 A. Yes, sir. This is a piece of documentation from the
7 Charleston Water System in the name of Therron Richardson
8 at [REDACTED] Old Fort Avenue. It appears to be a bill.
9 Q. And I think we saw a picture of that earlier. Is
10 that an item that you seized from the home?
11 A. Yes, sir.
12 MR. SOWARDS: Your Honor, at this time the State
13 would seek to admit 94 into evidence.
14 THE COURT: Any additional objection?
15 MR. DAVIS: No, Your Honor.
16 THE COURT: Without additional objection, the
17 previous objection previously argued and ruled upon,
18 State's 94 is admitted.
19 [Whereupon, State's Exhibit Number 94 is admitted
20 into evidence by the Court]
21 Q. [Mr. Sowards] I'm going to hand you now what has
22 been marked as State's 99 and I'll ask you to take a look
23 and see whether you recognize it.
24 [Whereupon, the witness views documents]
25 A. Yes, sir, I recognize this.

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1 Q. [Mr. Sowards] And how do you recognize that?

2 A. This is a rental agreement that we located in the
3 residence. It's in the name of Sharmane and Therron
4 Richardson.

5 Q. And was that item located and then recovered and
6 submitted into evidence by you?

7 A. Yes, sir.

8 MR. SOWARDS: Your Honor, at this time the State
9 would seek to admit 99 into evidence.

10 THE COURT: Any additional objection?

11 MR. DAVIS: No, Your Honor.

12 THE COURT: Without additional objection, previously
13 ruled upon, State's 99 is admitted.

14 [Whereupon, State's Exhibit Number 99 is admitted
15 into evidence by the Court].

16 MR. SOWARDS: May I approach the witness, Your
17 Honor?

18 THE COURT: You may.

19 Q. [Mr. Sowards] And finally I'll hand you what have
20 been premarked as State's 75, 76, 77, 79, 80, 81, 82, 83,
21 and 84 and ask if you can take a look and tell me whether
22 you recognize those photographs.

23 [Whereupon, the witness views photographs]

24 A. Yes, sir, I recognize these.

25 Q. [Mr. Sowards] Did you take those photographs?

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1 A. Yes, sir.

2 Q. And are they a fair and accurate depiction of what
3 you observed at [REDACTED] Old Fort Avenue?

4 A. Yes, sir.

5 MR. SOWARDS: Your Honor, at this time the State
6 would seek to introduce -- admit the aforementioned
7 exhibits and publish them to the jury.

8 THE COURT: Any additional objection?

9 MR. DAVIS: No, Your Honor.

10 THE COURT: Without any additional objection, those
11 objections previously ruled upon, State's 75 through 77,
12 79, 80 through 84 are admitted.

13 [Whereupon, State's Exhibit Numbers 75, 76 and 77
14 are admitted into evidence by the Court]

15 [Whereupon, State's Exhibit Numbers 79, 80, 81, 82,
16 83 and 84 are admitted into evidence by the Court]

17 [Whereupon, photographs are published for the jury]

18 Q. [Mr. Sowards] I will start with State's 79.

19 A. Yes, sir. That's a clear plastic bag containing a
20 white-powder substance with an approximate weight of 41
21 grams. And there's a presumptive cocaine swab next to
22 it.

23 Q. And what is a -- when you say presumptive swab, what
24 does that mean?

25 A. So when we seize -- when we seize narcotics, we

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1 don't conduct a chemical test right then. We have tools
2 available to us. As you see this is a Searcy brand narc
3 cocaine ID swab.

4 It gives you the ability to give a presumptive test
5 without, you know -- understand we have to do a chemical
6 test beyond that. But that gives us a presumptive test
7 so that we can go ahead and pursue our charges and start
8 making our case.

9 Q. State's 80?

10 A. That's another clear plastic bag containing a white-
11 powder substance. It looks like approximately 15 grams.

12 Q. State's 81?

13 A. Another clear plastic bag. It appears to contain
14 additional clear plastic bags with white-powder substance
15 weighing approximately 123 grams.

16 Q. State's 82?

17 A. Again, another clear plastic bag containing white-
18 powder substance with approximate weight of 1,144 grams.
19 And you can see the blue -- actually, the blue mark on
20 the white powder, which would indicate where a
21 presumptive swab was taken. And, again, a presumptive
22 indication that cocaine was present.

23 Q. And did you notice anything about the substance in
24 this particular bag that drew your attention?

25 A. So this particular bag of white-powder substance is

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1 almost -- you can see it compressed and almost what you
2 would say is partly block form.

3 So it appears that it came out of a container that
4 was again compressed, which would indicate to us probably
5 a higher purer form, probably hasn't been cut up yet with
6 an additional substance to yield further product.

7 Q. And then State's 83?

8 A. Yes, sir. That's another clear plastic bag with a
9 white-powder substance with an approximate weight of 512
10 grams.

11 Q. And State's 84?

12 A. Another clear plastic bag with a white-powder
13 substance weighing approximately 226 grams.

14 Q. Lieutenant Ferguson, do you know how many grams are
15 in a kilogram?

16 A. Yes, sir. 1,000.

17 Q. And do you know the weight of the aggregate amount
18 of cocaine seized from the home?

19 A. Yes, sir. The -- our paperwork indicates 2,061
20 grams.

21 Q. So how many kilograms would that be?

22 A. I'm sorry?

23 Q. How many kilograms would that be?

24 A. A little over two kilograms.

25 Q. I'm going to hand you now what has been premarked as

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1 State's Exhibit 1 and I'll ask if you can take the
2 contents of this bag out and see whether you recognize
3 the contents.

4 A. Yes, sir.

5 [Whereupon, the witness is shown exhibit]

6 A. Yes, sir, I recognize this.

7 Q. [Mr. Sowards] And what are those items?

8 A. These are Clear-Lite bags containing white-powder
9 substance from the search warrant at [REDACTED] Old Fort.

10 Q. Now, when we saw the bags in, for example, State's
11 79, it looks like it's in a sandwich bag and the bag that
12 you're holding up is different. What is that bag?

13 A. So this is -- so this bag has been submitted into
14 evidence. This is an evidence bag that I believe it
15 would have been -- evidence that we submitted would have
16 been placed in these bags and then it would go through
17 the process of being tested, both sent off for testing
18 and returned to us for testing. It would come in these
19 bags.

20 Q. And were those bags sealed when you submitted them
21 for testing?

22 A. Yes, sir.

23 Q. And sealed by whom?

24 A. By myself.

25 Q. I'll show you State's 75. What does State's 75

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1 show?

2 A. That's an H and R Incorporated .32 caliber revolver.

3 And those are -- I apologize. Can you put the picture
4 back up?

5 You notice at the top of the picture are the six
6 rounds. Those were loaded in the gun.

7 Q. State's 76?

8 A. That's a Glock 17 or model 17. It's again, a Glock
9 handgun. And it has a magazine that was located. The
10 magazine was loaded. The weapon was not chambered.

11 Q. And then State's 77?

12 A. That's a Sig Sauer or Sig Incorporated model B --
13 excuse me -- P232SL. Next to it is a loaded magazine
14 that was in the hand gun. It was loaded but not
15 chambered, so there was not a round in the chamber.

16 MR. SOWARDS: May I approach the witness, Your
17 Honor?

18 THE COURT: Yes, you may.

19 Q. [Mr. Sowards] I'll hand you what has been premarked
20 as State's 100, ask if you recognize that.

21 [Whereupon, the witness is shown exhibit]

22 A. Yes, sir. This is the Sig Sauer P232SL handgun.

23 Q. And just to be clear, is that gun currently loaded?

24 A. No sir, it is not.

25 Q. Has it been rendered safe?

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1 A. Yes, sir, it has.

2 Q. And is that the gun that was located -- one of the
3 guns that was located at. [REDACTED] Old Fort Avenue?

4 A. Yes, sir.

5 THE COURT: Mr. Sowards, you had better put that
6 down and table it; the gun.

7 MR. SOWARDS: Judge?

8 THE COURT: The gun needs to go on the table. It's
9 an ID.

10 [Whereupon, Mr. Sowards complies]

11 THE COURT: Thank you.

12 MR. SOWARDS: I apologize, Judge.

13 THE COURT: That's no problem. The Court Reporter
14 will fuss and rightly so.

15 Q. [Mr. Sowards] Now I'll hand you State's 101, ask if
16 you recognize that.

17 [Whereupon, the witness is shown exhibit]

18 A. Yes, sir. This is a Glock Model 17, a handgun.

19 Q. And was that gun seized from [REDACTED] Old Fort Avenue?

20 A. Yes, sir.

21 Q. I'll hand you now State's 102. And, again, do you
22 recognize State's 102?

23 [Whereupon, the witness is shown exhibit]

24 A. Yes, sir. This is a Glock .22. It's a .40 caliber
25 handgun.

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1 Q. And did you seize that gun from [REDACTED] Old Fort
2 Avenue?

3 A. Yes, sir.

4 Q. And now I'll hand you State's 103. Again, do you
5 recognize State's 103?

6 [Whereupon, the witness is shown exhibit]

7 A. Yes, sir. This is the H&R Incorporated .32 caliber
8 revolver that you showed me in the picture a while ago.

9 Q. And was that gun seized from [REDACTED] Old Fort Avenue?

10 A. Yes, sir.

11 MR. SOWARDS: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 [Whereupon, Mr. Sowards and Ms. Frierson confer]

14 Q. [Mr. Sowards] And now I'll hand you what has been
15 marked for ID as State's 106, 107, 109 and 110 and ask
16 whether you can identify those objects.

17 [Whereupon, the witness is shown exhibits]

18 A. Yes, sir. The first bag is a fourteen -- it looks
19 like fourteen .40 caliber ammunition rounds taken from
20 the Glock .22.

21 THE COURT: What number is that?

22 THE WITNESS: That is 109, sir.

23 THE COURT: Thank you.

24 A. The second one, 110, fifteen .9 millimeter rounds
25 from a Glock 17.

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1 A. 107.

2 THE WITNESS: May I open the bag? Is it okay if I
3 open the bag?

4 MR. SOWARDS: That's fine.

5 A. 107 is six .32 caliber ammunition rounds.

6 And 106 is six appears to be .380 caliber ammunition
7 rounds.

8 Q. [Mr. Sowards] And all those items were found and
9 removed from [REDACTED] Old Fort Avenue?

10 A. Yes, sir.

11 Q. And finally I'll hand you State's 111 and 112.
12 Finally, I'll hand you State's 111 and 112 and ask
13 whether you recognize those items.

14 [Whereupon, the witness is shown exhibits]

15 A. Yes, sir, I do.

16 Q. And what are those items?

17 A. This yellow bag that was seen in the photograph
18 earlier was taken from a closet. Inside it are multiple
19 plastic bags containing smaller glassine bags. They're
20 typically utilized in the products trade to sell smaller
21 quantities of drugs.

22 MR. SOWARDS: Your Honor, at this time the State
23 would seek to introduce 112 into evidence.

24 THE COURT: Any additional objection?

25 MR. DAVIS: No objection, Judge.

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1 THE COURT: Without additional objection, State's
2 112 is admitted.

3 [Whereupon, State's Exhibit Number 112 is admitted
4 into evidence by the Court]

5 MR. SOWARDS: No further questions from the State at
6 this time, Your Honor.

7 THE COURT: All right. Before you -- you have some
8 examination?

9 MR. DAVIS: Judge, we would have none but we would
10 ask for a brief break at this time. Just ask for a
11 break.

12 THE COURT: You have no questions?

13 MR. DAVIS: I do not, Your Honor.

14 THE COURT: Very well. Any objection to this
15 witness being excused?

16 MR. DAVIS: No, Your Honor.

17 THE COURT: You are free to step down and free to
18 leave, sir. Thank you very much.

19 THE WITNESS: Thank you, Your Honor.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

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1 THE COURT: Ladies and gentlemen, at this point,
2 while you've been here about an hour we've been here
3 about an hour and a half, so we'll take a break, let you
4 go to your jury room. Do not begin your deliberations.
5 We'll be with you in about fifteen minutes. Thank you.

6 [Whereupon, the jury exits at 2:55 p.m.]

7 THE COURT: All right. Anything from the State
8 before we recess?

9 MR. SOWARDS: No, Your Honor.

10 THE COURT: Anything from Mr. Richardson?

11 MR. DAVIS: No, Your Honor.

12 THE COURT: Thank you. We'll be at ease for about
13 fifteen minutes.

14 MR. DAVIS: Thank you, Your Honor.

15 [Whereupon, a recess is taken from 2:58 p.m. to
16 3:13 p.m.]

17 THE COURT: All right. Is Mr. Richardson ready?

18 MR. DAVIS: Yes, Your Honor. Thank you.

19 THE COURT: Let's bring in our jury, please Mr.
20 Turner.

21 MR. DAVIS: Your Honor, if we ---

22 THE COURT: --- hold on just a second, Mr. Turner.

23 MR. DAVIS: I apologize. I'm so sorry, Judge. We
24 are ready. There's one thing we were just discussing
25 about. I believe the next witness the State will call

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1 will be Mr. Bunn, who's from the security systems ADT or
2 one of the others now; they changed. He testified on
3 Thursday for the defense. I believe the State is going
4 to call him. And they just had -- and I appreciate the
5 extra time. They just had him review calls from ADT
6 because what we had is evidence from Thursday. So he
7 just listened to that.

8 Well, here's what we have. He's certainly a records
9 custodian. He is not a party to any of these calls. We
10 have six tracks. The longest one is just about a minute
11 and a half, maybe slightly longer. They're short calls.
12 But we're running into a similar situation as to when
13 Deputy Bowen talked about the call he received. On two
14 of these the claim or a name said is going to be Therron
15 Richardson without a corresponding identification.

16 Mr. Bunn I'm not even sure he was employed in the
17 Charleston area at the time, so we're running into a
18 similar situation. I will smartly adopt one of the
19 objections you had last time. So lack of foundation,
20 more prejudicial than probative, and then a hearsay
21 objection.

22 I would suggest that there is a document that could
23 be easily redacted, where the two calls attributed to,
24 attempted to be attributed to, my client should not be
25 played. It would be the second and third tract on the

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1 disk. We would ask that those not be played. But the
2 gist of I believe what we're getting to can be admitted
3 through an event history with very minor edits. And,
4 again, it's the State's case to put forward with what
5 they choose whether they choose to put this event entry
6 or not.

7 But I would make objections to tract three -- I'm
8 sorry -- tract two and three, which are purported to be
9 of my client.

10 THE COURT: All right. What's the State's position?

11 MR. SOWARDS: Your Honor, in addition to the event
12 log, we would seek to admit a contract between Mr.
13 Richardson and ADT. And then there is the event log.

14 I believe while there is -- Mr. Dunn doesn't know
15 Mr. Richardson personally, the individual on the phone
16 identifies himself most of the times as Therron
17 Richardson. He obviously is aware that a security system
18 is installed at [REDACTED] Old Fort Avenue. And the State
19 would seek to admit it under admission by a party
20 opponent.

21 I think it also just goes to prove again, a
22 connection to the home and awareness that something
23 happened there and not necessarily that -- anything
24 beyond that.

25 THE COURT: All right. Any response to that?

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1 MR. DAVIS: Briefly, Judge, just taking it in order.
2 The contract, if a proper foundation is laid, we won't be
3 having any objection.

4 The event history with some redactions, we can take
5 that up at the appropriate time, I don't believe we have
6 an objection to.

7 But, again, we would argue two of the tracts are
8 purported to be my client without any substantiation,
9 and/or if it is, then it would be, we would argue, be
10 subject to hearsay exception.

11 THE COURT: Well, what's the purpose of the call,
12 Solicitor? Why are you offering the call?

13 MR. SOWARDS: Your Honor, the two in particular are
14 the Defendant, or the person who identifies himself as
15 such, occurred very shortly after deputies went into the
16 house. And he says, disregard the alarm.

17 And then I think Your Honor knows through reading
18 the transcript of Mr. Hess' prior testimony that he did,
19 in fact, show up to the house and obviously didn't make
20 contact with police, parked down the street, and then
21 left without them realizing that he had been there. They
22 saw him. It seems like it just shows a more concrete
23 connection to the home.

24 THE COURT: Solicitor, you know, this is one of
25 those cases where you really want me to rule on something

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1 that really and truly gets to the close question. All
2 right. This is a -- the ones where a person identifies
3 -- and it's a call to the security place?

4 MR. SOWARDS: It is a -- there's both. There's one
5 from him to the security place, and then one from the
6 security place to him.

7 THE COURT: Okay. And those are the two you want to
8 play?

9 MR. SOWARDS: We were just going to play them all
10 for the context.

11 THE COURT: Well, he objects to all of them.

12 But from the standpoint of that, really and truly,
13 do you really want to run the risk of record for this
14 evidence? I mean, really, what does it show? What does
15 it -- what does it -- how in the world does it do
16 anything?

17 Again, you've got something on direct -- you've got
18 something called reply. And if he gets up and denies all
19 of this stuff, we've got a different ballgame here.

20 So technically I think the ones that are attributed
21 to him and him making the call, then I think that
22 probably gets through the hearsay. It is what it is.
23 It's a call; it's a record of a call, maintained in the
24 course of business. So that's fine. But that part of it
25 I'm comfortable with. I just wonder what you want to put.

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1 something in that really and truly could cause this case
2 to be problematical, because it really is not that
3 critical. I don't see the critical. But you see more of
4 the case than I do. But is it somewhat probative? Sure.
5 It's probative to say that he knew something was going on
6 and he's calling to tell them to disregard the alarm.

7 I assume we're going to have some testimony about
8 what kind of alarm that comes in. It sounds like to me
9 it was a silent alarm that triggered it at the security
10 place. Is that...

11 MR. SOWARDS: Well, we don't know whether it was
12 silent. That's kind of the ---

13 THE COURT: --- well, nobody has testified to any
14 alarm. Anybody testify to that?

15 MR. SOWARDS: That will be our next witness.

16 THE COURT: Well, nobody has testified that they
17 heard an alarm at that place. That's what I'm saying.

18 MR. SOWARDS: I understand.

19 THE COURT: So, I mean, he's going to testify that
20 it's a silent alarm? I mean, see, you're creating
21 something for yourself that now you -- why do you want to
22 do that for? But that's up to you. That's your call.

23 I'll allow the testimony concerning -- that are
24 attributed to the Defendant. That's all; if you want to
25 do it. I just wonder what you're hoping to accomplish,

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1 other than maybe create a problem for yourself.

2 MR. DAVIS: And, Judge, just to make it clear. So
3 two and three are attributed to him. Those are the ones
4 we objected to. We understand your ruling.

5 Then as to the event logs, which they indicated they
6 would like to introduce as well, there are three lines.
7 May I approach?

8 THE COURT: Well, the event log means what? I mean,
9 the event log just says that there was an alarm?

10 MR. DAVIS: It lists several things. If I may, Your
11 Honor?

12 THE COURT: Yeah.

13 [Whereupon, Mr. Davis provides documents to the
14 Court]

15 THE COURT: Thank you.

16 MR. DAVIS: It has several things. I have
17 highlighted the three entries that would cause me
18 concern. If those are redacted, then I do not have an
19 issue with the call log.

20 THE COURT: Well, these are what the telephone calls
21 are saying, too, aren't they?

22 MR. SOWARDS: Mostly.

23 THE COURT: Well, certainly if there's -- if he
24 decides to do that, it's just merely confirmatory that
25 that call was made. So it's further evidence, in

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1 addition to the fact that it's the defendant and
2 therefore meets the test for assuming its hearsay.

3 MR. DAVIS: Thank you, Your Honor. May I?

4 THE COURT: Yeah. Sure.

5 [Whereupon, the Court returns documents to Mr.
6 Davis]

7 THE COURT: But as to the other, what -- I mean,
8 other than the fact that that's a record and it has -- it
9 is what it is and it's being produced as a business
10 record, which makes it admissible and by -- has some
11 matters which are not necessarily well, but I don't think
12 that that would exclude it being admitted.

13 MR. DAVIS: I understand Your Honor. Thank you,
14 Your Honor.

15 THE COURT: It's up to you, Solicitor. Whatever you
16 want to do.

17 MR. SOWARDS: Okay.

18 THE COURT: Okay? Are we ready to go?

19 MR. SOWARDS: We are.

20 MR. DAVIS: We are, Your Honor. And I apologize.
21 Thank you.

22 THE COURT: No. There's no apology necessary, Mr.
23 Davis. Thank you, though.

24 [Whereupon, the jury enters the courtroom at
25 3:29 p.m.]

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1 THE BAILIFF: All present, Your Honor.

2 THE COURT: Thank you very much, ladies and
3 gentlemen. We were taking up some matters of law, as
4 well, with the next witness. Appreciate your patience
5 with us.

6 Solicitor, you may call your next witness.
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1 MR. SOWARDS: Thank you, Your Honor. The State
2 calls Earl Bunn.
3 [Whereupon, Mr. Bunn comes forward]
4 CLERK OF COURT: Please place your left hand on the
5 Bible and raise your right hand.
6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]
8 CLERK OF COURT: For the record please state your
9 full name, spelling your last name.
10 THE WITNESS: William Earl Bunn. B-U-N-N.
11 MR. SOWARDS: May it please the Court?
12 THE COURT: Yes, sir.
13 - - - - -
14 EARL BUNN,
15 Having Been First Duly Sworn,
16 was Examined and Testified as Follows:
17 DIRECT EXAMINATION
18 BY MR. SOWARDS:
19 Q. Good afternoon, Mr. Bunn. I appreciate you being
20 here. Where do you work?
21 A. ADT Security.
22 Q. And what do you do at ADT Security?
23 A. I'm an install and service manager.
24 Q. How long have you been with ADT Security?
25 A. Twenty-five years.

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1 Q. As part of its business, does ADT offer home alarm
2 systems?

3 A. Yes.

4 Q. And how does one obtain a home alarm system through
5 ADT?

6 A. Either through internal sales or external sales. It
7 just all depends on where they buy it from.

8 Q. And does an ADT home alarm system require a
9 contract?

10 A. Yes.

11 Q. And as part of your experience with ADT, are you
12 familiar with the contract for residential service?

13 A. To some degree, yes.

14 MR. SOWARDS: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 Q. [Mr. Sowards] Mr. Bunn, I'll hand you what has been
18 marked for ID as State's 87.

19 [Whereupon, the witness is shown exhibit]

20 Q. I'll ask do you recognize that.

21 A. I do.

22 Q. And what is that?

23 A. It's a residential service contract.

24 Q. And is that a record that is kept in the regular
25 course of business with ADT?

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1 A. It is.

2 MR. SOWARDS: And at this time, Your Honor --

3 Q. [Mr. Sowards] Well, actually, are you able to
4 determine the parties to that contract?

5 A. I am.

6 Q. Who are the parties to that contract?

7 A. It's only one. It's Therron Richardson.

8 MR. SOWARDS: Your Honor, at this time the State
9 would seek to admit 87 into evidence.

10 THE COURT: Any objection?

11 MR. DAVIS: No, Your Honor.

12 THE COURT: Without objection, 87 is admitted.

13 [Whereupon, State's Exhibit Number 87 is admitted
14 into evidence by the Court]

15 Q. [Mr. Sowards] And I think this may be asking for
16 you to state the obvious, but what is that a contract
17 for?

18 A. For the monitoring and service of security alarm
19 systems.

20 Q. Are you able to tell what type of alarm was
21 installed?

22 A. The model that shows that was installed was a LINX.

23 Q. And what is a LINX?

24 A. It's just an all-in-one panel connected through
25 phone line or radio; just a basic alarm.

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1 Q. And were there any other things installed, aside
2 from the panel?

3 A. Looks like three doors, four windows, one motion,
4 one smoke detector, and one wireless remote.

5 Q. And are you able to determine from the contract
6 whether the alarm was an audible alarm?

7 A. I am not just from the panel itself.

8 Q. And you have not had an opportunity to look at the
9 panel?

10 A. No.

11 MR. SOWARDS: Beg the Court's indulgence.

12 THE COURT: Certainly.

13 [Whereupon, Mr. Sowards and Ms. Frierson confer]

14 MR. SOWARDS: No further questions from the State.

15 THE COURT: Cross-examine.
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CROSS-EXAMINATION

BY MR. DAVIS:

Q. Another document that would be kept in the normal course of business would be an event history; is that accurate?

A. Internally on the computer, yes.

Q. Okay. That's something you would save on a computer that you could also print out?

A. Correct.

Q. And in preparation for your testimony, did you have an opportunity to review the event history for October 17th, 2010, for this contract?

A. I did.

Q. Do you have a copy with you today?

A. I do not.

MR. DAVIS: May I approach, Your Honor?

THE COURT: You may.

[Whereupon, Defendant's Exhibit Number 1 is marked by the court reporter]

MR. DAVIS: May I approach the witness, Your Honor?

THE COURT: Yes, you may.

Q. [Mr. Davis] I'm going to show you what's been marked, for identification purposes only, as Defense Exhibit Number 1. Take a second and take a look at that and let me know when you've had enough time. I may have

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1 some questions for you about it.

2 [Whereupon, the witness views documents]

3 A. Okay.

4 Q. [Mr. Davis] Does that document look similar to the
5 one you reviewed for testimony previously?

6 A. Yes.

7 Q. Okay. Is that document pertaining to the contract
8 for which you just testified? I believe the address is
9 towards the middle.

10 A. Yes.

11 Q. And does that pertain to events that occurred on
12 October 17th, 2010?

13 A. Yes.

14 Q. Before we get started on details, you did not --
15 you're not involved in this contract being signed, were
16 you?

17 A. No.

18 Q. You were not involved in the installation, were you?

19 A. No.

20 Q. You're familiar that your security systems have
21 different zone; is that accurate?

22 A. That's correct.

23 Q. That's different areas that are being monitored; is
24 that fair?

25 A. Yes.

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1 Q. But since you didn't install it, you can't tell this
2 jury what zone five was?

3 A. No.

4 Q. With that in mind, is it true that the first event
5 history item on October 17th, 2010, is at 11:29:52 a.m.?

6 MR. SOWARDS: Your Honor?

7 THE COURT: Yes, sir.

8 MR. SOWARDS: I'll object to questions about the
9 specifics about ---

10 THE COURT: --- sustained. It's not admitted into
11 evidence yet. If you want to have it admitted, you may
12 do so but you can't publish anything directly or
13 indirectly, what the document contains.

14 MR. DAVIS: Thank you, Your Honor.

15 Q. [Mr. Davis] If there is a notification of restore
16 or re-restore interior, does that give you an indication
17 of whether this is a motion sensor or some other type of
18 sensor?

19 A. Yes.

20 Q. That would be a motion sensor; correct?

21 A. Not necessarily.

22 Q. Well, if it says restore interior, it's most likely
23 a motion sensor?

24 A. Most likely.

25 Q. From reviewing the contract there is no way to

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1 determine, I believe you already testified, whether this
2 system was set up with an audible or an inaudible alarm;
3 right?

4 A. That's correct.

5 Q. No one can hear it or it's a silent alarm. You
6 don't know?

7 A. Correct.

8 Q. Based on your I think you said twenty-five years of
9 experience, are most alarms audible or inaudible?

10 A. Audible.

11 Q. Can you give the jury an idea of what that would
12 sound like?

13 A. It depends on how close you are standing to it. It
14 could be as loud as I don't know, fire alarm.

15 Q. Is it more -- is it like a siren, a police or fire
16 truck siren, is it beeping, is it a ---

17 A. --- it's a siren. When the alarm goes off, it's a
18 siren on the panel.

19 MR. DAVIS: Mr. Bunn, give me one second, please,
20 and Your Honor, if I might have a moment.

21 THE COURT: Certainly.

22 [Whereupon, Mr. Davis and the Defendant confer]

23 Q. [Mr. Davis] On Defense Number 1 that's still before
24 you, Mr. Bunn, does that look like a printout of the
25 event log that would be maintained during the normal

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1 course of business at your company?

2 A. Yes.

3 MR. DAVIS: Your Honor, we would ask that Defense
4 Exhibit Number 1 be admitted.

5 THE COURT: All right. Any objection?

6 MR. SOWARDS: No, Your Honor.

7 THE COURT: Without objection, Defense 1 is
8 admitted.

9 [Whereupon, Defendant's Exhibit Number 1 is admitted
10 into evidence by the Court]

11 Q. [Mr. Davis] Now let me circle back around. On
12 October 17th, 2010, the first event history listed on
13 that report, is it accurate that that is at 11:29 and 52
14 seconds in the morning?

15 A. Yes.

16 Q. And the event that happens is a triggering of zone
17 site three?

18 A. Correct.

19 Q. Don't know what triggered it?

20 A. No, sir.

21 Q. Pretty sure it's not the interior motion sensor,
22 though; right?

23 A. I don't know.

24 Q. Okay. Well, I'm going to contrast it in a second
25 for you, okay. If we will go on down to the next alarm

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1 that's triggered, do you agree that that is at eleven
2 minutes, thirty-two seconds -- or sorry -- thirty-two
3 minutes and forty seconds in the morning?

4 A. That's correct.

5 Q. That's a zone nine alarm?

6 A. Correct.

7 Q. Okay. The next time zone nine pops up, which is
8 11:35 and 35 seconds, it's a re-restore interior;
9 correct?

10 A. Correct.

11 Q. And, again, that's most likely an interior motion
12 sensor, based on that type of restore?

13 A. Correct.

14 Q. Five seconds later, that same zone is triggered
15 again?

16 A. Yes.

17 Q. Zone nine; correct?

18 A. Yes.

19 Q. And then at 11:38 and 47 seconds, again, re-restore
20 interior, resetting it; right?

21 A. Correct.

22 Q. And, again, based on that documentation, most likely
23 an interior motion sensor?

24 A. Correct.

25 Q. Now, with that being said, let's go back to the

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1 first one, the zone three. We do not see following the
2 first trigger that starts this event history on October
3 17, 2010, we don't see a re-restore interior as to the
4 zone three alarm being tripped, do we?
5 A. No.
6 Q. Okay.
7 MR. DAVIS: Your Honor, may I have just one moment?
8 THE COURT: Sure.
9 [Whereupon, Mr. Davis and Mr. Summa confer]
10 MR. DAVIS: Thank you, Your Honor.
11 Q. [Mr. Davis] Mr. Bunn, that's all the questions I
12 have right now.
13 THE COURT: Redirect, Mr. Sowards?
14 MR. SOWARDS: No, Your Honor.
15 THE COURT: Very well. You may come down, sir.
16 MR. SOWARDS: Mr. Bunn -- may Mr. Bunn be excused,
17 Your Honor?
18 THE COURT: Any objection to Mr. Bunn being excused?
19 MR. DAVIS: No objection, Judge.
20 THE COURT: You are also free to leave. Thank you,
21 sir.
22 THE WITNESS: All right. Thank you, sir.
23 [Whereupon, the witness is excused and exits the
24 witness stand]
25

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1 MS. FRIERSON: Before the State calls its next
2 witness, Your Honor; can I have court's indulgence for
3 just a moment?

4 THE COURT: Sure. Absolutely.

5 MS. FRIERSON: May we approach, Your Honor.

6 THE COURT: Yes, sir -- yes, ma'am.

7 [Whereupon, an off-the-record bench conference is
8 held]

9 THE COURT: Do you have a copy for the court
10 reporter?

11 MS. FRIERSON: Alex has one.

12 THE COURT: No. For the court reporter. We need to
13 make this a Court's Exhibit --

14 MS. FRIERSON: Let me get -- I have one.

15 THE COURT: Because we will publish a portion.

16 Ladies and gentlemen, the next witness will be
17 publishing testimony given earlier than today concerning
18 a witness. The witness will not physically be present in
19 the courtroom, but you'll consider this testimony the
20 same as any other witness that appears.

21 It's for you to determine what you find to be
22 credible and believable. But it'll be published through
23 questions and answers by participants in that. You'll
24 listen to it, and it will be Court's Exhibit Number 3,
25 the original transcript of that testimony. But that is

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1 not an exhibit that will go. You'll consider this
2 testimony the same as any other witness. Okay. And
3 while they're doing that, it's not uncommon to omit some
4 things that are on this transcript. If they -- there is
5 -- appears to be, you need not consider that. That's
6 very proper and very appropriate for that to be done.

7 MS. FRIERSON: May I approach, Your Honor?

8 THE COURT: You may. Just give that to the court
9 reporter. That's the transcript that you're publishing;
10 correct?

11 MS. FRIERSON: And that is the one that me and Mr.
12 Davis are going to read.

13 THE COURT: I understand. Y'all will share in the
14 publication of it. That's fine.

15 [Whereupon, Court's Exhibit Number 3 is marked by
16 the court reporter]

17 THE COURT: It's not uncommon and I'll -- while
18 we're waiting on the witness, I'll share this. I was
19 sharing it with them when we were talking about this
20 earlier. I was, years ago, sent to Beaufort for six
21 months and we were publishing from time to time.

22 As I said, it's not uncommon to publish testimony
23 given at another time and place. But it was interesting.
24 The then Clerk of Court was the person that typically
25 read the part. And every time I heard him, he could be a

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1 doctor better than a doctor. I've never seen such
2 inflection and use of words. He was quite effective at
3 it. So it is very -- it's not uncommon for this to be
4 done. You'll consider the substance of the testimony.
5 Solicitor?

6 MS. FRIERSON: Thank you, Your Honor. At this time
7 the State would like to introduce the prior sworn
8 testimony of Mr. Robert Hess.

9 THE COURT: All right. Mr. Hess's stand-in will
10 come forward and publish from the transcript. Thank you,
11 Mr. Zeigler.

12 MR. SUMMA: Your Honor, we would like to renew our
13 objection as to this testimony.

14 THE COURT: What -- approach, please?

15 [Whereupon, an off-the-record bench conference is
16 held]

17 THE COURT: Alright. We'll put that fully on the
18 record. It's subject to the objection previously argued.
19 And the first break, we'll revisit that. Thank you.

20 MR. DAVIS: Yes, Your Honor.

21 THE COURT: Thank you, Mr. Summa.

22 MS. FRIERSON: May it please the Court, Your Honor?

23 THE COURT: Yes.

24 [Whereupon, the transcript of Mr. Hess is read into
25 the record] [Not taken down]

State v Therron Renard Richardson
Brent Roy-Direct Examination by Mr. Sowards
January 15, 2019

1 THE COURT: Call your next witness.
2 MR. SOWARDS: Thank you, Your Honor. The State
3 calls Brent Roy.
4 [Whereupon, Mr. Roy comes forward]
5 CLERK OF COURT: Place your left hand on the Bible
6 and raise your right hand.
7 [Whereupon, Mr. Roy is duly sworn by the Clerk of
8 Court]
9 CLERK OF COURT: For the record please state your
10 full name, spelling your last name.
11 THE WITNESS: Brent Michael Roy. R-O-Y.
12 - - - - -
13 BRENT ROY,
14 Having Been First Duly Sworn,
15 was Examined and Testified as Follows:
16 DIRECT EXAMINATION:
17 BY MR. SOWARDS:
18 Q. Good afternoon. Where do you currently work?
19 A. Charleston County Sheriff's Office.
20 Q. And what do you do at the Sheriff's Department?
21 A. I'm in the traffic division.
22 Q. And how long have you been there?
23 A. Let's see. Sixteen years, seventeen years right
24 now; since '02.
25 Q. And -- sorry. I didn't mean to interrupt.

State v Therron Renard Richardson
Brent Roy-Direct Examination by Mr. Sowards
January 15, 2019

1 A. 2002.

2 Q. And what were you doing there, what was your role
3 there, in October of 2010?

4 A. I was in the forensic services department.

5 Q. And what did you do in the forensic services
6 department?

7 A. I processed crime scenes, assisted with evidence,
8 transported evidence to various laboratories to be
9 tested, things of that nature.

10 Q. And speaking specifically as to this case, did you
11 have any involvement in this case, State versus Therron
12 Richardson?

13 A. I did.

14 Q. And what was your involvement in this case?

15 A. I took some evidence to the City of Charleston drug
16 lab.

17 Q. And could you describe the process of taking
18 evidence to the City of Charleston drug lab?

19 A. Uh-huh. First, we get a work request saying that
20 this -- that they want this item, whatever it is, further
21 tested. We take that. Then I do a submittal for the
22 City, which was done online at the time through a
23 database.

24 All that paperwork is printed out. That's done
25 probably usually the day before, so I have everything

State v Therron Renard Richardson
Brent Roy-Direct Examination by Mr. Sowards
January 15, 2019

1 that's going that week, because you can only take so many
2 items a week, that kind of thing. Once that's done, it's
3 all put in a bin, put back in the evidence room, so
4 everything's ready to go. The next morning I, first
5 thing in the morning, take it down there; sign it over to
6 the whoever is the intake person that day.

7 Normally, the City drug lab at that time used -- the
8 person that was actually going to test it usually
9 received it. So it was turned over to them, paperwork
10 signed as far as chain of custody is concerned.

11 I then return to my office and then update the
12 computer for each item: this item was taken to the City
13 by me, and date, stuff like that.

14 MR. SOWARDS: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes, you may.

17 Q. [Mr. Sowards] Deputy Roy, now I'm going to hand you
18 what has been previously marked as State's Exhibit 1.
19 There's another bag inside and I'll ask you if you can
20 take a look at that and see what --

21 [Whereupon, the witness is shown exhibit]

22 Q. And are those the items that you transported to the
23 City of Charleston forensic laboratory?

24 A. They are.

25 Q. And I know you testified previously that you were

State v Therron Renard Richardson
Brent Roy-Direct Examination by Mr. Sowards
January 15, 2019

1 involved in forensics with the County. Are you familiar
2 with the way evidence is stored at the Charleston County
3 Sheriff's Department?

4 A. The Sheriff's Office? Yes, I am.

5 Q. And how is it stored?

6 A. At the time -- that building no longer exists,
7 actually. The building was torn down some years ago.
8 However, at the time there was a compound. Basically,
9 you have an outer fence, and then a security system with
10 cameras, and then an inner building.

11 The building had an alarm on it, as well. Things
12 were broken down into found property, or property held
13 for security evidence, such as -- let's say that the desk
14 was evidence. That would be that kind of evidence.

15 Then you had drugs and money or currency, anything
16 of value such as money, gold, coins, things like that.
17 That's how it was categorized. So you had three areas of
18 storage for these items.

19 Obviously, the drugs are in one area. The property
20 held for security in another, your regular evidence. And
21 then your currency was put in a vault. We call it a
22 vault. It was a cinderblock room with more security, I
23 guess.

24 Q. And who in the Sheriff's Department has access to
25 stuff that's in the vault?

State v Therron Renard Richardson
Brent Roy-Direct Examination by Mr. Sowards
January 15, 2019

1 A. At that time, there was only five people. It would
2 have been the sergeant and the four investigators working
3 at that unit. That's it. Those are the only people that
4 had access to it.

5 Q. And from the time that you retrieved the items from
6 the vault until they were relinquished to the lab, the
7 City of Charleston lab, did you have the sole care,
8 custody and control ---

9 A. --- I did ---

10 Q. --- of the items in that bag?

11 A. I did.

12 Q. And did they appear, when you retrieved them from
13 the vault, that they had been tampered with?

14 A. No, they had not.

15 Q. And what would you have done had they been -- had it
16 appeared that they were tampered with?

17 A. I immediately would have went to my supervisor in
18 that unit and also the case agent.

19 MR. SOWARDS: Beg the Court's indulgence.

20 THE COURT: Yes. Certainly.

21 [Whereupon, Mr. Sowards and Ms. Frierson confer]

22 MR. SOWARDS: No further questions from the State,
23 Your Honor.

24 THE COURT: You may cross-examine.

25 MR. DAVIS: Thank you, Your Honor. No questions for

State v Therron Renard Richardson
Brent Roy-Direct Examination by Mr. Sowards
January 15, 2019

1 the deputy.

2 THE COURT: Very well. You may step down. Do you
3 wish the witness to be excused?

4 MR. SOWARDS: Yes, Your Honor.

5 THE COURT: Any objection?

6 MR. SOWARDS: No objection.

7 THE COURT: You're also free to leave, sir.

8 THE WITNESS: Thank you, Your Honor.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

11 THE COURT: Call your next witness, please.
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State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 MR. SOWARDS: Thank you, Your Honor. The State
2 would call Anita Moore.

3 [Whereupon, Ms. Moore comes forward]

4 CLERK OF COURT: Place your left hand on the Bible
5 and raise your right.

6 [Whereupon, Ms. Moore is duly sworn by the Clerk of
7 Court].

8 CLERK OF COURT: For the record, please state your
9 full name, spelling your last.

10 THE WITNESS: Anita Marie Moore. M-O-O-R-E.

11 - - - - -

12 ANITA MOORE,

13 Having Been First Duly Sworn,

14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MR. SOWARDS:

17 Q. Good afternoon Ms. Moore.

18 A. Good afternoon.

19 Q. Where do you currently work?

20 A. I currently work for the North Charleston Police
21 Department.

22 Q. And what is your involvement with North Charleston
23 Police Department?

24 A. I'm a crime scene investigator.

25 Q. And where did you work in October of 2010?

State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 A. I worked for the City of Charleston Police
2 Department.

3 Q. And what was your role there?

4 A. I was a criminalist in the drug analysis lab.

5 Q. And how long were you employed as a criminalist in
6 the drug analysis lab?

7 A. I was a criminalist for two years, and a lab tech
8 for three.

9 Q. Could you describe your education, training, and
10 experience as it relates to your work with the CPD drug
11 lab?

12 A. Certainly. I have a bachelor's degree in chemistry.
13 I also took in-house training, went to numerous classes
14 pertaining to drug analysis analyst positions, and then
15 intensive job shadowing with a trained criminalist, as
16 well.

17 Q. And have you had the occasion to conduct forensic
18 examinations on suspected narcotics and other controlled
19 substances?

20 A. I did.

21 Q. On approximately how many occasions?

22 A. Thousands of cases.

23 Q. And have you ever testified previously in a court?

24 A. I have.

25 Q. And have you ever been admitted as an expert before

State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 a court?

2 A. Yes, sir, I have.

3 Q. And do you recall how many -- approximately how many
4 occasions?

5 A. For drug analysis, I don't recall. I know it was
6 multiple times, but I'm not sure.

7 Q. And is your work as a criminalist, is it peer
8 reviewed?

9 A. It is.

10 MR. SOWARDS: Your Honor, at this time the State
11 would seek to have Ms. Moore designated as an expert in
12 the area of forensic examination of suspected narcotics.

13 THE COURT: Do you care to examine her as to
14 qualifications?

15 MR. SUMMA: No objection, Your Honor.

16 THE COURT: Very well. She'll be permitted to
17 render an opinion in that area.

18 Q. [Mr. Sowards] Ms. Moore, could you describe for the
19 jury the process of testing narcotics?

20 A. Certainly. Do you mind if I -- may I, please?

21 Q. What you're looking at here is -- right in front of
22 you is what's been previously identified as State's 1.
23 If you could please tell the jury about how you test
24 narcotics.

25 A. When we receive a sample into the lab, we follow a

State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 chain of custody. We do a visual examination on the
2 contents that we receive. We then do several tests, one
3 being a chemical test, to determine what type of class of
4 drug it may be.

5 That will also help us determine what area or
6 analytical scheme that we need to take to continue
7 testing. Then we would do instrumental testing to
8 confirm the identity of the drugs.

9 Q. And did you have the occasion to test drugs in this
10 case, State versus Therron Richardson?

11 A. Yes, sir, I did.

12 Q. And as part of your testing, did you create a
13 report?

14 A. Yes, sir, we have.

15 Q. And I'll just have you first take a look at State's
16 1, which is right in front of you, and see whether you
17 recognize that.

18 [Whereupon, the witness is shown exhibit]

19 A. Yes sir, I do.

20 Q. And how do you recognize those items?

21 A. In all cases that we have, we put the case number
22 that was assigned to the lab on the items itself. We put
23 an item number on them, and then we put our initials on
24 the case, as well.

25 Q. And could you just describe for the jury the process

State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 of in-taking drugs, specifically where those drugs are
2 being submitted by a different agency?

3 A. Certainly. Inside the lab we would have one
4 particular person take, intake the items that would come
5 in. So the officer from the other agency would come into
6 the lab.

7 The lab technician would use a chain of custody to
8 sign over their items to us in the lab. She would then
9 sign the items into a safe, and put it into our lab
10 information system.

11 And then when we're ready to do the analysis, we
12 would retrieve the items from the safe and sign over
13 again on the chain of custody that we're taking custody
14 of the items.

15 Q. And do you know who received the items into custody
16 at the Charleston Police Department lab?

17 A. According to the chain of custody that I have, Susan
18 Moody, on the 19th of October, took those drugs into the
19 lab.

20 Q. Are you able to also determine who they were
21 submitted by?

22 A. Yes. It does state that they were submitted by
23 Officer Brent Roy from the Charleston County Sheriff's
24 Office.

25 MR. SOWARDS: And at this time, Your Honor, may I

State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 approach the witness?

2 THE COURT: You may.

3 Q. [Mr. Sowards] Ms. Moore, I'm going to hand you what
4 has been marked for ID as State's Exhibit 2, ask you if
5 you could take a look and see whether you recognize that.

6 [Whereupon, the witness is shown exhibit]

7 A. Yes, sir. This is the report that was issued from
8 the laboratory, with my signature, for the results of the
9 case.

10 Q. And is that a fair and accurate representation of
11 the work that you generated in this case?

12 A. Yes, sir.

13 MR. SOWARDS: Your Honor, at this time the State
14 would seek to admit Exhibit 2 into evidence and publish
15 it to the jury.

16 THE COURT: Is there any objections?

17 MR. SUMMA: No new objection, Your Honor.

18 THE COURT: Without objection, it is admitted,
19 subject to the all the previous objections.

20 MR. SUMMA: Thank you, Your Honor.

21 THE COURT: Previously argued.

22 [Whereupon, State's Exhibit number 2 is entered into
23 evidence by the Court]

24 [Whereupon, the exhibit is published to the jury]

25 Q. [Mr. Sowards] If you could, could you walk us

State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 through this report and tell us what it means?

2 A. The top portion of the report gives the information
3 of the officer who submitted the case, where the location
4 was, and the subject that they listed for the case
5 identification.

6 The center portion, this area here [indicates],
7 lists all the items as they were submitted as I did the
8 inventory of them. So when the items come into the
9 laboratory, I take them out, I do an itemized record of
10 each and every item.

11 They get submitted according to how they are
12 packaged. So every unique individual item gets analyzed
13 separately. So in this particular case there are one,
14 two, three, four -- six different items that were
15 analyzed separately.

16 It also gives the amount and the results of the
17 examination, and then it gives the method code as to what
18 types of analysis that was used to analyze the items.

19 Q. And could you describe for the jury the methods that
20 you utilized to test these items?

21 A. Yes, sir. Methods three is a color test. It is a
22 standard test that is used to -- it's called presumptive
23 test -- that tells you what type of class of drugs it may
24 be. We take a sample of the drugs, suspected drugs. We
25 put it into a spot plate. We place the chemical on top

State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 of it, and depending on what kind of color we get tells
2 us what class of drugs it may be. In this case we used
3 cobalt -- which will turn it blue ---

4 THE COURT REPORTER: --- you used what? Tell me
5 again.

6 THE WITNESS: Sorry.

7 A. -- cobalt thiocyanate, which turns a blue color in
8 the presence of cocaine.

9 Then it leads us to analysis method four, which is
10 an FTIR, just short for Fast Fourier infrared
11 spectrometry. And that will leave us a spectrum that
12 will tell us definitively what type of drug it is,
13 depending on the -- how well the spectrum looks.

14 If it gives a high enough match to the spectral
15 library, because we have knowns that we compare it to,
16 then we can stop. If it does not have a high enough
17 percent match to it, then we continue on to a
18 confirmative process, which is the method five.

19 Method five is called a GCMS. It's a gas
20 chromatograph mass spectrometer, and it's an instrument
21 that we can put the drugs into that separates out
22 anything that may be in with the drugs.

23 Again, it goes through a full process. It comes out
24 with a spectrum that we can actually match to known
25 standards. And if those match, then we can actually say,

State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 yes, this is this drug. That's the short version.

2 Q. And what were the results of your analyses in this
3 case?

4 A. On these samples, they came back for cocaine.

5 Q. And that was each item?

6 A. Yes, sir.

7 Q. And did you also weigh the items?

8 A. Yes sir, we did.

9 Q. And what were the weights?

10 A. It states that the first item had a weight of 505
11 grams, the second item had a weight of 223.78 grams, the
12 third one was 39.05 grams, then we had 14.07 grams.

13 And then we had a plastic bag containing four
14 plastic bags of white powder which totaled a weight of
15 111.75 grams, and then we had a plastic bag with white
16 powder that contained 1,135 grams.

17 Q. And that's your signature?

18 A. Yes sir, it is.

19 MR. SOWARDS: Your Honor, at this time the State
20 would seek to admit Exhibit 1 into evidence.

21 THE COURT: Any objection other than that previously
22 argued?

23 MR. SUMMA: No, Your Honor.

24 THE COURT: It is admitted, subject to the previous
25 objection placed on the record in this proceeding.

State v Therron Renard Richardson
Anita Moore-Direct Examination by Mr. Sowards
January 15, 2019

1 [Whereupon, State's Exhibit number 1 is entered into
2 evidence by the Court]

3 MR. SOWARDS: Beg the Court's indulgence. .

4 THE COURT: Yes, sir.

5 [Whereupon, Mr. Sowards and Ms. Frierson confer]

6 MR. SOWARDS: No further questions from the State.

7 THE COURT: You may cross-examine, Mr. Summa.

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State v Therron Renard Richardson
Anita Moore-Cross-Examination by Mr. Summa
January 15, 2019

CROSS-EXAMINATION

1
2 BY MR. SUMMA:

3 Q. Thank you Ms. Moore. I just wanted to clarify. You
4 stated on direct that you take a sample of whatever's in
5 that bag and you test that sample; is that correct?

6 A. Yes, sir.

7 Q. Okay. So the way these tests work, you don't really
8 test for purity; is that correct?

9 A. At this -- at that time, no, we did not.

10 Q. So what you do is you just take a small sample, you
11 take a small sample and you test that and determine
12 whether it contains one of the substances you're looking
13 for; is that correct?

14 A. Yes, sir. So this -- for example, if we took this
15 whole bag, we would put -- we would empty this out and we
16 would put it into a container and we would take a
17 representative sample out of say the middle and test that
18 one particular sample, which is representative of the
19 whole.

20 And then it tests for whatever is in that particular
21 bag. And then we only record out any controlled
22 substance, not anything else that was in it.

23 Q. Okay. So you don't test the whole bag in this case?

24 A. Well, you don't. No, you don't test all of the
25 sample because then you would lose all the sample for any

State v Therron Renard Richardson
Anita Moore-Cross-Examination by Mr. Summa
January 15, 2019

1 further testing.

2 Q. Okay. So that being the case, I think you mentioned
3 method number five, take stuff out. You don't really
4 know whether the sample was, you know, fifty percent
5 cocaine, a hundred percent, one percent, or even two
6 percent; right?

7 A. Not from the analysis that we do. You can do
8 quantitative analysis. That is not something that was
9 required at that time in the lab.

10 So it only will show that there was cocaine present.
11 So, no, I couldn't tell you the percentage of cocaine
12 that was in there.

13 Q. I think I saw on your report that you had to do
14 three tests on several of the bags; is that correct?

15 A. Yes, sir.

16 Q. But one of those bags, or I guess it was the set of
17 four ---

18 A. ---Uh-huh ---

19 Q. --- you did not do three tests, you just did two; is
20 that correct?

21 A. Yes, sir.

22 MR. SUMMA: Thank you. I don't have any other
23 questions, Your Honor.

24 THE COURT: Redirect?

25 MR. SOWARDS: No, Your Honor.

State v Therron Renard Richardson
Anita Moore-Cross-Examination by Mr. Summa
January 15, 2019

1 THE COURT: Thank you, you may come down.
2 THE WITNESS: Thank you.
3 THE COURT: Do you wish the witness to be excused?
4 MR. SOWARDS: Yes, Your Honor.
5 THE COURT: Any objection from the defendant?
6 MR. SUMMA: No.
7 THE COURT: Thank you. You're free to leave.
8 THE WITNESS: Thank you, sir.
9 THE COURT: Uh-huh.
10 [Whereupon, the witness is excused and exits the
11 witness stand]
12 THE COURT: You may call your next witness.
13 MR. SOWARDS: Your Honor, may we approach briefly?
14 THE COURT: Sure.
15 [Whereupon, an off-the-record bench conference is
16 held]
17 THE COURT: Call your next witness.
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State v Therron Renard Richardson
Thomas Plyler-Direct Examination by Mr. Sowards
January 15, 2019

1 MR. SOWARDS: The State calls Detective Thomas
2 Plyler.

3 [Whereupon, Mr. Plyler comes forward]

4 [Whereupon, Mr. Plyler is duly sworn by the Clerk of
5 Court.

6 CLERK OF COURT: For the record please state your
7 full name, spelling your last.

8 THE WITNESS: Thomas Plyler. P-L-Y-L-E-R.

9 - - - - -

10 THOMAS PLYLER,

11 Having Been First Duly Sworn,

12 was Examined and Testified as Follows:

13 DIRECT EXAMINATION

14 BY MR. SOWARDS:

15 Q. Good afternoon Detective Plyler.

16 A. Good afternoon.

17 Q. Where do you currently work?

18 A. Currently work at Mount Pleasant Police Department.

19 Q. And what is your role with the Mount Pleasant Police
20 Department?

21 A. Currently, I am in the K-9 unit. For the last four
22 plus years, I've been assigned to the K-9 unit.

23 Q. And how long have you been in law enforcement?

24 A. May 7th will be twelve years.

25 Q. And what was your role back in October of 2010?

State v Therron Renard Richardson
Thomas Plyler-Direct Examination by Mr. Sowards
January 15, 2019

1 A. October of 2010, I was assigned to the task force
2 for the Charleston County Sheriff's Office Metro Major
3 Case. I was still employed by Mount Pleasant; however, I
4 was just assigned to assist with the task force.

5 Q. I think we heard some prior testimony about
6 narcotics and the narcotics division. Could you please
7 describe what does the Metro Major Case Unit do?

8 A. Metro major case, we focus on the distribution of
9 illegal narcotics, trafficking of weapons, possession of
10 illicit currency, undercover alcohol buys, vice, which
11 deals with gambling. But I was assisting mainly with the
12 narcotics investigations, distribution level drugs.

13 Q. And have you had training as a law enforcement
14 officer?

15 A. Yes, sir.

16 Q. And what training have you had?

17 A. I have an associate's degree in criminal justice. I
18 have a bachelor degree in criminology, in addition to
19 graduating from the police academy.

20 Since '07, I've had 900-plus hours of continuing
21 education through South Carolina Criminal Justice
22 recognized classes; in specific, narcotics. I've had
23 over 250 hours recognized by the South Carolina Criminal
24 Justice Academy.

25 Q. And about how many narcotics investigations have you

State v Therron Renard Richardson
Thomas Plyler-Direct Examination by Mr. Sowards
January 15, 2019

1 participated in?

2 A. So as a case agent where I'm the person in charge of
3 conducting the buy with the CI, I've had thirty-five
4 distribution cases as a case agent. As a co-case agent,
5 I've assisted with hundreds of narcotics distribution
6 cases.

7 In addition, I've had the privilege to work ten
8 undercover cases ranging from small buys to large-scale
9 buys with the ATF and DEA for large quantities of cocaine
10 and crack.

11 Q. And when did you participate in those undercover
12 buys?

13 A. The five years I was assigned to Mount Pleasant
14 Narcotics, I did low-level undercover buys in Mount
15 Pleasant.

16 But the larger-scale buys, I was -- I assisted in
17 while I was at Metro. And while I was at Metro I
18 assisted DEA and FBI with large-scale operations.

19 Q. And going specifically to this incident, were you
20 involved in this case, State versus Therron Richardson?

21 A. Yes sir, I was.

22 Q. And what was your role in this case?

23 A. So it was a Sunday, my day off. However, as a
24 narcotics detective, just like your criminal detective
25 that works property and personal crime, we're on call. I

State v Therron Renard Richardson
Thomas Plyler-Direct Examination by Mr. Sowards
January 15, 2019

1 was on call that week, myself and Lieutenant Ferguson.
2 My supervisor at the time was Sergeant Stanning
3 [phonetic]. I got a phone call from him and he briefed
4 me on the few details that he had and told me to get in
5 touch with Deputy Bowen, who was on scene at [REDACTED] Old
6 Fort.

7 MR. SOWARDS: May I approach the witness, Your
8 Honor?

9 THE COURT: You may.

10 MR. SOWARDS: Apologize. I'll just move this out of
11 your way.

12 THE WITNESS: Oh. I'm sorry.

13 Q. [Mr. Sowards] Did you obtain a search warrant in
14 this case?

15 A. Yes sir, I did.

16 Q. And what was the subject location of that search
17 warrant?

18 A. [REDACTED] Old Fort Avenue, which is in Charleston County.

19 Q. And were you personally involved in the prior
20 investigation, the 911 call?

21 A. No, sir.

22 Q. And did you ever interview any witnesses related to
23 that incident?

24 A. Personally, I did not.

25 Q. Do you know the names of the individuals who were

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1 alleged to be involved in that incident?

2 A. I knew of Mr. Therron Richardson.

3 Q. And when did you execute the search warrant on that
4 day?

5 A. Officially, we executed at I think 1412 hours, which
6 is 2:12 in the afternoon.

7 Q. And could you describe the process of executing a
8 search warrant?

9 A. Sure. Once I got off the phone with Deputy Bowen, I
10 traveled from my residence to the -- our office, the
11 Metro Office, where I had a desk, and one of this sized
12 [indicates] desktop, and a phone.

13 I requested Deputy -- or Detective Bowen to give me
14 a call on my desk phone. I needed some particular
15 information for the search warrant affidavit. I needed a
16 solid description of the residence and I needed a solid
17 description of what they observed in plain view in the
18 house, which would be my probable cause.

19 Once I had all that information, I scribbled it down
20 on a notepad during the conversation; I transferred it to
21 a search warrant affidavit, three or four page form that
22 we present to a judge.

23 And it gives the property that we want to search,
24 what we're looking for, and the reason we believe that
25 additional evidence is located. I prepared that search

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1 warrant. In addition to that, I had to get all the
2 equipment to conduct our search, which we call it a hit
3 kit. It's a container on wheels.

4 We have gloves, containers, bags, camera, items that
5 assist us with searching and keeping the evidence
6 organized in an organized fashion.

7 So I grabbed all that equipment from the office and
8 I traveled to Judge Koontz' office.

9 Q. And are you familiar with the items that were seized
10 during the search warrant?

11 A. I am.

12 Q. Do you know whether digital scales were recovered?

13 A. Yes sir, they were.

14 MR. SUMMA: Objection.

15 THE COURT: What's the objection?

16 MR. SUMMA: The prior objection, Your Honor.

17 THE COURT: Okay. Subject to the prior objection,
18 I'll allow the testimony.

19 MR. SUMMA: Thank you, Your Honor.

20 Q. [Mr. Sowards] Were there any digital scales
21 recovered?

22 A. Yes, sir. A few; few different sets.

23 Q. And in your experience as a narcotics detective,
24 what does it mean or what do you think when you find
25 digital scales?

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1 A. Digital scales in itself, obviously it is not
2 illegal to possess. You can buy them just about
3 anywhere. You can weigh out ingredients for cooking and
4 recipes.

5 However, when they're coupled with white residue,
6 plastic bags, spoons, other additional paraphernalia,
7 that's when we -- our suspicion raises that it might be
8 involved in a drug activity.

9 Q. And I'll hand you --

10 MR. SOWARDS: May I approach, Your Honor?

11 THE COURT: Yes.

12 Q. [Mr. Sowards] I'll hand you what has been
13 previously admitted as State's 93.

14 [Whereupon, the witness is shown exhibit]

15 A. Yes, sir.

16 Q. Do you know what that is?

17 A. Yes sir. It's -- Inositol. It's a dietary
18 supplement. The texture of the powder is similar to the
19 texture of powder cocaine.

20 And say for instance if I had a gram of pure uncut
21 cocaine, I can turn that gram into two, three, even
22 three-and-a-half grams, which is called an eight-ball, in
23 the drug distribution world. And I could double, even
24 triple, my profit using this cutting agent.

25 Q. Do you know whether any firearms were seized?

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- 1 A. Yes, sir ---
- 2 Q. --- during this investigation? Sorry.
- 3 A. Yes, sir.
- 4 Q. And was any additional investigation completed on
- 5 those firearms?
- 6 A. So when we submit firearms as evidence, there's a
- 7 little box on the form we would like them to be processed
- 8 for fingerprints. We would always check that box.
- 9 Very rare do we get anything coming back, mainly
- 10 because we wear gloves when we handle these things. But
- 11 we always check the box just in case maybe a fingerprint
- 12 will come back.
- 13 Q. And were any electronics seized during this
- 14 investigation?
- 15 A. Yes, sir. I believe a laptop and a phone.
- 16 Q. And do you know whether any additional investigation
- 17 was completed on those items?
- 18 A. Yes, I do. Typically, we -- the search warrant
- 19 covers the further search of the laptop and/or cell
- 20 phone.
- 21 And sometimes we uncover additional drug language or
- 22 drug behavior on those devices, so we conduct an
- 23 additional search on the contents of the computer and the
- 24 phone.
- 25 Q. I'll show you what's been previously admitted as

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1 State's Exhibit 60.

2 [Whereupon, the witness is shown exhibit]

3 A. Yes, sir.

4 Q. Do you recognize that truck?

5 A. I do.

6 Q. And where was that truck located?

7 A. So this truck was in the driveway of the residence.
8 I'll draw an arrow for you guys. The house is directly
9 to the left of that truck.

10 Q. And what was the condition of that truck?

11 A. I'm not a mechanic. However, I would consider the
12 truck in poor condition because we did have to jump it
13 off and get it started. And it looks like it wasn't
14 moved in a while.

15 Q. And did you look at any lawn equipment on the
16 property?

17 A. I did. Just out of view of this truck was like a
18 small push mower and a lawnmower. It was covered with a
19 black tarp. The tarp had leaves. You can see the leaves
20 in the back of this truck.

21 But the tarp had more leaves. And then we lifted
22 the tarp up and you could see additional leaves on the
23 equipment under the tarp. So you could -- one would
24 believe that it hadn't been used in a while.

25 Q. During this investigation, did detectives locate any

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1 mail or other items in the Defendant's name with a
2 different address?

3 A. Yes, sir. I believe it was [REDACTED] Kennedy Street.

4 Q. And did you make anything of that?

5 A. Not at first, but I made a mental note of it.

6 Q. And in your experience, is it common for people
7 involved in the drug enterprise to maintain multiple
8 residences and multiple places of ---

9 A. --- yes ---

10 MR. SUMMA: --- Your Honor, I object to this at this
11 time. I think that calls for speculation.

12 THE COURT: Overruled. It's based on -- it's a 701
13 opinion, which I'll permit. He's already testified to
14 his prior experience.

15 A. I have been involved in investigations where houses
16 are strictly used for stash houses where only the product
17 is stored. That way, the suspect that possesses all that
18 illegal narcotics or product, they will leave it in that
19 stash house and that house has no direct link to the
20 suspect. So they can separate themselves from the
21 product.

22 In addition, you might have a safe house where they
23 lay their head down and they sleep and they feel safe
24 because they know, I don't have anything in here that
25 anybody wants so I can get a good night's sleep. In

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1 addition, you have houses that may just contain the
2 currency. So anywhere between one to three houses is not
3 unreasonable.

4 Q. [Mr. Sowards] And do you know whether any currency
5 was seized in this case?

6 A. Yes sir, I do.

7 Q. And what happens when, during a metro investigation,
8 currency is seized? Where does that go?

9 A. So there -- if you remember the testimony, there
10 were three locations currency was located: on the floor
11 in front of the safe, in plain view; in a bag just
12 outside the closet, in plain view, a blue bag with Lazy
13 Man on it; and then the currency that was in the safe.

14 So we gather all that currency. We keep it separate
15 on scene and once we get back, due to the amount of
16 currency we have a supervisor count it officially with a
17 money counter. It's kept separate.

18 And the money bag amount is noted on an individual
19 receipt, the amount on the floor was noted on an
20 individual receipt, and the amount in the safe was noted
21 on an individual receipt.

22 That money is then secured in a secure location
23 until we're told otherwise what to do with it.

24 Q. Do you know the denominations of the money that was
25 seized in this investigation?

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1 A. One hundreds and twenties. There might have been a
2 ten or a five in there, but it was predominately larger
3 bills.

4 MR. SOWARDS: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 [Whereupon, Mr. Sowards and Mr. Davis confer]

7 MR. SOWARDS: May we approach real quick, Your
8 Honor?

9 THE COURT: Sure.

10 [Whereupon, an off-the-record bench conference is
11 held]

12 MR. SOWARDS: No further questions from the State at
13 this time.

14 THE COURT: You may cross-examine.
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Thomas Plyler-Cross-Examination by Mr. Summa
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1 CROSS EXAMINATION

2 BY MR. SUMMA:

3 Q. Detective Plyler, I believe you testified on direct
4 that you drafted the affidavit for this search warrant;
5 is that correct?

6 A. Yes, sir.

7 Q. Okay. Just for the jury, an affidavit is just a
8 sworn statement; correct?

9 A. Correct.

10 Q. Were you at the scene when you drafted this warrant?

11 A. No, sir. I was at my desk at the office.

12 Q. So this information that you put in your affidavit
13 was relayed to you by another individual?

14 A. Yes. Correct.

15 Q. And you took that information to the Magistrate?

16 A. Correct.

17 Q. Okay. And in that statement -- I'll give you a copy
18 if you need it -- you swear, among other things, that the
19 officers who entered the home conducted a field test of
20 the powder residue found on the digital scales?

21 A. Correct.

22 Q. Okay. So obviously that test was done prior to you
23 obtaining the search warrant?

24 A. Correct. I wanted to make sure that it was, in
25 fact, illegal drugs instead of flour or sugar.

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- 1 Q. Okay. And you've been a detective for I think you
2 said twelve years? Almost twelve years?
- 3 A.. Detective for narcotics, five-plus years. Police
4 officer, almost twelve.
- 5 Q. So you've probably been involved in some elaborate
6 and planned drug busts during that time, I'm sure?
- 7 A. Yes, sir.
- 8 Q. And so when we're talking about cocaine, you know
9 that trafficking involves anything over 10 grams?
- 10 A. Correct.
- 11 Q. Is that correct?
- 12 A. Yes, sir.
- 13 Q. And when you drafted the search warrant, residue on
14 the scales was all the drugs you were aware of at the
15 time?
- 16 A. Correct. And money and guns. Yes. Correct.
- 17 Q. So you're the lead detective in this case; is that
18 correct?
- 19 A. Yes, sir.
- 20 Q. Okay. It's your case; is that --
- 21 A. Yes, sir.
- 22 Q. And as a detective it's your job, like I said to try
23 and piece together what happened?
- 24 A. As much as I can. Yes, sir.
- 25 Q. Okay. Came to the house, found some of illicit

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1 items and you tasked another individual, Ferguson, Deputy
2 Ferguson, with securing that and taking it away?

3 A. Yeah. You mean I tasked him as the evidence
4 custodian to do the documentation and retrieve the
5 evidence?

6 Q. Yes.

7 A. Yes. Yes, sir.

8 Q. Did you -- I believe you said that you attempted to
9 recover some fingerprints from the firearms; is that
10 correct?

11 A. I personally didn't. However, when we submitted it
12 to evidence where Officer Roy worked, we requested that
13 they try to obtain fingerprints located on the items.

14 Q. Okay. Did anyone dust for fingerprints on any of
15 the scales that were recovered?

16 A. I -- I don't -- I don't believe we did, because that
17 wouldn't have -- we didn't ask for that, no. Just the
18 handguns, magazines, and ammo.

19 Q. So you didn't dust for fingerprints on the box that
20 you found with the rice?

21 A. No, sir.

22 Q. So, Detective Plyler, I know we've talked a lot
23 about powder and firearms and cash. But you took some
24 other stuff along with that; right?

25 A. Yes, sir.

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1 Q. Okay. You took, among other things, an HP laptop?

2 A. Correct.

3 Q. You took a leather couch?

4 A. Yes, sir.

5 Q. The Play Station Four?

6 A. Yes, sir.

7 Q. Took a Whirlpool washer and dryer?

8 A. I believe so, yes, sir.

9 Q. You took two TVs; right?

10 A. I know we took at least one, maybe two. I can't
11 recall. But if it's on the return, then, yes, two TVs.

12 Q. Do you need a copy of the return for your benefit?

13 A. If you want me to look at it so I can be exact, that
14 will be helpful.

15 MR. SUMMA: May I approach?

16 THE COURT: You may.

17 Q. [Mr. Summa] If I show you a copy of the search
18 warrant and the return, will you recognize it?

19 A. Yes, sir. It would satisfy -- that would be
20 correct.

21 THE COURT: You need to have it marked, Mr. Summa,
22 as a --

23 MR. SUMMA: Yes, sir.

24 THE COURT: -- for identification, please. Thank
25 you.

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1 [Whereupon, Defendant's Exhibit Number 2 is marked
2 by the court reporter]

3 MR. SUMMA: Your Honor, may I approach the witness?

4 THE COURT: Yes, you may.

5 Q. [Mr. Summa] I'm showing you what's been marked for
6 identification purposes only as Defense's Exhibit 2.

7 [Whereupon, the witness is shown exhibit]

8 Q. Do you mind, take a look at that and take all the
9 time you need. Tell me when you're ready.

10 A. This appears to be my -- a copy of my affidavit,
11 search warrant, and three-page return.

12 Q. So you can see -- I guess it would be the fourth
13 page.

14 MR. SUMMA: Your Honor, actually, at this time I
15 would like to enter Defense Exhibit 2 into evidence.

16 MR. SOWARDS: We'd object, Your Honor.

17 THE COURT: You object?

18 MR. SOWARDS: Yes, sir.

19 THE COURT: Relevance. That will -- it's not
20 admitted.

21 Q. [Mr. Summa] But you remember taking his truck for
22 sure?

23 A. Yes, sir. We had to jump it off.

24 Q. Okay. Do you remember taking some jewelry?

25 A. I do.

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1 Q. Okay. And all those things, are you -- so you took
2 all those things. Are you aware that the County
3 Sheriff's Office filed for forfeiture of those items?
4 A. Yes, sir. I do believe.
5 Q. Okay. So are you aware of the order signed by Judge
6 Nicholson in 2013 granting the County ownership of all
7 that property?
8 A. I believe so. If it was at a trial I testified at.
9 Q. So that property was never returned to Mr.
10 Richardson?
11 A. Correct, because it was forfeited to Charleston
12 County.
13 MR. SUMMA: Court's indulgence, Your Honor.
14 THE COURT: Yes, sir.
15 [Whereupon, Mr. Summa and Mr. Davis confer]
16 Q. [Mr. Summa] So that truck was seized by the County,
17 as well?
18 A. I believe so.
19 Q. Do you mind if I grab that exhibit from you?
20 A. No.
21 MR. SUMMA: Your Honor, may I approach the witness?
22 THE COURT: Yes.
23 [Whereupon, the witness returns documents to Mr.
24 Summa]
25 THE COURT: Y'all approach, please.

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1 [Whereupon, an off-the-record bench conference is
2 held]

3 Q. [Mr. Summa] So, Detective, going back to this
4 affidavit that you wrote in support the search warrant,
5 is it true that you write in your notes, papers, phone --
6 phone, money -- and any other items used to --

7 THE COURT REPORTER: I'm sorry. You read that
8 really fast.

9 THE COURT: Yeah. You need to restate that. I
10 couldn't hear you.

11 MR. SUMMA: I'm sorry.

12 Q. [Mr. Summa] You write on here any notes, papers,
13 phone tolls, phone toll registers, monies, paraphernalia,
14 and any other items used to conduct illegal drug
15 trafficking.

16 A. Correct.

17 Q. That's what you wrote on this warrant?

18 A. Typically, there are templates and we go off the
19 template and typically we change -- if it was weed in
20 plain view I would put, instead of cocaine, looking for
21 marijuana and anything else.

22 Typically, on the template the address to be
23 searched is changed, the description of the place to be
24 searched is changed, and the probable cause of the search
25 warrant is changed to show what we're doing currently.

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1 So a lot of that's a template that we follow. So, yes.

2 Q. Okay. And just one more question. Going back, you
3 talked a little bit on direct about you saw an address ■
4 Kennedy Street?

5 A. Yes.

6 Q. Did you -- are you aware that ■ Kennedy Street is
7 the address of Mr. Richardson's mother?

8 A. I am. I conducted a little surveillance there to
9 see if I could find the defendant.

10 MR. SUMMA: Thank you. No further questions.

11 THE COURT: Redirect?

12 MR. SOWARDS: Just a few questions, Your Honor.

13 THE COURT: Sure.

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State v Therron Renard Richardson
Thomas Plyler-Redirect Examination by Mr. Sowards
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1 REDIRECT EXAMINATION

2 BY MR. SOWARDS:

3 Q. Detective Plyler, Mr. Summa asked you a lot of
4 questions about items that were seized. Just asking
5 generally, why would you seize items like the Play
6 Station Four and TVs?

7 A. Typically, it's expected to lose your product in the
8 real world. If I'm a drug dealer, I would expect to lose
9 product. However, I do not expect to lose my profit from
10 the product and other items that I've gathered over the
11 years of -- from illegal proceeds.

12 So as a detective, I know from past experiences and
13 speaking with Defendants and suspects in my cases that
14 they do not want to lose the more valuable items.

15 So we, as the County and the State, typically take
16 valuable items when it's associated with drug dealing and
17 we hold it for safekeeping until whether we're awarded it
18 back, the County or State is awarded, or we're told the
19 Defendant or suspect met a burden of proof to provide --
20 or show proof that they purchased these certain items
21 with not illegal proceeds from dealing drugs, so we give
22 the items back. So --

23 Q. You testified that you conducted some surveillance
24 of ■ Kennedy Street?

25 A. Yes.

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1 Q. Did you ever see the Defendant at that location?

2 A. I did not.

3 Q. And one final question. When was the Defendant,
4 Therron Richardson, arrested on these charges?

5 A. I believe it was January 24th, 2011.

6 Q. And how did you arrest him?

7 A. Myself and Deputy Alley, with the United States
8 Marshal's Service, along with Lieutenant Ferguson, who
9 was my partner met the Defendant and his attorney at
10 Charleston County Detention Center, turned himself over
11 to us, and we booked him straight into the jail.

12 MR. SOWARDS: Thank you. No further questions from
13 the State.

14 THE COURT: Recross, Mr. Summa?

15 MR. SUMMA: No, Your Honor.

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

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Thank you, sir. Thank you.

19 [Whereupon, the witness is excused and exits the
20 witness stand]

21

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Andrea Moniz-Direct Examination by Ms. Frierson
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1 MS. FRIERSON: The State would call Lieutenant
2 Moniz.
3 THE COURT: Okay.
4 [Whereupon, Ms. Moniz comes forward]
5 CLERK OF COURT: Will you please place your left
6 hand on the Bible and raise your right hand.
7 [Whereupon, Ms. Moniz is duly sworn by the Clerk of
8 Court]
9 CLERK OF COURT: For the record, please state your
10 full name, spelling out your last name.
11 THE WITNESS: Andrea Moniz. M-Q-N-I-Z.
12 MS. FRIERSON: May it please the Court, Your Honor?
13 THE COURT: Yes.
14 - - - - -
15 ANDREA MONIZ,
16 Having Been First Duly Sworn,
17 was Examined and Testified as Follows:
18 DIRECT EXAMINATION
19 BY MS. FRIERSON:
20 Q. Thank you Deputy Moniz. What is your current
21 occupation and who do you work for?
22 A. I'm a deputy sheriff with the Charleston County
23 Sheriff's Office.
24 Q. And how long have you worked there?
25 A. With the sheriff's Office, approximately seventeen

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- 1 years and prior to that, about nine years at North
2 Charleston.
- 3 Q. And what is your current rank and assignment?
- 4 A. I'm a Lieutenant over our patrol division.
- 5 Q. And what shift are you on?
- 6 A. I'm on the night shift, permanent night shift.
- 7 Q. Did you work last night?
- 8 A. I did.
- 9 Q. Thank you for being here. Can you tell the jury
10 what a Lieutenant on the night shift does?
- 11 A. I'm in charge of all the patrol deputies that are
12 assigned underneath me, make sure that they do all of
13 their tasks and complete everything, and also respond to
14 calls and assist wherever needed.
- 15 Q. Have you worked in any other capacities during your
16 time at the Charleston County Sheriff's Office?
- 17 A. At the Sheriff's Office, yes. I've been a deputy on
18 patrol, also been a detective in our detective division,
19 and also assigned to our Metro Narcotics Unit.
- 20 Q. And what was your assignment back in October of
21 2010?
- 22 A. I was a sergeant over patrol.
- 23 Q. And what is a sergeant over patrol and what are your
24 duties and responsibilities there?
- 25 A. Pretty much as the same as they are now except where

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1 I'm just a first-line supervisor as a sergeant. So I'm a
2 little bit more involved with what they're doing in their
3 day-to-day activities.

4 Q. And back in October of 2010, did you supervise
5 Deputy Bowen?

6 A. I did. Yes, ma'am.

7 Q. Did you supervised Deputy Alexander?

8 A. I did.

9 Q. And how about Deputy Riley?

10 A. I did.

11 Q. Do you recall call for service on October 17th,
12 2010, for this case at [REDACTED] Old Fort Avenue?

13 A. Yes, ma'am.

14 Q. Do you recall what kind of call it was?

15 A. It was I believe they said it was a heated domestic.

16 Q. And was it an in-progress call?

17 A. Yes.

18 Q. Could you tell the jury the significance of an in-
19 progress call?

20 A. It means that it's currently going on, that it's in
21 progress. It's something that gets a little bit faster
22 response.

23 Q. And is that something that more than one deputy
24 would be dispatched to do?

25 A. Yes.

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1 Q. Did you, in fact, start in route?

2 A. I did.

3 Q. And why would you start in route if other deputies
4 are going?

5 A. Again, just because of the nature of the call. As a
6 supervisor, that's what I would have done.

7 Q. Did you -- do you recall hearing Deputy Bowen or
8 Deputy Alexander advise that they had an open door at
9 that location?

10 A. Yes. I believe it was the back sliding door.

11 Q. Do you recall hearing them close the channel for
12 emergency purposes?

13 A. Yes.

14 Q. Do you know why they closed the channel?

15 A. Again, because of the situation of a possible
16 domestic in progress, which is -- tends to be an assault
17 in progress. And they had the opened door.

18 Q. Now, you testified that you're a first-line
19 supervisor as a sergeant back then on the road and so
20 you're tasked with kind overseeing? You're they're boss?

21 A. Uh-huh.

22 THE COURT REPORTER: Is that a yes?

23 THE WITNESS: I'm sorry.

24 A. Yes.

25 Q. [Ms. Frierson] Given the information that was

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1 provided at that time, would those deputies need to make
2 entry regardless of an open door?

3 A. They would. Absolutely.

4 Q. Now, prior to this, were you able to listen to
5 dispatch recordings from this incident?

6 A. Yes.

7 Q. Do you recall asking the dispatcher about any other
8 calls that might be associated with this?

9 A. Yes. I believe I asked about the phone number and
10 any past history, I believe.

11 Q. Is it your understanding that another jurisdiction
12 responded to a separate location to try and confirm if it
13 was related or not?

14 A. Yes. I believe it was downtown, the City of
15 Charleston.

16 Q. Now, do you know how that location was developed?

17 A. I believe that we asked the dispatcher to try to
18 triangulate the phone number that placed the phone call.

19 Q. Now, I understand you work for the Sheriff's Office
20 and not a phone company. But in general, in your
21 experience in law enforcement, what does triangulate the
22 phone mean?

23 A. At that point in time, basically they would try to
24 see where that phone number was hitting off of the cell
25 towers and kind of come up with a generalized location of

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1 where that phone was being called from.

2 Q. So it's not the physical location of the phone?

3 A. No.

4 Q. Just the cell tower that it's hitting off of?

5 A. That it's bouncing off of. Yes.

6 Q. And, again, just generally your knowledge of -- you
7 said you were narcotics, you've been on the road, you've
8 been in law enforcement for quite some time. Does the
9 cell tower that it hits off depend on how many people are
10 on the phone at that time ---

11 MR. DAVIS: --- objection, Your Honor. It calls for
12 speculation.

13 THE COURT: Sustained. I'm not going to allow her
14 to testify without laying foundation for her expertise in
15 that.

16 MS. FRIERSON: Okay. Let me rephrase it, if I may.

17 THE COURT: Sure.

18 Q. [Ms. Frierson] Lieutenant Moniz, do you have any
19 independent knowledge of the amount of cell towers that
20 were in downtown Charleston or in the Charleston area in
21 2010?

22 A. No.

23 Q. Do you have any independent knowledge of how many
24 people were on the cell phone at the time this call was
25 made?

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1 A. No, ma'am.

2 Q. Do you have any personal knowledge of the amount of
3 cell towers for each phone company?

4 A. No.

5 Q. Per protocol -- going back to the actual call --
6 even if deputies had been provided that information
7 before they entered, would they still have had to enter
8 where they had the information at [REDACTED] Old Fort Avenue?

9 A. Yes, ma'am. Due to, again, the call, the type of
10 call that it was, we have to look out for the safety of
11 the person who was calling.

12 Q. Moving on to what was found inside the residence.
13 Were you aware that a field test was completed?

14 A. Yes.

15 Q. We've heard a lot of talk about this, and I don't
16 quite think it's been explained in laymen's terms. But
17 what is a field test, for the jury?

18 A. So it's a chemical that will react with narcotics
19 and it will turn a certain color, depending on what the
20 narcotics is.

21 Q. Did you do the field test?

22 A. Yes, I believe I did.

23 Q. And would this generally be something that is done
24 prior to instructing the deputies to call out Metro?

25 A. Absolutely.

State v Therron Renard Richardson
Andrea Moniz-Direct Examination by Ms. Frierson
January 15, 2019

1 Q. Do you know the results of that test?

2 A. They tested presumptive positive.

3 Q. And do you know what it was presumptive positive
4 for?

5 A. Cocaine.

6 Q. Based on this, was Metro notified?

7 A. Yes.

8 Q. Do you ultimately know if a search warrant was
9 obtained?

10 A. Yes.

11 Q. And did you have any further involvement with this
12 case after that?

13 A. We just stayed until the search warrant was closed
14 out.

15 MS. FRIERSON: Court's indulgence, Your Honor?

16 THE COURT: Certainly.

17 [Whereupon, Ms. Frierson and Mr. Sowards confer]

18 MS. FRIERSON: I have no further questions at this
19 time. Please answer any that Mr. Davis may have.

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Cross-exam, Mr. Davis.

22 MR. DAVIS: Thank you, Your Honor.

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State v Therron Renard Richardson
Andrea Moniz-Cross-Examination by Mr. Davis
January 15, 2019

1 CROSS-EXAMINATION

2 BY MR. DAVIS:

3 Q. In your lengthy history with law enforcement, you
4 never worked at dispatch, did you?

5 A. I did, actually.

6 Q. Okay. Did you work dispatch in October of 2010?

7 A. No, I did not.

8 Q. And when we were talking about CPD investigating,
9 looking into the incident, you just testified about that
10 on direct, that was pertaining to a 911 caller that
11 started this whole domestic heated-domestic
12 investigation?

13 A. I believe so. The phone number that called, I
14 believe so, yes.

15 MR. DAVIS: Thank you, Lieutenant. No other
16 questions.

17 THE WITNESS: Thank you.

18 THE COURT: Redirect?

19 MS. FRIERSON: Nothing further, Your Honor.

20 THE COURT: Thank you. You may come down.

21 THE WITNESS: Thank you.

22 THE COURT: Do you wish the witness to be excused?

23 MS. FRIERSON: Yes, Your Honor.

24 THE COURT: Any objection, Mr. Davis?

25 MR. DAVIS: No, Your Honor.

State v Therron Renard Richardson
Andrea Moniz-Cross-Examination by Mr. Davis
January 15, 2019

1 THE COURT: Very well. Thank you. You are free to
2 leave.

3 THE WITNESS: Thank you, sir.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: Are there any additional witnesses,
7 Solicitor?

8 MR. SOWARDS: No, Your Honor. At this time the
9 State would rest.

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State v Therron Renard Richardson
Proceedings
January 15, 2019

1 THE COURT: Alright. Ladies and gentlemen, at this
2 point there are some matters of law that need to be taken
3 up out of your presence. It's perfect timing for that
4 because you can go home -- its five o'clock -- and we'll
5 take care of those matters of law.

6 Please do not begin your deliberations. Do not
7 discuss this case at all. Obviously, when you go home
8 tonight I would imagine the first question, if there's
9 somebody there, is what are you doing, what's the case
10 about. The temptation is there to talk about it but
11 you're not at liberty to do that. If you discuss this
12 with anyone at home, you will have violated your oath by
13 commencing your deliberations.

14 We'll probably finish this case tomorrow, I would
15 think, and then if you want to talk about it you're free
16 to. But until then, talk about something else. Have a
17 good evening.

18 I would ask you to please return to your jury room
19 by 9:30 in the morning. Thank you.

20 [Whereupon, the jury exits at 5:01 p.m.]

21 THE COURT: All right. Any motions from the State
22 at this point? Mr. Sowards?

23 MR. SOWARDS: Your Honor, actually, we just realized
24 that we prepared a stipulation on the prior charge.
25 Would it be appropriate to do it tomorrow?

State v Therron Renard Richardson
Proceedings
January 15, 2019

1 THE COURT: Sure. And I'll tell them what a
2 stipulation is.

3 MR. SOWARDS: Correct.

4 THE COURT: And we'll put that in, and that's not a
5 problem. We'll just say you reopened your case for the
6 purpose of doing that.

7 Any motions to be made by the State at this point?

8 MR. SOWARDS: No, Your Honor.

9 THE COURT: Mr. Davis, be glad to hear from you,
10 sir.

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State v Therron Renard Richardson
Motion for Directed Verdict
January 15, 2019

1 MOTION FOR DIRECTED VERDICT

2 MR. DAVIS: Thank you very much, Your Honor.

3 Obviously, at this time we will make our motion for
4 a directed verdict. Judge, we've had about a full day of
5 testimony. I don't need to rehash ---

6 THE COURT: --- no, you don't ---

7 MR. DAVIS: --- the entire thing. I would simply
8 indicate that we would argue -- we renew all prior
9 motions that we heard last Thursday.

10 THE COURT: Sure.

11 MR. DAVIS: And incorporate into that our motion for
12 a directed verdict. We would simply argue that while
13 there's suspicion as to the guilt on the three
14 indictments, we would argue it's not sufficient enough.
15 It's a circumstantial case, and we would argue that the
16 circumstances are not proved -- haven't been proven
17 sufficiently to allow this case to go to the jury. So we
18 would ask for a directed verdict.

19 And we renew any motions that you would see fit to
20 reverse decision on that. Thank you, Your Honor.

21 THE COURT: Thank you. I think the record reflects
22 I declined to recuse myself. I think I've granted you
23 more protections in certain areas than I would
24 customarily have done, for the reasons I've stated on the
25 record. I think the record reflects that I have not

State v Therron Renard Richardson
Motion for Directed Verdict
January 15, 2019

1 prematurely judged anything in this case. Not that
2 that's why I did it, but I just want to point that out.

3 I wouldn't disagree with you from the standpoint of
4 the circumstantial evidence because obviously Mr.
5 Richardson, at least to the officers' knowledge, was not
6 present. There's testimony that he was, but that will be
7 for the jury's determination of whether they believe that
8 witness's testimony or not.

9 But that being said, there is an abundance of
10 circumstantial evidence, and just tons of it, with all
11 the evidence showing his involvement in that place of
12 residence, as you say. I don't know whether it's his
13 residence or not.

14 But clearly evidence that he was in control of the
15 premises. The fact -- if they believe that witness the
16 witness testified that he lived there. So there's
17 another indicia of that. And so I think there's
18 substantial circumstantial evidence to deny your motion.

19 And of course as to the ruling made by Judge Young,
20 I didn't hear -- I heard it early, but I didn't hear it.
21 And so I can't -- all I can say is Judge Young's ruling
22 stands on its record and his decision in that, and I'm
23 not inclined to overturn it. Certainly the search
24 warrant has been issued and has not been challenged. And
25 certainly an abundance of evidence was -- I understand

State v Therron Renard Richardson
Motion for Directed Verdict
January 15, 2019

1 the threshold is you wouldn't have gotten the search
2 warrant but for the fact that you went in. And I think
3 they call that the fruit of the poisonous tree. That's
4 my recollection from law school. And I get that, and I
5 understand your basis. And certainly you've preserved
6 your objections on all of those issues.

7 With respect -- let me address the one concerning
8 the confrontation. Oddly enough, there's a nice little
9 case, The State vs. Sanders, at 356 S.C. -- 356, 214.
10 It's a Court of Appeals decision. Justice Kittredge is
11 one of the judges as was two prior ones, one being Judge
12 Hough from this circuit. But it dealt with the
13 unavailable witness. And of course 804 has you had to
14 had that indicia of reliability and trustworthiness,
15 typically.

16 But in this one they don't. The question is, is the
17 witness truly unavailable. And in this case, there is no
18 question about that fact. Nobody has challenged the
19 obituary. So I would find that he is truly unavailable.
20 And the Court opined that because of that, that
21 trustworthiness is preserved.

22 And you had the right -- and I realize you made some
23 arguments about whether counsel was deficient in
24 examining and confront. But it's not whether they were
25 deficient. It's did they have a right to challenge that.

State v Therron Renard Richardson
Motion for Directed Verdict
January 15, 2019

1 Did he have a right through counsel, and he did. And so
2 I think it falls squarely within that particular case.
3 And so for that reason, I would deny your -- I support
4 that of my granting and allowing the testimony to go
5 forward. I think I've addressed that.

6 Now, have you talked with your client about whether
7 he wishes to testify or not testify?

8 MR. DAVIS: We have had discussions, and I asked the
9 State to grab the prior record so we could deal with this
10 issue now. I would ask you advise him and then if we
11 could have tonight and ---

12 THE COURT: --- I'll be ---

13 MR. DAVIS: --- and advise the court tomorrow.

14 THE COURT: I'll be happy to. Of course at this
15 point, Mr. Richardson, you're going -- he doesn't have to
16 stand up unless he wants to.

17 MR. DAVIS: Thank you.

18 THE COURT: You're welcome to stand or you're
19 welcome to stay seated, Mr. Richardson, whatever your
20 pleasure, sir.

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State v Therron Renard Richardson
Fifth Amendment Rights
January 15, 2019

FIFTH AMENDMENT RIGHTS

THE COURT: Your lawyers have talked with you previously to this. And of course we've been through this process before. The jury doesn't know that. But as you know, you have the right to testify or not testify. And you've heard me instruct the jury that they need not look to you for any testimony and that you have the absolute right not to say anything at all.

If you choose to exercise that right, I will, in my charge, renew that and further state that. But you do have the right to testify, if you wish. Of course, if you do, then you'll be subject to cross-examination just as every witness has been.

It's my understanding you're conferring with your lawyers about that. And I'll give you tonight. Tomorrow we'll revisit this first thing and at that time I'm going to ask you what your decision is. Okay?

MR. RICHARDSON: Yes, sir.

THE COURT: Thank you, sir.

MR. DAVIS: Judge, could we now, so he can think about it ---

THE COURT: --- sure ---

MR. DAVIS: --- if he were to testify, what prior convictions the State would seek to introduce so he'll have it on his mind.

State v Therron Renard Richardson
Fifth Amendment Rights
January 15, 2019

1 THE COURT: Which ones would you want to do?

2 MR. SOWARDS: Your Honor, nothing comes in on its
3 own. But I think he can testify -- if he opens the door.
4 He does have a prior conviction in 1991 for aggravated
5 assault. And, again, that would be if he were to open
6 the door to any he has.

7 THE COURT: Well, obviously that goes beyond the --
8 what is it, 611? Whatever the Rule number is that allows
9 prior convictions.

10 MR. SOWARDS: And then there is -- I think his most
11 recent conviction was from 1998 for trafficking, which is
12 the predicate conviction for the felony possession of a
13 firearm. But that's about it. That's '98. That was
14 twenty-one years ago.

15 THE COURT: Yeah. That would still exceed the Rule,
16 I think, in that regard. So to answer your question --
17 its 609. So apparently there are none.

18 MR. DAVIS: Thank you, Judge.

19 THE COURT: Okay.

20 MR. SOWARDS: I appreciate it.

21 MR. DAVIS: One final thing just before we leave the
22 courtroom ---

23 THE COURT: --- excuse me. One thing. I noticed
24 that your call is a -- because you haven't put in but it
25 would not be before the jury, his prior record. Which

State v Therron Renard Richardson
Fifth Amendment Rights
January 15, 2019

1 you've got the Clerk of Court I assume is going to
2 certify to that. So you still have that. That's not a
3 part of this record. It doesn't need to be, I don't
4 believe. That deals with sentencing, should he be
5 convicted I think.

6 Is there any question about his prior record, prior
7 conviction?

8 MR. SOWARDS: We have a certified conviction.

9 THE COURT: You do? Okay.

10 MR. SOWARDS: We could have the Clerk, if needed, I
11 think --

12 THE COURT: Have you been presented with that?

13 MR. DAVIS: Judge, so that I understand. The
14 stipulation we agreed to just hasn't been ---

15 THE COURT: --- oh, I see. It says all of that.

16 MR. DAVIS: It says that there's a prior qualifying
17 felony.

18 THE COURT: That's fine. Okay. That's fine. I
19 remember you, now, mentioned that. And that's going
20 through that stipulation.

21 MR. SOWARDS: Yes, sir.

22 THE COURT: Okay.

23 MR. SOWARDS: It doesn't say the nature of the
24 charge, just that he has one that was --

25 THE COURT: --- which would trigger the charge on

State v Therron Renard Richardson
Fifth Amendment Rights
January 15, 2019

1 the possession of a firearm by a convicted felon.

2 MR. SOWARDS: Yes, sir.

3 THE COURT: Okay. Because the amount of the drugs
4 in this case would trigger the twenty-five. It's not --
5 it doesn't have anything to do with prior convictions.

6 MR. SOWARDS: Right.

7 THE COURT: All right.

8 MR. DAVIS: Could we take a look at the Hess
9 testimony? I want to make sure. It may have bled over
10 to another witness. And just before it's published, I'd
11 like to check that.

12 THE COURT: Well, here. You can have my copy.

13 MR. DAVIS: So, Judge, on the last page of what is
14 Court's Number 3 ---

15 THE COURT: --- the one published?

16 MR. DAVIS: Oh. It's just for a Court's Exhibit.
17 I'll just -- to clean up: Line 19 lists Tim Ketchem
18 [phonetic] which was the next witness. So anything below
19 that, obviously need to ---

20 THE COURT: --- well, obviously, it's only -- this
21 really is for the purpose -- the jury does not see this.
22 It doesn't go there. This is really for the court
23 reporter's benefit so she doesn't have to transcribe it,
24 she doesn't have to take it down. That's the reason for
25 that. So we would all agree that Ketchem [phonetic] is

State v Therron Renard Richardson
Fifth Amendment Rights
January 15, 2019

1 another witness, and it speaks for itself.

2 MR. DAVIS: That's the last housekeeping thing I
3 have, Judge.

4 THE COURT: Okay. Good. All right. We'll be at
5 ease until 9:30 in the morning, then.

6 [Whereupon, jury trial adjourns at 5:45 p.m.]

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State v Therron Renard Richardson
Certificate of the Court Reporter
January 15, 2019

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, 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 Sessions for Charleston County,
South Carolina on the 15th day of January, 2019.

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

April 2, 2019



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

THERRON RENARD RICHARDSON

Defendant

COURT OF GENERAL SESSIONS

DOCKET NO. 2011-GS-10-2320

2011-GS-10-2321

2019-GS-10-0879

TRANSCRIPT OF RECORD

January 16, 2019

Charleston, South Carolina

Volume 3 (of 3)

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE

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State v Therron Renard Richardson
Proceedings
January 16, 2019

1 PROCEEDINGS
2 THE COURT: Thank you very much. Good morning.
3 MR. DAVIS: Good morning, Your Honor.
4 MR. SOWARDS: Good morning, Your Honor.
5 THE COURT: Have you had an opportunity to discuss
6 with your client further his right to testify and not to
7 testify, Mr. Davis?
8 MR. DAVIS: I have, Your Honor. And just for the
9 record, it is something we have talked about previously.
10 But I had the opportunity to spend almost an entire hour
11 discussing various things. But one of the major things
12 last night was that decision. I went over the review of
13 his record, that unlikely, unless he opens the door there
14 won't be anything in his record, which is different than
15 ---
16 THE COURT: --- the previous ---
17 MR. DAVIS: --- when he was first tried.
18 THE COURT: Precisely.
19 MR. DAVIS: We did discuss that. And without more
20 detail we discussed it thoroughly. And last night it's
21 my understanding that he indicated he does not wish to
22 testify. I believe that's still his decision this
23 morning.
24 THE COURT: All right. Mr. Richardson, good
25 morning, sir.

State v Therron Renard Richardson
Proceedings
January 16, 2019

1 MR. RICHARDSON: How are you doing?

2 THE COURT: I'm well. You have had the
3 opportunity, of course, to discuss this throughout but
4 certainly again yesterday with your lawyers, your right
5 to testify or not to testify; is that correct?

6 MR. RICHARDSON: That's correct.

7 THE COURT: And you've had a chance to reflect on
8 what your lawyers have shared with you and you've made a
9 decision for yourself; is that correct?

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: And that decision is not to testify,
12 sir?

13 MR. RICHARDSON: Yes, sir.

14 THE COURT: Are you under the influence of any
15 alcohol or any medication here today, sir?

16 MR. RICHARDSON: No, sir.

17 THE COURT: And are you comfortable with your
18 decision not to testify?

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: You understand I'll be relying on your
21 responses here today?

22 MR. RICHARDSON: Yes, sir.

23 THE COURT: Nobody has threatened you in any way to
24 get you not to testify?

25 MR. RICHARDSON: No, sir.

State v Therron Renard Richardson
Proceedings
January 16, 2019

1 THE COURT: You're satisfied with the manner in
2 which your attorneys have advised you concerning your
3 rights in this matter?

4 MR. RICHARDSON: Yes, sir.

5 THE COURT: I find that Mr. Richardson has had the
6 benefit of very competent counsel. He's indicated he's
7 satisfied with the advice given to him concerning his
8 rights in this matter. He has demonstrated by his
9 responses here today that it is his decision not to
10 testify, which is absolutely his perfect right to do so.
11 And I will again -- I'm sure your lawyers have indicated,
12 and I indicated to you yesterday, charge the jury that
13 they cannot consider that in any fashion. I find that
14 decision to be one he makes freely, voluntarily,
15 knowingly and intelligently.

16 And, Mr. Richardson, if at any point between now and
17 when the jury comes in -- well, let me ask Mr. Davis
18 this; do you intend to present any additional testimony?

19 MR. DAVIS: No, we do not, Your Honor.

20 THE COURT: Very well. And, of course, you will
21 rest at that point?

22 MR. DAVIS: Yes, Your Honor.

23 THE COURT: And you've explained that to your
24 client, as well?

25 MR. DAVIS: I have, Your Honor.

State v Therron Renard Richardson
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1 THE COURT: Mr. Richardson, if we get to that point
2 and he tells me -- because what I typically do now
3 because I -- and that's the reason I say what I say.
4 You're not required to, but you have the right to.

5 And I'm going to ask Mr. Davis simply this question.
6 Does Mr. Richardson wish to present any additional
7 testimony for the jury's consideration? And he's going
8 to say, no, we rest. At that point, your decision is
9 sealed, so to speak. Okay?

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: If at any point between now and that
12 point you change your mind, if you'll let your lawyers
13 know that, I'll excuse the jury and we'll resume our
14 conversation.

15 MR. RICHARDSON: Okay. Thank you, Your Honor.

16 THE COURT: But if I don't hear from you, I'm going
17 to assume you stand by your decision. Okay?

18 MR. RICHARDSON: Yes, sir.

19 THE COURT: Okay. Thank you. That being said, so
20 that we don't send the jury out again, the State --
21 obviously, you can't have any reply to nothing. So, any
22 motions on behalf of the State at this juncture?

23 MR. SOWARDS: No motions, Your Honor. The only
24 thing is we have the stipulation.

25 THE COURT: We'll put that in before I go to Mr.

State v Therron Renard Richardson
Proceedings
January 16, 2019

1 Davis about the question. I'll remind them, you have one
2 more thing to add before ---

3 MR. SOWARDS: --- okay ---

4 THE COURT: --- you finally rest. Is that right?

5 MR. SOWARDS: And that's the only other thing.

6 THE COURT: Okay. Mr. Davis, I'll be delighted to
7 hear from you again. I assume your bases are the same
8 that you previously argued?

9 MR. DAVIS: Your Honor, it is. And obviously here
10 in camera I will rest. I'll rest formally at the
11 appropriate time ---

12 THE COURT: --- sure ---

13 MR. DAVIS: --- for the jury. But we have nothing
14 else to present.

15 I renew all motions made prior to last Thursday. I
16 renew all motions that were argued last Thursday. We're
17 going to renew all and any motions that were made during
18 the course of this trial. And then, specifically, I'll
19 make -- renew my directed verdict motion. I have no new
20 argument than what I made before the close of business
21 yesterday.

22 THE COURT: Very well. I think the record contains
23 the Court's response to those and we'll let that record
24 suffice for responding to this motion. Your motion is
25 denied.

State v Therron Renard Richardson
Proceedings
January 16, 2019

1 So that we have an agreement that it's preserved
2 without having the jury have to go out again any
3 objection to us proceeding directly to argument and no
4 issue will be raised if this matter is appealed -- should
5 be appealed by the State, that you didn't properly make
6 your motion. Is that correct, Solicitor?

7 MR. SOWARDS: Yes, Your Honor.

8 THE COURT: And you're comfortable with that, Mr.
9 Davis?

10 MR. DAVIS: I am, Your Honor. Thank you.

11 THE COURT: In protecting your client's right?

12 MR. DAVIS: Yes, Your Honor.

13 THE COURT: Okay.

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State v Therron Renard Richardson
Charge Conference
January 16, 2019

1 CHARGE CONFERENCE

2 THE COURT: Now, that being said, I understand y'all
3 have some requests to charge. I'll be happy to -- any
4 specific requests from the State?

5 MR. SOWARD: No, Your Honor. I believe Mr. Davis
6 has one requested.

7 THE COURT: I'm sure -- I would anticipate it's
8 probably possession with intent to distribute.

9 MR. DAVIS: And, Judge, I have asked Mr. Summa to
10 research as best he can on this. We will be asking the
11 Court to consider lesser includeds on the drugs.

12 THE COURT: All right. Mr. Summa?

13 MR. SUMMA: Thank you, Your Honor.

14 We obviously heard testimony that, you know, we
15 don't know the purity of this. It could be a very small
16 amount mixed with a large amount of cut. So we think the
17 jury could find him guilty of not trafficking, but
18 possession with intent to distribute. Also, the jury
19 could possibly find him guilty of possessing some of
20 these bags but not of all of them. So I do think there's
21 been evidence presented that could allow the jury to find
22 him guilty of the lesser included. So we would request
23 the charge on that basis.

24 THE COURT: Help me, Mr. Summa. What would be the
25 evidence that I can rely on, or the reasonable inference,

State v Therron Renard Richardson
Charge Conference
January 16, 2019

1 that since he was never present? Obviously, constructive
2 possession is the control here, because there was no
3 evidence that he was in actual possession of any of these
4 drugs. So what could possibly -- what evidence can
5 distinguish because as I recall, all the drugs were found
6 in this residence.

7 And the question is did he have dominion and control
8 over that, over the residence, and was there sufficient
9 indicia of his ownership or involvement and control to
10 warrant them finding constructive possession? I don't
11 know how I could distinguish anything else in there that
12 would say it belonged to somebody else. Maybe you can
13 help me.

14 MR. SUMMA: Well, you know, I think part of our
15 theory is that somebody could have maybe intruded this
16 home. And obviously you have ---

17 THE COURT: --- well, I don't quarrel with you --
18 your theory is it was planted; it was never there in the
19 first place, none of it. I mean, you're not -- your
20 theory isn't, well, he had half of it and they planted
21 more than what he had.

22 That's not what I heard. It's a setup, I think, was
23 Mr. Davis -- and I might not be using the exact words,
24 but somebody basically set this man up and basically put
25 all this stuff there and planted it. So I don't know how

State v Therron Renard Richardson
Charge Conference
January 16, 2019

1 we distinguish it.

2 MR. SUMMA: Well, there's -- I guess what I'm
3 focused on is that there's obviously that big bin with
4 the large amounts, and then there's a bag in the drawer,
5 and then there's a residue on the scale.

6 THE COURT: Yeah.

7 MR. SUMMA: The jury could find that he had this
8 residue for personal use but somebody else put that giant
9 bin below his bed. And if that's the case, I think that
10 there ---

11 THE COURT: --- you going to argue that? I don't
12 think you're going to argue that. I mean, it's been
13 twenty-five years since I practiced law, but I don't
14 think I would try to spin that one, I don't believe. But
15 you're a much better lawyer than I ever was. But I don't
16 see that, in any way that it would -- it's not possession
17 of all.

18 What's your position on the possession with intent
19 to distribute? And, you know, this is one of those
20 things that just really why I wish the legislature would
21 draw some distinction between the two, because there
22 really isn't any. I mean, as a practical matter, it's
23 basically the same elements. I don't -- it's been a
24 while since I've read just the -- the possession with
25 intent to distribute. You don't have to prove

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1 distribution, you have to prove you had it to distribute.
2 But with all of the money that we had here, that's the
3 thing that -- that's never an element. The money part is
4 not. The money part is because it talks about -- I think
5 there's an aspect of a financial gain or something.

6 So what's the State's position on that?

7 MR. SOWARDS: Your Honor, the State's position is
8 that, I mean, given that the smallest bag that was found
9 still exceeded the trafficking threshold, that obviously
10 the cumulative weight far exceeded the trafficking
11 weight.

12 THE COURT: And we're talking about over 2 kilos of
13 drugs.

14 MR. SOWARDS: And I just think that trafficking is
15 based on the weight, and the weight, even the recent --
16 the smallest bag exceeds it.

17 THE COURT: If I don't charge -- and this gets back
18 to whether you want a lesser included offense in murder,
19 because if you don't prove -- if you argue that that's
20 not all his, and they haven't, they've got to prove, in
21 order to obtain a conviction -- because I'm not going to
22 charge a lesser included trafficking. It's either all or
23 none. You agree?

24 MR. SOWARDS: I think -- my reading of the statute
25 is that the different thresholds are for penalties, and

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1 then you have the crime, and then the jury determines ---

2 THE COURT: --- well, he's charged with trafficking
3 over 400 grams.

4 MR. SOWARDS: I think maybe that that's the State's
5 theory of the case is that he possessed it all.

6 THE COURT: I understand. But I'm just saying,
7 they've got to -- I'm going to go through the elements of
8 it. But basically they have to prove that he had
9 possession of over 400 grams of cocaine.

10 In fact, I'm thinking do you want me to write in --
11 I don't think it's necessary if I couch it, in the
12 verdict form, guilty of trafficking cocaine over 400
13 grams because that would be an element. In order to
14 return a verdict of guilty on that, they have to prove
15 that he had possession of over 400 and was possessing.
16 You don't have to prove all of those. You have to prove
17 one of those.

18 And that's where -- that's why in looking at my
19 charges that I've had since I -- I have all my -- just
20 about all my charges. I did start deleting, to give
21 myself some space, charges back from the '90s. But the
22 last time I gave a charge on trafficking was 2006, so
23 that just shows you it's -- to me, it's a slam dunk for
24 the State. It's just really -- that's why I wish they
25 would distinguish it somewhat, because then we -- then

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1 there could be a delineation between possession with
2 intent to distribute versus trafficking. This goes back
3 to my earlier example. Are you opposed to the possession
4 with intent to distribute?

5 MR. SOWARDS: May I have one second?

6 THE COURT: Talk about it, because I -- you know, I
7 go back to that if I had charged voluntary manslaughter,
8 they would still return a verdict of guilty. And it's
9 certainly fair. I don't quarrel with your right to have
10 it because it has over the requisite amount of -- the
11 level to mark the inference. But...

12 [Whereupon, Mr. Sowards and Ms. Frierson confer]

13 MR. SOWARDS: Your Honor, I mean, we're fine with
14 you charging the lesser included of possession with
15 intent.

16 THE COURT: Okay. I'll charge it.

17 MR. SUMMA: Thank you, Your Honor.

18 THE COURT: You bet.

19 Now we've got possession of a firearm by a person
20 convicted of a -- is it a felony? I've got to pull the
21 statute and then possession in commission of a violent
22 crime, obviously.

23 MR. SOWARDS: Correct.

24 THE COURT: So there are two separate possession
25 charges that I need to give; is that correct?

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1 MR. SOWARDS: Correct.

2 THE COURT: And we have -- so we'll have three
3 verdict forms, basically.

4 MR. DAVIS: Yes, Your Honor.

5 THE COURT: Okay?

6 MR. DAVIS: And just you may have already thought of
7 this. It's clear to you. The prior time this was tried,
8 I think it's under 16-23-30, which would not apply based
9 on his record. The State last week, I think on Wednesday
10 or Thursday ---

11 MR. SOWARDS: --- Wednesday ---

12 MR. DAVIS: --- Wednesday indicted under 16-23-500,
13 so under that statute his prior record does qualify him
14 as a felon to not possess. And that's the stipulation.

15 THE COURT: Okay. That's the stipulation. 23 --
16 what is it?

17 MR. DAVIS: 500.

18 MR. SOWARDS: It's 23-500.

19 THE COURT: Okay.

20 MR. SOWARDS: So I think its 23-490 is the
21 possession during a violent crime, then 500 ---

22 THE COURT: --- but he's also charged with that,
23 too, isn't he?

24 MR. SOWARDS: Correct.

25 THE COURT: Okay. So both of them?

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1 MR. SOWARDS: Yes, sir.

2 THE COURT: All right. Are y'all going to be ready,
3 or do you want to take a break now to get your thoughts
4 together? Y'all ready to go? I'm going to need a few
5 minutes anyway, so y'all take a few and then we'll ---

6 MR. SOWARDS: --- okay ---

7 THE COURT: --- to get this charge. How long do you
8 anticipate your arguments to be? And you're going to
9 open fully on the facts and reply?

10 MR. SOWARDS: Full opening, then reply.

11 THE COURT: That's fine.

12 MR. SOWARDS: We discussed it earlier. I think
13 twenty minutes for me.

14 THE COURT: That's fine. Okay.

15 MR. SOWARDS: Twenty, twenty-five.

16 MR. DAVIS: I don't think I'll exceed twenty.

17 THE COURT: That's fine. Then maybe I could go
18 ahead and wing it and if I need to I can give them a
19 break.

20 [Off the record momentarily]

21

22

23

24

25

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1 THE COURT: All right. Let's bring in our jury, Mr.
2 Williams.

3 [Whereupon, the jury enters at 9:48 a.m.]

4 THE BAILIFF: Judge, all jurors are present.

5 THE COURT: Thank you, Mr. Pryor. Thank you, ladies
6 and gentlemen, and I hope you had a good evening. We're
7 ready to continue.

8 And I have noticed that you have sat in that seat
9 for the balance of the trial. Have you been selected as
10 the presiding juror?

11 JUROR NUMBER 182: I have been.

12 THE COURT: I thought that might be indicative of
13 that fact. Your name and number, please, for the record.

14 JUROR NUMBER 182: Travis Massie, juror 182.

15 THE COURT: Thank you, Mr. Massie. And thank you
16 for your performance of presiding juror thus far. And I
17 appreciate the jury selection of that.

18 And we're now at the point -- yesterday the State
19 rested. I think the State, after you all left, said they
20 had one further thing to deal with. Solicitor?

21 MR. SOWARDS: Thank you very much.

22 Your Honor, at this time, the State would seek to
23 admit State's Exhibit 86, which is a stipulation between
24 the parties, and publish that to the jury.

25 THE COURT: All right. Ladies and gentlemen, a

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1 stipulation is one of those situations where -- as you
2 know, witnesses come in and present the evidence, which
3 you -- present testimony, which you would evaluate and to
4 determine what you find to be credible and believable.

5 But on occasions the parties, to expedite, simply
6 can agree that these are certain facts that you may
7 consider and they put it in the form of a stipulation.
8 So both sides agree that these facts are what they
9 represent to be.

10 So if you want to publish that to the jury, you may
11 do so.

12 MR. SOWARDS: Thank you, Your Honor.

13 STIPULATION READ INTO THE RECORD

14 MR. SOWARDS: The State and the defense have agreed
15 upon the following stipulation regarding a prior
16 conviction of the Defendant. The Defendant, who was
17 represented by counsel, was convicted of a crime
18 considered statutorily violent under the South Carolina
19 Code of Laws.

20 Thank you, Your Honor.

21 THE COURT: Thank you.

22 [Whereupon, State's Exhibit Number 86 is admitted
23 into evidence by the Court]

24 THE COURT: Now, with that additional exhibit, the
25 State now rests?

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1 MR. SOWARDS: The State rests, Your Honor.

2 THE COURT: All right. Of course, the record
3 reflects that we have entertained the motions which would
4 be appropriately made at this particular stage. Now Mr.
5 Davis --

6 As you remember, ladies and gentlemen, Mr.
7 Richardson does not have to present any additional
8 witnesses for your consideration but he still has the
9 right to do so, no obligation to do so.

10 Mr. Davis, at this point, does Mr. Richardson wish
11 to present any additional witnesses for the jury's
12 consideration?

13 MR. DAVIS: No, Your Honor.

14 THE COURT: So Mr. Richardson rests?

15 MR. DAVIS: Defense rests.

16 THE COURT: That would conclude the evidentiary
17 portion. And I have gone through this discussion with
18 the parties prior to your coming out and anticipated that
19 was going to be the response, but also afforded them the
20 opportunity to change their mind should they want to do
21 so. Now that's been determined.

22 And we would normally have to excuse you, but we've
23 also now argued those motions which would now be
24 appropriate for me to consider and the rulings and the
25 arguments are preserved in the record and we rely on

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1 that. All that being said, we're now in the last two
2 portions of this proceeding. And they will be extremely
3 helpful to you very shortly when you begin your
4 deliberations. First, you're going to hear closing
5 arguments from the attorneys. And as I mentioned to you
6 when we started, the difference is obvious.

7 You've heard the evidence, and it's appropriate for
8 them to discuss that evidence with you and suggest
9 reasonable inferences that you may draw from that
10 evidence. Please give them your attention because I'm
11 confident that it will be very beneficial to you when you
12 go through the process of analyzing the evidence in this
13 case and making the decisions that you'll have to make.

14 While extremely important and will be very helpful,
15 also remember their remarks should never be considered
16 evidence because the evidence, as we know, came through
17 the testimony of the witnesses.

18 Following their remarks, I will give you the Charge
19 on the law. And that we'll discuss the various elements
20 of the crimes that the State has charged and we'll go
21 through some other principles of law. So with all that
22 said, please give your attention now to the attorneys.
23 Solicitor, you may proceed.

24
25

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CLOSING ARGUMENTS

MR. SOWARDS: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. SOWARDS: Good morning, ladies and gentlemen. We appreciate your attention in this case. I know it's been a long couple of days but, again, we appreciate the opportunity to present the evidence to you.

I told you in my opening statement that this case began with a 911 call. And I think that, as you've heard the testimony, that was borne out in the evidence that was submitted.

What I would like to do first is just talk to you generally about some of the legal concepts that you'll hear when Judge Dennis charges you on the law after we finish our closing statements.

So the defendant, as you heard, is charged with trafficking cocaine, possession of a weapon during the commission of a violent crime, and possession of a weapon by a person convicted of a violent crime. What are the elements of those crimes?

Trafficking cocaine is a cumbersome thing and encompasses a lot. But the statute says that any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this state, or who provides

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1 financial assistance or otherwise aids, abets, attempts
2 or conspires to sell or manufacture, cultivate, deliver,
3 purchase, or bring into this state, or who is knowingly
4 in actual or constructive possession, or who knowingly
5 attempts to be found in actual or constructive
6 possession, of 10 grams or more of cocaine or any mixture
7 containing cocaine.

8 He's also charged with the possession of a weapon
9 during the commission of a violent crime. We generally
10 shorten it to that acronym, because it's a mouthful. If
11 a person is in possession of a firearm, or visibly
12 displays what appears to be a firearm during the
13 commission of a violent crime, then that person is guilty
14 of that offense.

15 And, finally, possession of a firearm by a person
16 convicted of a violent crime. The statute says that it
17 is unlawful for a person who has been convicted of a
18 violent crime, as defined in 16-160, that is classified
19 as a felony offense to possess a firearm or ammunition in
20 the state. And you heard from me just recently with the
21 stipulation that the Defendant does, in fact, have a
22 violent -- a criminal conviction.

23 One of the other things that Judge Dennis mentioned
24 when he introduced the case to you, and I touched on it a
25 little bit, is this concept of beyond a reasonable doubt.

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1 He alluded to the standard in civil cases being lower,
2 probability standard, which is often 50.1 percent.
3 Whichever side tips the scale in their favor may carry
4 the day. Beyond a reasonable doubt is much higher than
5 that. But although it is higher it's not beyond any
6 doubt. It doesn't require the State to erase any doubt
7 that may exist in your mind.

8 Some people have demonstrated it as if you think of
9 a cable that's composed of multiple strands, those
10 strands making it stronger than a single rope, and if you
11 pop one or two of the strands the cable still maintains
12 its integrity and holds the rope. So even if after the
13 conclusion of the evidence you may have a doubt or two,
14 if you're -- and it doesn't reach the point that makes
15 you hesitant to act, then the State has met its burden.

16 There are generally two types of evidence that are
17 submitted in a criminal case. There is direct evidence
18 and circumstantial evidence. Now as you will hear on the
19 Charge on the law it doesn't place a greater weight or
20 emphasis on one or the other.

21 So direct evidence is testimony from a witness that
22 tends to directly prove a fact. In other words, it
23 doesn't require you to make any inferences. It might be
24 an eyewitness observation. Circumstantial evidence, on
25 the other hand, is proof of a chain of facts and

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1 circumstances which prove the existence of an ultimate
2 fact. That would require you to make inferences and
3 deductions. So an example would be we've been sitting
4 here -- yesterday we sat in here all day. And while you
5 may have checked the weather, there are no windows in
6 this courtroom. I think it's fair to say that you can't
7 see outside and see what's happening.

8 But if a person walked in and had an umbrella and
9 they shake some water off of it, and then another person
10 walked in with a raincoat and it appeared to be wet, and
11 then finally a person walked in and they didn't have
12 either one and they were soaking wet, you could infer
13 from that that it's raining outside even though you've
14 not been outside and seen for yourself.

15 The Defendant is charged with trafficking, which
16 requires the State to prove possession. And it's --
17 under the simple term that the law defines, possession is
18 actual or constructive possession.

19 Actual possession is kind of exactly what it sounds
20 like. It's I have actual possession of this because it's
21 in my hands. I have sole control over it.

22 Constructive possession, on the other hand, is the
23 right or ability to control an object. So while my cell
24 phone is in that box over there, I don't have it in my
25 hand, I think it's fair to say that it's in my possession

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1 because it belongs to me and I have the right and the
2 ability to control it. Some examples that can be
3 illustrated are a safe-deposit box. It's in the bank.
4 The bank is storing it for you, but you have ready access
5 to it and it belongs to you, the contents do.

6 The same way with items in your home and items in
7 your car, even when you are not there. The key is
8 whether a person has the right and the present ability to
9 control it.

10 So over the course of this case you've heard about
11 the response to [REDACTED] Old Fort Avenue. A dispatcher
12 receives a 911 call from a distressed woman claiming that
13 she was the victim of an ongoing heated domestic
14 incident. She gave this address. She said, and you all
15 heard the call, that he's trying to get in, and then the
16 call was disconnected.

17 Given the nature of the call, dispatch sent deputies
18 out there to check on the house. And when they arrived,
19 the first thing they noticed was that no door handle.
20 And that seemed odd to them.

21 Unable to make contact with anybody in the front of
22 the house, they went around to the back. And Deputy
23 Alexander realized that that door right there [indicates]
24 was ajar. He said it was about a half an inch. And,
25 really, what that meant to them is that there might be

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1 someone inside there because generally when people leave
2 their homes they secure the doors. That didn't determine
3 whether or dictate whether, they went into the house.
4 Given the nature of the call, they were going in; going
5 an additional step would have been contacting their
6 supervisor.

7 So like I said, Jason Bowen, Detective, now
8 Detective Bowen, was the first one on the scene. And he
9 testified that based on the call, they felt obligated to
10 sweep the house to find the potential victim. And, you
11 know, they -- even though they didn't hear anything at
12 the door, they were unsure whether someone was inside.
13 He did not know the information regarding the caller
14 location.

15 But as he testified right here, it wouldn't have
16 mattered. They don't have the luxury of sitting around
17 and trying to determine whether this person called from
18 here. That was the physical address that they gave. And
19 to preserve life, they had to enter that house.

20 So when they cleared the house, the only thing they
21 did was look where a person could reasonably hide. So
22 they checked closets, under the bed, bedroom, kitchen,
23 the upstairs. And they didn't detour from that search.
24 But they did notice things while they were looking in the
25 house. Deputy Alexander told you the same thing. That's

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1 one of the most dangerous calls law enforcement responds
2 to. So there's a heightened sense of danger as they
3 approached that house. And I should add that neither
4 Deputy Alexander nor Deputy Bowen recall hearing an alarm
5 when they were inside the house. Deputy Alexander did
6 say that they swept the house quickly, he's shouting, you
7 know, identifying himself and Deputy Bowen as law
8 enforcement officers.

9 And so they get inside and they realize that on the
10 bathroom counter is a scale of white powder. And then in
11 a closet door they find loose money. They also found a
12 bag with loose bills in it. And then under the bed, they
13 notice guns.

14 Their supervisor, Sergeant Moniz at the time,
15 responded and field tested the substance on the scale
16 because they wanted to be right. They wanted to make
17 sure that that powder they saw was actually cocaine. And
18 another thing that she testified to, which I think is
19 critical, is that she spoke with dispatch trying to
20 figure out what's going with that other call, because she
21 knew that dispatch had sent someone else downtown to
22 check on the caller's location.

23 So they checked both out. They did exactly what we
24 want them to do in a situation like that. She gave that
25 address, they went there. The date on the screen gave

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1 another place and they went there. And also she
2 testified that nobody at that point had any knowledge
3 about how many callers were trying to get on the system,
4 how many cell towers were between the physical location
5 and Romney Street.

6 So with that information, they pass it on to Metro
7 and Metro obtained a search warrant. And Lieutenant
8 Ferguson testified that he was designated as the evidence
9 custodian so he went into the home and photographed
10 things and collected things. And he was the only person
11 who had custody of the items that were taken from the
12 house. He said he saw the stuff that the deputies
13 located.

14 And, also, when they looked under the bed they found
15 a large plastic bin full of rice and inside that bin was
16 2,000 grams of cocaine. And Lieutenant Ferguson
17 testified that based on his experience, you would have
18 rice in there to preserve the integrity of the product.

19 They also seized 23,000 dollars in cash, some of it
20 bundled, mostly twenties and one hundreds. And they also
21 finally testified that 1,000 grams of cocaine equals one
22 kilo. So in that bedroom where they found a number of
23 items belonging to the Defendant, they found two
24 kilograms of cocaine. One bag still had the edges from,
25 he testified, probably being bricked up.

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1 Now, Detective Plyler was the case agent and he took
2 the search warrant, got it signed, and then did a walk-
3 through in the house before they executed the search
4 warrant. He didn't know what happened as far as the 911
5 call. He just knew they responded, they had to make
6 entry, and they noticed several things which led them to
7 believe there may be drug activity in the home.

8 Detective Plyler told you that they found items
9 inside the house that led them to believe the Defendant
10 operated a lawn-care business, but outside they found his
11 truck and it wouldn't even start. It was covered with
12 leaves. And then in the backyard they found lawn-care
13 equipment with a tarp over it and it seemed, according to
14 him, to have not been used in a while.

15 And then there were some questions about other items
16 that were seized from the home. And Detective Plyler
17 testified that under state law, they are required to
18 seize items that may be proceeds of illegal activity. So
19 as I said, he noticed the truck and the Lazy Man, again,
20 on the bathroom.

21 And then when they opened the door, they find drugs
22 in a spoon, a number of sandwich bags in the bathroom,
23 and a scale, all of which tells them this isn't just a
24 place where someone stores drugs, it's a place where
25 someone packages them for distribution.

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1 And then on the bathroom they found pill bottles in
2 the name of the Defendant and it said take one tablet
3 every day. This is where he keeps his one-a-day
4 medicine.

5 In the second drawer, they found Inositol, which
6 both Lieutenant Ferguson and Detective Plyler testified
7 this is what you use to expand your product. This is
8 what you use to make two kilograms of cocaine go even
9 farther on the street.

10 And then when they entered -- when they searched in
11 the bedroom they looked at the bed and then under the
12 pillow of the bed, two guns. Those guns weren't found by
13 Deputy Bowen. They cleared the house. They noticed the
14 things that were in plain view and it was only after they
15 obtained the search warrant that they found these other
16 items.

17 So here you see the cocaine that was located under
18 the bed. And if you look in particular at this bag
19 [indicates] it still has the corners from the brick.
20 Then they field-tested it to make sure, to make sure it
21 wasn't flour or powdered sugar.

22 Then in the bedroom they found, right next to the
23 bed, a life-insurance policy in the name of the Defendant
24 and then his social media account information, Therron
25 Richardson, Facebook account, Therron Richardson, Yahoo

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1 account. And then they looked in the closet. And in the
2 closet they found this yellow bag right here [indicates]
3 which contained bundles of these [indicates], which --
4 and this will be going back into the jury room with you
5 so you can take a closer look. But if you look, these
6 are little bags. He had a number of these bundles.

7 Lieutenant Ferguson testified that that's what you
8 use when you expand your product and then portion it out.
9 That's what you use. And they also found bundles of
10 cash; twenty-dollar bills, hundred-dollar bills, in the
11 safe. They found these firearms in the room next to the
12 drugs.

13 Now, Ms. Mallette testified that she works for
14 Charleston County Dispatch, that now she works in FOIA
15 but previously she had actually worked as a dispatcher.
16 And she testified that in a call like this, it's a high
17 priority call, that some calls may not warrant an
18 immediate response but this one did. And they sent
19 deputies to the location where the woman said she was.

20 Now, they do have information on the screen which
21 tells them the location of the phone, not the physical
22 location of the person. And as it turns out, someone was
23 sent there as well. But for this case, they sent
24 deputies to that home to check to see whether there was a
25 person who needed help.

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1 You heard the transcript of Mr. Hess' statement and
2 he testified that Therron Richardson lived across the
3 street from him and had lived across the street from him.

4 And on this day, while the police were at his house,
5 he came back when he realized the police were there. He
6 may have known they were there to begin with. But when
7 he saw the police cars, he backed his car up and parked
8 on a different street, walked over to his house for a
9 couple of minutes, and then left.

10 Mr. Bunn testified that he's a district manager for
11 ADT, that Therron Richardson got an alarm system for that
12 house. And Mr. Bunn was not able to say whether it had
13 an audible one, some do, some don't. He was unable to
14 say which area of the house tripped the alarm.

15 I will say that the defense entered the event
16 history for the alarm system. And you'll have an
17 opportunity to look at this and you can look and see who
18 they called when the alarm was triggered and what that
19 person told them to do.

20 And finally you heard from Anita Moore. She's now
21 in crime-scene investigation with the North Charleston
22 Police Department but at the time she was a forensic
23 analyst of drugs for the City of Charleston. City of
24 Charleston Police Department was testing drugs for the
25 Charleston County Sheriff's Department. She was admitted

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1 as an expert and her expert opinion was that the
2 substance in the bag is cocaine. They didn't test for
3 purity at the time. But it doesn't matter. The
4 trafficking statute says cocaine or any mixture
5 containing cocaine.

6 And, finally, she testified in her report, which you
7 all will have back there. She testified that she weighed
8 it on a scale in the lab and it was 505 grams, 223 grams,
9 39 grams, 14 grams, 111 grams, and, finally, 1,135 grams.

10 In his opening statement, Mr. Davis suggested that
11 there's a mystery here that the State can't solve. He
12 said you won't know anything about the 911 call, anything
13 that you need to decide this case. The truth is you
14 don't need anything about the 911 call. As far as
15 whether it was a hoax, a setup, anything, it's
16 irrelevant.

17 The information that law enforcement had at the time
18 was that a person was in distress. They responded,
19 trying to help that person out. They did not have the
20 benefit of time. They could not sit outside that house
21 and wait for an hour or two, because the alternative is
22 just not tenable.

23 They didn't know whether a person was inside the
24 house and they weren't willing to wait to find out that
25 that person was dead.

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1 So while we don't know the answer to who the caller
2 was, why she called, what her purpose was, it's not
3 determinative. I can't answer that question for you.
4 But I can say that you can answer the question whether
5 Therron Richardson is guilty of trafficking cocaine.

6 And, finally, there were a lot of items in the house
7 that show that this wasn't just a place where a person --
8 where a person stored drugs. This was a place where a
9 person bought in large quantities and repackaged them
10 into smaller quantities. They had scales; they had a
11 cutting agent which allows you to expand your product.
12 He had big sandwich bags, small sandwich bags, and then
13 he had little bags which might hold a gram or so.

14 And what did he have to protect his supply? He had
15 firearms and they were loaded. They were ready. On the
16 issue of the firearms, the statute says that you're not
17 only precluded or prohibited from owning a firearm, you
18 can't even have ammunition. And he had both.

19 All the evidence in this case points to the
20 defendant as being the only occupant of that house. The
21 lease was in his name, he paid the bills, he brought mail
22 that was sent to his mother's house on Kennedy Street to
23 Old Fort Avenue. He parked his work truck there. He
24 kept his work tools there. He had his cash there. He
25 kept his guns there, and he kept his drugs there.

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1 I would submit to you that once you've retired to
2 the jury room to deliberate and you've had an opportunity
3 to review the evidence that was submitted in this case,
4 that you all will conclude that on October 17th, 2010,
5 Therron Richardson had in his possession over 2,000 grams
6 of cocaine and that he had firearms in his possession,
7 even though he's prohibited, and you will find him guilty
8 of trafficking cocaine, possession of a weapon during the
9 commission of a violent crime, and possession of a weapon
10 by a person convicted of a violent crime.

11 And I would add that on the issue of the 911 call,
12 the State is not asking you to condemn Mr. Richardson.
13 We're asking you to hold him accountable for his actions.
14 Hold him accountable for having illegal drugs in his
15 house. Thank you.

16 THE COURT: Thank you, Mr. Sowards. Mr. Davis?

17 MR. DAVIS: If I could grab some exhibits first,
18 Your Honor?

19 THE COURT: Sure. Take your time, sir. No rush.

20 [Whereupon, Mr. Davis reviews photographs]

21 MR. DAVIS: Thank you, Your Honor.

22 THE COURT: Yes, sir.
23
24
25

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CLOSING ARGUMENTS

MR. DAVIS: Good evening, ladies and gentlemen. I wasn't sure what exhibits the State was going to use. I appreciate your patience in letting me get this together.

To my best count, the State talked about the 911 call three times. They should be concerned about it. You should be concerned about it. It does not go to any of the elements of the offenses that he put on the screen, any of the three indictments that Mr. Richardson stands trial for.

But that's the beginning of several things that makes their story just not accurate. I told you that in the beginning. This is wrong, this stinks, this phone call was bogus. There's no dispute.

Mr. Richardson, as I told you in the beginning, blue-collar worker, Lazy Man Lawn Care. That was the money bag that has cash in it. And, gosh, that makes him guilty, doesn't it? Here [indicates] is his work shirt, one of them probably. Here's [indicates] his truck. If I were buying it, I'd call it in poor condition. If I'm selling it, just because it has to be junk doesn't mean it is an unused truck.

Tag [indicates] [REDACTED]. Business license [indicates]. I won't belabor the point of mail to that business coming to that address. That's who Mr.

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1 Richardson is; just a hard worker. And you must still
2 have questions about this case. The story they gave you
3 in the opening, and now you've heard a day's worth of
4 testimony about that.

5 I asked you to pay attention to certain things, what
6 was presented, what was omitted, witnesses who were
7 omitted, recordings that were omitted. You must still
8 have questions. I'm going to highlight three or four
9 here in a second that I would ask you to consider still.

10 Those questions -- what does that really mean? If
11 you have questions, then you have doubts. And that's
12 okay. You should have doubts. But if you have doubts,
13 then that means they haven't proven their story.

14 They want you to believe, no; don't worry about the
15 911 call being inaccurate. Well, pay attention to that,
16 you have to, because that sets up everything else. So
17 they want you to believe, even though it's a bogus 911
18 call, they just fluked on two kilos of powder cocaine,
19 just by luck. It's undisputed that this call was fake.
20 There's nobody in the house. There's no blood, there's
21 no weapons. They ping it to an address downtown.

22 CAD report. You don't need to -- look at all this
23 stuff. Y'all will have all this stuff back when you
24 deliberate. CAD report. The State's right. They want
25 to kind of gloss over this. CPD officer on scene, ■

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1 North Romney Street. That's downtown Charleston. Now,
2 ultimately, it's not concluded. We don't know who, we
3 don't know where, we don't know why. As to the elements
4 they don't have to give you evidence -- to buy this story
5 doesn't that have to be explained?

6 The State produced the 911 call. You can listen to
7 it. That was the only recording they provided for you to
8 listen to. They produced a 911 call. We are not
9 suggesting that Deputy Bowen or Deputy Alexander knew
10 about the location when they entered. That's not what
11 we're suggesting. But law enforcement did. Dispatch
12 did. CPD working on it; law enforcement knows about
13 this. It was not coming from Old Fort Avenue. It was
14 pinging off of downtown.

15 It is fair, it is right, for you to wonder who and
16 why, because that sets this entirety of this
17 investigation, this seizure, in motion. Is there any
18 doubt; is there any doubt, on this that he was framed?
19 Listen to the call. My boyfriend's beat me up all day,
20 he's trying to choke me, he's trying to get in right now,
21 I'm locked into the front bedroom.

22 Front bedroom. Tells them exactly where to go. Is
23 there any doubt about that? But who did it, why did they
24 do it. Now, look, I told you we don't have the answers
25 over here. I told you I don't think y'all have the

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1 answers. Was this a jilted lover? Was the person
2 calling the person that actually knew the female? Maybe.
3 A person with a grudge, a friend that the relationship
4 has turned bad? But those things fit as possibilities.
5 They do.

6 For a second let's talk about how the police
7 entered, because I do think that is important, too, and
8 it's something that is critical and is in dispute.

9 Deputy Bowen, first on the scene, the one that does
10 the report and the one who testified first, talked about
11 the scene and the truck and stuff, calls that in, is
12 worried, understandably. So is Alexander -- someone is
13 in there hurt or needing help or needs to be apprehended.
14 But when Alexander calls and says, hey, come around back,
15 I've got an open sliding door, and he radioed that in to
16 dispatch. But you didn't get to hear it.

17 Bowen says it was unsecured. That's what he said in
18 his report, unsecured. Alexander says open. Well, which
19 was it? An unsecured -- an unlocked, sliding-glass door
20 is most consistent with the evidence. It's also most
21 consistent with him being framed.

22 There's a security system. We know, we know,
23 because we put it in, that the first alarm to go off on
24 the event history -- they called Mr. Bunn from ADT, but
25 they didn't want you to see this. Asked him all the

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1 questions and sat down. I had some questions for him and
2 I asked that you be able to see this. The Judge said,
3 yes. It's evidence. The first line: At 11:29 and 52
4 seconds, there is a trigger on zone three.

5 Now Mr. Bunn didn't install it. He can't tell you
6 exactly where that is. But what he can tell you is on
7 down, zone nine is most likely interior; so the motion
8 sensor. He had fire alarm, windows and doors, motion
9 sensor. That's unlikely a motion sensor on the rear
10 door. It's the back door.

11 11:29 and 52 seconds, it's the back door. The
12 reason that's important is this: dispatch indicated that
13 the deputies arrived on the scene at 11:15 and 13
14 seconds. That's in the CAD report, number five. They
15 are dispatched. They arrive on scene at 11:24. It's
16 right on the front page, when they're dispatched, when
17 they arrive; 11:24 and 59 seconds.

18 Five minutes later, a door or window -- and I'm
19 going to tell you, we know the only thing that was open,
20 physically opened, about five minutes later was that back
21 sliding door. That triggers. And that is on Defense 1.

22 Then they go inside. Then motion sensors get set
23 off because they're walking around inside. They're doing
24 their emergency sweep, and we understand that. But it
25 was unlocked, not open. And that's consistent with