THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

CASE NO.: 2019-001317

Jacquese Underwood #323347,..... Petitioner,

vs.

State of South Carolina, ...Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)	2013-GS-46-2073
	2013-GS-46-2040
STATE OF SOUTH CAROLINA)	
)	
vs.)	
)	
JACQUESE T. UNDERWOOD)	
)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA)	OF PRETRIAL HEARING
)	
VS.)	
)	
DUANE ARNESS HARRISON)	

AUGUST 25, 26, 2014
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE LEE S. ALFORD

APPEARANCES:

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YORK, SOUTH CAROLINA

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ATTORNEY FOR THE DEFENDANT, DUANE ARNESS HARRISON

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	Direct	Cross	Re-Direct	Re-Cross
Frank Finch				
By Shelton	28			
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E-X-H-I-B-I-T-S

NO.	DESCRIPTION	ID.	EVD.
C1-	Search warrant - 5 pages	4	56
C2-	Copy of Miranda Rights	4	91
C3-	Photograph of phone with Number	4	
C4-	Text messages - Harrison to Underwood - (10/17)	4	
C5-	3 pages of text messages (Oct. 6)	4	
C6-	3 pages of text messages (Oct. 17)	4	
C7-	One page of text messages (Oct. 18)	4	
C8-	3 pages of text messages (Oct. 23)	4	
C9-	Photo of cell phone with message	4	
C10-	One page of text messages (Oct. 11)	4	
C11-	Copy of UPS shipping label addressed to Sheruka White	4	78
C12-	Jacquese Underwood's criminal record	4	
C13-	Duane Harrison's criminal record	4	

(WHEREUPON, DOCUMENTS MARKED AS COURT'S EXHIBITS)

THE COURT - Let's take -- we don't have a lot of time left. Let's just take about a five minute break, give everybody a restroom break and we'll come back, anything we can do ---

MR. SHELTON - Judge, I'd propose maybe we just reconvene in the morning. It's been a long day.

MR. RUTHERFORD - Your Honor, I would ask not to do that. I've got another trial in Richland County that started today. I've got other lawyers trying that, and since this has broken down, I just want to go and do that one in the morning in front of Judge Manning.

THE COURT - Well, but are we going to have time to do the pretrial?

MR. SHELTON - No, sir, we're not. It's twenty til 5:00 and as I talked about this morning, I've got ---

THE COURT - He's got a wife with a broken arm.

MR. RUTHERFORD - Got you.

THE COURT - We wouldn't have a lot of time in any event I don't think, but I -- I'm willing to do what we can do. If you got anything we can do quickly.

MR. SHELTON - I mean I think -- my understanding is a lot of these motions kind of interchange. I think -- if we're coming back in the morning, why don't we just

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start fresh in the morning. That would be what I would propose. I think some of the things Ms. Moody has interconnect with -- like -- a couple of the issues interconnect.

MS. MOODY - Welcome to tell you briefly, Your Honor. And I recognize that -- so I would ask the Court to limit any testimony coming from Dalmicos Hemphill as it relates to my client and only use his testimony, if necessary, for rebuttal purposes. The other is, limit the text messages prior to October 30th, 2012; I believe they have amended their indictment which is -- it encompasses some text messages that show they communicated, but it doesn't give enough -- it's not credible in my opinion, and I think they will be subject to not coming in under the 403. And then the last one, the one that is, I think, really quick, is preventing any testimony from State's witness Shureka White regarding any prior knowledge of Mr. Underwood's criminal history. I believe in one of the statements she indicates she knew him -- excuse me, in the incident report she indicated that she knew him and had been involved with him prior to him going to prison and I just wanted to make sure that that was not mentioned.

MR. SHELTON - Your Honor, as to number three, I completely agree with defense on that. I've spoken with Ms. White and have already instructed her accordingly and

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attend to do so before she's scheduled to testify as a reminder. She's indicated she understands that and --

THE COURT - Make sure before she gets on the stand she knows it, because they don't think about it, they get on the stand -- they're lay witnesses, they don't think about it and they ask them a question -- particularly if you ask them a broader question. Had an attorney asked the witness something, oh, I told them not to answer it, I told them wasn't going into that. Said you asked them a question, that says broad and you expect them not to go into, but a -- you know, you've got to tailor your questions if they're not being able to go into that if you've got any questions about that. So make sure they understand that. And, of course, any -- if you're going to try to impeach with anything, that's different, but you have to be able to -- we'd have to address those -- any offenses which you wish to impeach, we'd have to be able to go through those and let me do an analysis on if you can before you -- at any rate, that's not where we are on the motions, though. You're agreeing with Ms. Moody's motions?

MR. SHELTON - On number three, yes, sir, but um we -- we do not agree on number one and two.

THE COURT - Okay.

MR. SHELTON - I think we're probably going to need a proffer, at least some testimony in regards to at

least number two, potentially number one. I can just advise Your Honor basically what these relate to. Number one, Dalmicos Hemphill is not directly involved with the conspiracy that -- on October 30th until after these two men engage in the package that's suspected here. Dalmicos Hemphill got a phone call and he would testify he got a phone call from Mr. Harrison's cousin or somebody that he knows asking to pick up another package, and then Mr. Harrison contacted him asking him -- Mr. Harrison had the cousin or friend contact Mr. Hemphill to have him meet a couple of days later to discuss why didn't you pick up the package and that -- it's the State's position that goes to the heart of the conspiracy and the heart of the incident that's kind of the culmination, if you will, of the conspiracy. Without going into too much detail, you may need to hear from Mr. Hemphill to gauge whether that falls into a 404 ---

THE COURT - Might need a proffer on that so the Court ---

MR. SHELTON - And then as far -- and I anticipated as such. I think I'm going to -- I intend to have Mr. Hemphill in the morning to tender a proffer to that regard. As to number two, as I stated when I called the case, I amended the indictment to include the entire month, September 30th through October 30th. These text

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messages that are in question fall squarely in the time-frame in the indictment. They're communications between Mr. Underwood and Mr. Hemphill. They're communications in regards to counter surveillance of what sounds like a delivery vehicle and a package. There's warnings to watch out for the police. Commander Brown has extensive experience in package interdiction and drug detection and enforcement. We would seek at some point in the trial to have him admitted as an expert to give his expert opinion as to what's going on in these conversations, and these are text messages between Mr. Underwood and Mr. Harrison that the State is confident by the time Mr. Brown connects the dots, we will have -- we will have authenticated that this is a conversation between these two men through other evidence. So I think it falls squarely within the range of the indictment and the conspiracy that's alleged. In particular the package was delivered on October 30th to a house on Shenandoah Circle in Rock Hill. Thirteen days earlier Jacquese Underwood sent a text message to Duane Harrison with that address, and it's an address that neither one of them lived at; it's where Jacquese Underwood's ex-girlfriend lived. So that clearly shows knowledge that something -- why else would those men be sending -- one sending the other one an address? That

clearly falls within the conspiracy since this package was shipped from California to this address.

MS. MOODY - Your Honor, if I may. When reading the text messages that are 13 days prior, it's asking for assistance at that time. It's not talking about the um -- it's an address that's forwarded telling him to come and help him at that address on that date. That's how I read those text messages. As well as the package, it is addressed to Shureka White in this particular situation. She received a phone call and I guess we -- I don't know whether we need to put her up there, because I'm not really clear on her testimony either, but she received a phone call from her neighbor telling her that the police swarmed on her house. So she was put on notice as to what was going on. Looking at the search warrant that initially was served or that they were trying to execute at this particular address -- they were not looking for Jacquese Underwood. They were looking for another individual that's not in this courtroom. And so them knowing each other, I don't think that that clearly states that there is some kind of drug transaction going on. Them knowing each other and communicating with one another -- where he is, he's telling the other person to come where he is, does not suggest that it is a drug transaction going on. Further, we don't know what was sent to that address, if there was

anything sent to another address. I believe they focused on some other addresses in here. We don't know what -- what it was that they received. The one thing that we do know of is there was a package that was -- I guess it -- it gave all the indications of being a drug package, and they intercepted that and they operated on that day, October 30th, as it relates to that. Incidentally, the State does not have that cell phone that would have those text messages, so we would argue that we don't even know if that is Jacquese Underwood's cell phone. The evidence that they might be using to say that it is his cell phone occurred back in July of 2012. It is now October. They don't get that phone. They don't have that phone broken down as to what messages were coming from Jacquese Underwood, and they have Mr. Harrison's phone. They don't have any text messages or anything that are occurring on October 30th, the day that this incident is occurring as to them communicating about this package. So we would ask that the Court based on this -- we're not saying suppress them all at this point. We're just saying to limit them to a reasonable range, because 13 days -- the way the texts read is they're -- he's currently at that person's house and they don't have a package that comes with in. And, again, they amended the indictment, I believe, so that they could have evidence. That's my position. And then they did so

back in July, almost two years -- what -- some two years later.

MR. SHELTON - And, Judge, taken -- I mean realizing you're not from -- this familiar about this case as we are -- I mean we're talking about text messages you've never even seen -- the State's position, basically, is you can't look at these things in a vacuum. There's a series of text messages that Commander Brown has reviewed, and taken in context with what happened on October 30th, 2012, it's the State's position they clearly suggest that there was counter surveillance and some sort of package delivery going on. There's mention of, is the package dropped, has the man knocked on the door, you got it, you got it. I mean there's this continuing flow of dialogue here. If they're not talking about the package delivered, I have no idea what they're talking about. The State does not intend to argue to the jury that this is proof that all these others packages of drugs were delivered, because we will concede that we can't prove what was in those packages, but what is important and why the jury needs to hear this, it's a pattern of communication between these two men with the same thing they were doing in October 30th, 2012, package, counter surveillance, waiting for a package; there's a warning, watch out for the police. There are suggestions of criminal activity. The homeowner, Shureka

White, will testify for the State that she did not give either man the authority to be at her house on October 30th, did have no idea about drugs, had no idea that anything was being sent to her house. She was never charged. She was interviewed. So this -- this -- there's a whole bunch of stuff that's going to come out in this trial that's going to support the State's position. The defense will have an opportunity to cross examine. If the text messages reveal nothing, that's for the jury to decide, but these -- it -- taking this whole snapshot of time, this conspiracy out of context is not really getting the big picture. There's a series of events going on that culminates on October 30th when this -- this particular package was intercepted.

MS. MOODY - Your Honor, if I may. I recognize that he's trying to go with there is a common scheme or plan here, however, Rule 403 as to whether it is probative or prejudicial to my client is something that I think that we have to attend to. I think that based on the -- if I -- because the Court doesn't have a full picture of it, they intercept a package, they reveal that -- they find that it has this cocaine crack in it, they open the package after they get a -- anticipatory search warrant, they get the package, the kilo that is the package, they take it out, they then set up, basically, a sting on this particular address that is addressed to this witness that they will

have, Ms. Shureka White. In the package it also has children's books. One thing that Ms. White does not tell the State until here recently, which, you know, kind of -- it all is kind of fuzzy to me, is that she was with my client that day. Without getting into the point of him having to testify, it's our position that the package was coming to her for a specific reason. The person that they were looking for also is Gregory Parker, he's on the search warrant; he's living there; that's what they're discovery tells us, is that this gentleman was living at that house. So when they swarm on the house, they don't even know that my client is in the house. So they're not looking for him, but they arrest him, even though they're looking for another individual. The text messages, you know, I think it would confuse the jury as to trying to figure out what they're about. I think that when they initially charged them, they charged them with that particular package, and had they gotten the phone, the other records for the phone, they would have the full -- there would be some reliability as to what the packages -- what the package was for, who the messages were coming from. We don't even know if that phone is the exact phone that my client had at that time. So I think based on just confusing the jury, I don't think that it is more probative than prejudicial, I would ask that the Court limit any use -- and we'd have to look back

and some of the e-mails, but I did -- excuse me -- the text messages -- I did read through each one of them. I didn't read them in a vacuum -- reading them back and forth and I read them at least three times. There are conversations that my client has with another individual, but it doesn't -- we don't know what it is. We don't know what -- what they're -- what kind of package they're trying to get, and I need to look back at what he was talking about in terms of what -- watch out for the police, but at least as to this particular address that is the subject of this indictment, there is no text messages that lead -- I don't think that they would be probative to -- for the jury. It would confuse the jury.

MR. SHELTON - Your Honor, if I may just respond to a couple of things. The State's case in chief is presenting a conspiracy to the jury, so, you know, 404 analysis, we're alleging a conspiracy took place. We're not -- we're simply alleging a conspiracy took place. The fact that the defense is taking the position that the police were looking for somebody else, Parker and White, that's simply not true. They did a -- no offense to Ms. Moody, but they did a check on the residence. They had no -- they had no indication of what was going on at this house. This was not something that they -- that they've been watching. This is something they happened upon when

there was an alert to the UPS facility. They did a check through their system to see who's pulling power, who's listed that as their address, any number of things. Shureka White lived there; Mr. Gregory Parker lived there at some point. He did not live there at that time. Shureka -- Shureka White was the only person living there with her four children, and she would testify to that effect. She wasn't there. She was at work. And she has -- she told the police the day of and has been consistent she had no idea what was going on. Her credibility in that regard is for the jury to gauge. That's not for us to decide in pretrial. It's for the jury to decide whether she's telling the truth or not, and she'll be subject to cross examination by two competent defense attorneys. As to Mr. Underwood, the police didn't just arrest him; they saw him pick up the package off the -- off the front step after Mr. Harrison was running counter surveillance for a period of time up and down the street, following the delivery driver out, came back in and then Underwood picks the package up out of the house, a house he had no permission being inside, a house he wasn't supposed to be in. And then he locked himself in that house as Mr. Harrison ran from the police and threw his cell phones. So the text messages that we're -- we've been talking about are in one of the cell phones that Mr. Harrison threw.

Take that into consideration, the fact that he threw the phone, why is he throwing the phone, because that, I would argue, is some indication of I don't want the police to get these phones, I'm going to throw them away from me, coupled out with the fact that the defense is trying to point fingers at somebody else is all the more reason why the text messages are relevant. It goes to knowledge; it goes to intent; it goes to the overall conspiracy in this month.

THE COURT - All right. I -- you know, there's no way I can really make any kind of ruling on that until I hear it. I think -- but I'll say this. The State is entitled to present its case, and it's entitled to present the whole picture. In this case if they're alleging conspiracy and that is essentially the charge -- of course, trafficking includes conspiracy, conspiracy to do this, that and the other, so conspiracy can be graving of the defense and the proof of the offense, so they're entitled to present their case and what they have. And -- now, where -- when you get into a situation under a 403 analysis, I'll just have to look at it and see, but if it tends to -- if it's probative on the question whether there's a conspiracy or not or what the defendants knew or didn't know and with regards to a conspiracy, whether they were involved it or not, then they're entitled to produce it. I mean this is not just a possession case. It's a

conspiracy case, so I think they're allowed to present whatever they have. Now, at some point in time the Court's going to have to look at a directed verdict motion, and, of course, I'll also have to look at in an individual basis whether it comes in or not if an objection's made, but I don't think I'm prepared at this point to make any kind of ruling on the admissibility of some of this evidence until I hear what they've got and what their theory of their prosecution is and as it relates to conspiracy, because it's much broader than just simple possession, possession with intent or distribution. It's much -- it's much broader than that, conspiracy, as a drug conspiracy. And so -- I mean they have to show a connection between whoever they say was involved in this conspiracy and what they did. Sometimes you have to do that through circumstantial evidence and it's allowed to be proven by circumstantial evidence. I can't say that any of this is not coming in. They get to present their case. The defense has its theory and is entitled to present its case along - attack the State's case. But I'll have to do it -- I think I'm going to have to do as we go along. I don't think I can do it pretrial, unless there's something very specific that we can look at or listen to that -- they're saying we -- I need to see the whole picture before I rule on the admissibility on this, and I think they're probably right

about that. But, you know, I'm willing to listen to you on it and if you want to make any proffer, if that's an issue we can proffer it, so I'll have a better idea of what we're talking about. But again, we have to look at the whole picture when you're talking about a conspiracy as to how they can prove it. If it's not proven by somebody had or didn't have possession of something, so that's where I am. Yes, sir, Mr. Rutherford?

MR. RUTHERFORD - Yes, sir, Your Honor, and obviously we would join in our co-counsel's argument and we'll reserve at a time -- we didn't know we were going to argue all this this afternoon, and my rule is to get out of here at 5:00.

THE COURT - I know you need to get on the road, and everybody else does, too.

MR. RUTHERFORD - Yeah. Well, just briefly, Your Honor, I would suggest that the Court at least ask the State to proffer those text messages that they intend to rely on so that we can look at the whole picture. Part of the problem I think as Ms. Moody is suggesting and that I hear from the State side is they initially thought that it was related to this day, but then when they got access to the phones, they went back until they could find text messages that they think can relate to the delivery of

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packages, not that package, but the delivery of other packages. That's not a conspiracy. We'd have ---

THE COURT - Well, it ---

MR. RUTHERFORD - --- prior bad acts.

THE COURT - Well, it could be.

MR. RUTHERFORD - Well, and that's the problem ---

THE COURT - It could be part of the conspiracy. That's the problem you got in defending a case like this, is they're allowed to show a conspiracy. That's -- conspiracy is an offense.

MR. RUTHERFORD - Right.

THE COURT - And if they have to got back a little ways to show this was all part of what was going on over a 30 day period and this was on-going thing, they don't have to prove that they received or disposed of any drugs 30 days before. All they have to do is prove that this was an on-going conspiracy that wound up by a -- by an act itself, which is dealing with lots of drugs on this case. And I think they're entitled to show that there was an on-going conspiracy. It's not like saying somebody distributed drugs on this case, so you go back to what they were talking about on the phone about here. It's a conspiracy.

MR. RUTHERFORD - Right.

THE COURT - And so I think they can go back to a reasonable time and connect it altogether if they can. I

don't know if they can or not, and I'm willing to listen to it and I'm certainly prepared to make a ruling when the time comes, but I don't think I can do it at this point.

MR. RUTHERFORD - No, I've agreed on it. All I'm asking ---

THE COURT - I'll listen to the proffers, but I've got to look -- I've got to look at it in the light of allowing them to present their case and establishing it. In the way of conspiracy I have to give them a little more leeway, because we're not just talking about what happened on one particular day. We're talking about whether it involved other drugs; maybe that doesn't come in, but the fact that they were working on these things and conspiring to rule these things. If they can show that, even if it went over a year's period, I think they can do that. Of course, they have to allege it in the indictment. I think they can do that. It's much broader on conspiracy.

MR. RUTHERFORD - Yes, sir. But the problem is, at some point the conspiracy began as it relates to that package, it ended, it started wherever it is, and all I'm asking is that they don't -- all I'm saying is if they don't proffer it to Your Honor in advance, then on each individual text message where they said -- he said -- they said look out for the police, we're going to have to have this whole hearing all over again as to whether that is

related. My -- the guy that drives me back and forth is in the back of the room. If I send him a text and say, the police are at exit 74, it is totally unrelated, but if you try and make it a part of a conspiracy related to delivering packages, in the absence of everything else they get to say that, and that's what we're objecting to, is that you can't take somebody cell phone, pull out text messages that you think fit a conspiracy on that particular day when there are no cell phone messages on that particular day relating to that package, and then say that that's part of a conspiracy.

THE COURT - Well, I hear -- I understand your position on that, and -- but at the same time, like I say, it'd be very hard for me to make a ruling without having the whole picture.

MR. RUTHERFORD - Yes, sir.

THE COURT - You -- and they have to tie it together somehow and show a conspiracy. They have to be able to do that.

MR. RUTHERFORD - Yes, sir.

THE COURT - And an isolated incident that happened 30 days before wouldn't be sufficient to do that. I think they have to -- have to do more than that. But they're saying they can do that. I just -- I'll listen to a proffer and may have to rule as we go along on this.

It's going to be very difficult for me to do if you all just give me a synopsis of what you think you can produce or what you can do.

MR. SHELTON - And, Judge, we can have our witnesses here for a proffer tomorrow. Just tell us what time you want to be here, and we can reconvene tomorrow. I need to go pick up my children so ---

THE COURT - What time you want to start in the morning?

MR. RUTHERFORD - 10:00 o'clock, Your Honor. I have to do the same thing he's doing tomorrow morning.

THE COURT - All right, yes, sir. All right, you want to try to start about 10:00 and I'll ask everybody else to be back here at 10:00 and we'll get started -- have your witnesses ready to go at 10:00 o'clock. All right.

MS. MOODY - Thank you, Your Honor.

MR. SHELTON - Thank you, Your Honor.

THE COURT - Counsel, let me tell you -- I'm going to allow them to stay out. We haven't sworn a jury yet. Even though the case has been called, we haven't sworn a jury yet, so I'm going -- this will be a long time for them to sit here waiting -- I'm going to let them stay out with this admonition. If for any reason -- we're going to start the trial back on Tuesday, and for any reason you didn't show up, the trial's going forward in your absence. Your

attorneys will be here and they'll represent you the best they can. If you choose not to be here when we get started with the trial on Tuesday, it'll go forward in your absence. If you're tried in your absence, a bench warrant will be issued for your arrest if you're found guilty. If you're found not guilty, that'll be the end of it. If you're found guilty, then you'll be picked up and the sentence will be imposed on you at that time. And so I want you to understand that. You have to be here. If you don't, the trial is going forward; we've already gotten started with it. The other thing is you're not allowed to contact any of the witnesses during this break that you've got. It's the same as if we were in the trial. So I'll not allow you to contact -- I'm talking -- your attorneys can call whatever witnesses they need in preparation for trial, but you're not allowed to contact anybody who may be testifying on behalf of the State themselves. You understand?

MR. UNDERWOOD - Yes, sir.

MR. RUTHERFORD - Thank you, Your Honor.

MS. MOODY - Thank you, Your Honor.

MR. SHELTON - Thank you, Your Honor.

THE COURT - Thank you.

(WHEREUPON, COURT IN RECESS FOR THE DAY AT 5:05 P.M.)

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(WHEREUPON, COURT RESUMES AT 10:00 A.M. TUESDAY, AUGUST 26, 2014)

THE COURT - All right, good morning, counsel.

MR. RUTHERFORD - Good morning, Your Honor.

THE COURT - Y'all ready to proceed this morning?

MR. RUTHERFORD - Yes, sir, Your Honor.

THE COURT - All right.

MR. SHELTON - Your Honor, initially -- I think we probably can just go ahead and put a few things on the record we discussed. It wasn't brought up through a motion, but -- in court -- but both attorneys on behalf on behalf of their defendants did file Rule 5 and Brady motions along with their letters of representation. The State has complied with this. I'm -- to disclose Brady and Rule 5 material. In fact, I think we've exchanged e-mails. I've lost count. I've got a file that's real thick on all the things we've been updating the defense on as they come to light in the continuing investigation over the last 18 months or so. I'm confident that the defense has everything that the State has in its file, whether it's relevant material, potentially exculpatory, all of those things that -- I don't know if the defense has anything they need to articulate that they think the State has not provided, but I've gone over with Ms. Moody a couple times now these text messages and phone data and stuff like that.

I'm confident that the State's complied fully with its obligation. And I don't know if the defense has anything they need to articulate at this time.

MS. MOODY - Thank you, Your Honor. May it please the Court. There may be one other item, but I think they did give it to us, and otherwise, I can speak with them after we get out of this proceeding.

THE COURT - Is there a reciprocal in this case?

MR. SHELTON - Yes, sir. That was going to be second thing to -- I filed it with the Clerk of Court. It's been a while ago. I've got a certified copy if you want to make it a Court's Exhibit. It's filed with the Court.

THE COURT - I don't know if -- unless there's some issue comes up. Might as well address that, if they're in compliance.

MS. MOODY - I have nothing else to provide to him, and I do have it. I have a copy of it here in my file for purposes of ---

MR. RUTHERFORD - Your Honor, we have nothing to provide, but there are some issues related to a potential witness that they're going to proffer this morning, so if they haven't provided anything, we'll know when that witness gets up to proffer.

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MS. MOODY - Your Honor, as it relates to one of their witnesses, Dalmicos Hemphill, I needed to put on the record that I've represented him before on a number of occasions, and so I needed my client to be made aware of that representation. We have discussed that, and he tells me that he has no problem with it. I understand the State has discussed it with Dalmicos Hemphill that I was opposing attorney in this case.

THE COURT - Mr. Underwood, you've heard what your attorney says, she has represented a witness, perhaps, for the State, that will perhaps testify for the State in the past, which is a potential conflict of interest and -- but -- I guess she doesn't feel like it will be a conflict of interest, but still -- do you understand that?

MR. UNDERWOOD - Yes, sir.

THE COURT - And you wish to waive any possible conflict between she and Mr. Hemphill?

MR. UNDERWOOD - Yes, sir.

THE COURT - All right, thank you.

MS. MOODY - And, if, -- Your Honor, just for the protection of the record, it was in 2005, 2008 and 2009 that I represented him.

THE COURT - Okay.

MR. SHELTON - And, Your Honor, I have spoken with both Mr. Hempbill and his attorney, Cyrus Hinton. Mr.

Hinton represents Dalmicos currently on some pending charges he has at the State level. Both of them have indicated they have no problem with Ms. Moody cross examining Dalmicos if he does testify. I made sure he understands what that means. With these -- these -- the prior representation was with prior offenses that the defense could impeach Mr. Hemphill on, as far as his prior record, for a limited purpose, convicted of, you know, a certain type of crime that carries more than a year. They're -- they're drug charges, so I think they'd be limited to crime that carries more than a year. As far as them going into any details on those, I think that's definitely not allowed under the rules of Court, so Mr. Hemphill understands that any attorney/client privilege he may have with Ms. Moody would not be brought into play here. It would be limited to the scope of the trial that we're here for.

THE COURT - Okay.

MR. SHELTON - Your Honor, in response to the defense's motions that Ms. Moody handed up yesterday, she has indicated -- we agreed on the second one, -- excuse me -- on the third one as pertains to Ms. White. As we discussed yesterday afternoon, she knows not to talk about anything, any prior bad acts in her testimony. Number one and two, we'll get to those in turn, but there are a couple

other things we need to put on the record as well, so I think probably just into those. They should be a little simpler than the other two. So at this time, Ms. Moody had indicated to me that the defense was going to challenge the search warrant as it relates to the parcel that was intercepted at the postal service, and the State's prepared to proffer testimony in that regard.

THE COURT - Okay.

MS. SHELTON - And to that effect, we would call our first witness, Frank Finch.

FRANK FINCH, AFTER BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS -

DIRECT EXAMINATION

BY MR. SHELTON -

Q Please identify yourself for the Court.

A My name is Frank Finch. That's F-i-n-c-h.

Q What do you do for a job or occupation?

A I'm a deputy with the Lexington County Sheriff's office, in Lexington, South Carolina.

Q And how long have you been in law enforcement?

A Been in law enforcement a little over 17 years.

Q Are you a certified canine handler?

A I was at the time this occurred.

Q And how long were you certified?

A For approximately five years.

Q Are you currently certified?
A No.
Q What type of training and qualifications have you received or had you received that qualified you as a canine handler?
A Myself and my canine partner at the time, Ben, received over 200 hours of initial narcotics scent detection training. We had 16 hours of on-going monthly training, meaning four hours a month. Additionally, we went to numerous classes to include the Regional CounterDrug Training Academy, a 40-hour class in Meridian, Mississippi, a additional class, a 40-hour advance narcotic handler course put on by the Chatham County Sheriff's office in Savannah, Georgia, a conference -- looks like a two-day conference, two or three-day conference in Charleston put on by the National Criminal Enforcement Association and a one-day conference put on by the multi-jurisdictional counter drug task force over -- dealing with canine narcotics investigations in March of 2012.
Q And so you said all of this training and experience was with a canine named Ben?
A Yes, sir.
Q Is that the dog that you were using in this investigation on October 30th, 2012?
A Yes.

Q And what is his breeding?
A He's a Belgium malawa.
Q Is he still an active law enforcement ---
A No, sir, he retired.
Q And when he retired, did you allow your certifications to lapse?
A You're certified with the dog, so when he retired his -- our certification would elapse.
Q So if you wanted to be re-certified, you'd have to do so with another dog?
A Yes.
Q And how long did you work with Ben?
A Approximately five years.
Q And when you explained all your qualifications and training, that applies to you as well as Ben. Correct?
A Right. It's us together as a team.
Q And were y'all certified?
A We were certified at the time.
Q Is the certification process different than the training and on-going training?
A The certification insures that the dog knows the odor and the handler can recognize when the dog knows the odor. The training just insures that you can read the dog, that the dog knows the odor. It -- they kind of work through -- if somebody's had some problems, because it's usually done

as a team effort, meaning all the canines in the team, and you kind of work through problems. If the dog has issues with going high, well, they put -- put like high is high. If they have a problem with certain other odors, we would often times put food out just to insure the dog was focusing on the odor of drugs, not the odor of food or any kind of cover odor as well.

Q And so can you explain the certification process?

A Yes, sir. The certification process typically is either five rooms with four odors when you've got one blank room. In each room you have three minutes, and at the end of the three minutes or when the dog alerts, you've got to say he's alerting where or it's a blank room. Or they also -- sometimes they'll have vehicles out and you've got five vehicles, hides inside the vehicles or on the outside with one blank one, and you've got three minutes per a vehicle.

Q And is this a process where you've got to be recertified?

A Annually, yes, sir.

Q So were you and Ben recertified each year you worked together?

A Annually, in the spring, usually April or May.

Q And is there a specific name associated with the certifications y'all received?

A Narcotic's scent detection canine. We were -- at the time we were certified by the South Carolina Police Canine Association.

Q And did you have any prior field experience together?

A Before that date we had a multitude of field experience.

Q And before that date, had you participated as a team in probable cause assessments for search warrants?

A Yes, sir, numerous times.

Q Approximately how many times?

A I've got his bio; his bio is typed up from when he retired in March, 2013. At that time he'd detected marijuana 395 times, methamphetamine one time, cocaine eight times, heroin three times, ecstasy twice and crack cocaine four times. We had a total of 800 deployments with me as his handler. Those deployments resulted in 200 federal search warrants being issued and 236 magistrate search warrants being issued.

Q Have you ever been qualified as an expert in Court?

A I have before.

Q And in what field?

A The parcel interdiction.

Q And is that in your -- in relation to you working with Ben?

A It was -- it's identifying the parcels that look suspicious and then presenting them for him to -- him or another canine to see if they can detect the odor of illegal narcotics.

Q And where were you qualified ---

A Richland County Court.

Q How many times?

A One time.

Q One time.

MR. SHELTON - Your Honor, at this time I would move to have the Court recognize Mr. Finch as an expert in parcel interdiction with the use of a canine.

THE COURT - Voir dire?

MS. MOODY - No, none.

MR. RUTHERFORD - None, Your Honor.

THE COURT - The Court will find him so qualified. It appears he's been qualified and I think the experience of the dog -- long number of times that have been involved, the years they've been involved, and he's previously been qualified with his training and experience, so the Court will find him qualified.

Q Mr. Finch, how does a dog indicate or alert, Ben, in particular?

A Well, dogs are taught to alert two different way, the pass alert, which is when they scent or lay down at the

source of odor or -- Ben was taught to do it in the -- what they call aggressive alert, meaning they scratched at it.

Q And we've eluded to this, but were you involved in the investigation of a suspicious package at the UPS facility on Mount Gallant Road in Rock Hill in York County on October 30th, 2012?

A Yes, sir.

Q Please explain to the Court how you became involved.

A I was working parcel interdiction at the time with Agent Dennis Tracy who worked at the sheriff's department at the time. I was essentially the other member of the team and their canine handler. He called me up and said can you go to Rock Hill, I've got information there's a suspicious parcel inbound destined for the Rock Hill area, can you take your dog up there and get in touch with a SLED agent who's on the task force with us. I was on the -- task force with the DEA Columbia district office, that way the SLED agent could obtain a State search warrant, and we traveled to Rock Hill.

Q Did anyone go with you?

A Myself and Special Agent Aaron Rawl rode separately but we both met up there.

Q Did you take Ben with you?

A Of course I did.

Q And did you and Ben participate in what's commonly referred to as a package line-up?
A Yes, sir.
Q Explain how that is conducted?
A Once we've identified the suspicious parcel, whether it being we're working about and we see one that fits the indicators or in this case someone has said, this one fits the indicators, that parcel is placed out with four other similar parcels because they're non-suspicious, meaning you go and just grab them out of the -- the ones that are sitting there waiting to go out, and you set them out. You set them out, space different -- a decent way apart so the dog can adequately sniff the parcel.
Q And was this line-up on October 30th, 2012 at the UPS facility conducted in that manner?
A Yes, sir.
Q Did Ben sniff the packages in the line-up?
A Yes, he did. He -- refer back to my canine report; that way I don't miss anything.
Q Okay, yeah, let -- whenever you're ready, just let the Court know what -- what your findings were in the investigation.
A Okay. Myself and Agent Rawl responded to the UPS hub in Rock Hill. We put four non-suspicious parcels out with the one suspicious parcel. I had Ben start at one end,

gave him his command to find illegal -- denote the odor of illegal narcotics, observe him pass a couple of parcels, then he gave a quick and sudden head turn, which literally mean his head turned suddenly to a parcel, quick and suddenly as he passes one parcel indicating a change in behavior. He then sniffed the parcel. With deep deliberate breaths you could -- you could hear him. You could see the -- in his breathing you could see it was different than just a normal breathing. He became visibly excited. You could look at the dog and see he was excited. Then he scratched at the side of the parcel and quick looking back at me, meaning he had -- it was his final odor indication, indication for the odor of illegal narcotics. And additionally when he swatted at or scratched at it and looked back at me, I put a slight amount of tension on the lead, because with -- especially with him, if you put tension on it and there's nothing there, he'll go on to the next. Put a slight amount of tension on the lead and he stayed with it, scratched that again and looking back at me wanting his reward, indicating that there was odor of illegal narcotics coming from that parcel.

Q And had you given him any clues or cues as to which one of the packages he should alert on?

A No, sir, I kept moving. Again, that's part of the training. You -- during the training other handlers watch

you, and if they think you're giving them cues, it could be something subtle, but, you know, they could correct you, and that's what part of training is, so I just let him go.

Q Was anyone else present with the two of you during the ---

A Special Agent Rawl was there, and there was some employees of UPS as well.

Q And did you notice anyone else that was present giving Ben clues or anything like that?

A No, sir. Everybody was just kind of watching.

Q Based on your training and experience with Ben, was this a clear alert?

A It was a clear alert. That sudden head turn is always a good indication he is in odor, and then the scratch is the final indication.

Q Was there any question in your mind as to which of the five packages he's -- he alerted on?

A The one he wouldn't leave. Additionally we -- we took that parcel out and had him run the rest of the parcels to include the area around them, and he did not give any kind of change in behavior, so we knew that was the parcel.

Q And the parcel or the package that Ben alerted on, was that the suspicious package in question?

A Yes, sir.

Q And did you have occasion to look at that package?

A I did.
Q Did you notice anything about that package that was relevant or suspicious?
A That package was much like a lot of drug packages. It had some indicators on it that just on the surface would be one I would've pulled off the belt, meaning it had some -- it looked suspicious.
Q Could you please explain that?
A Yes. This package -- if I can go back to the parcel indicators. The first thing I look for is where is it coming from. And this one was coming from a UPS store. And whereas that's normal for people to ship from a UPS store, when you're looking at a suspicious parcel, that's one of the things you look at is a third-party shipper. And this one was shipped next day, air-saver, which meant that they wanted to get it there the next day. That's one of the most expensive ways to ship it, and if someone's shipping something basic that you'd just pay the price to ship something, often exceeds the price of what's inside. And your typical shipments do not do that. There was no phone number on the recipient. If you get a package from say, Amazon, a lot of times they're going to have the phone number on there in case it gets misplaced, they can call you and say, we've got your package here. There was no phone number on there. It had tape covering all the seams

of the package. It wasn't just your typical, again, Amazon or Belk package that had the tape on the top and bottom and hoping it'll stay in tact til it gets there. It had tapes across the top and bottom, all the seams. And this is two-fold. It's one, to make sure what's inside doesn't fall out, and two, an attempt to hide the -- to keep the odor inside so it doesn't escape. And finally, the names of the shippers were vague or incomplete. It had a name on there, but the spelling wasn't correct, and so that's an indicator as well.

Q And where was the package shipped from?

A It was shipped from -- I think it was Rialto, California, which is in a -- I believe it's in northern California, if memory serves me correct.

Q And where was the package being shipped to?

A Rock Hill, South Carolina, or York.

Q And was it clear on the label -- did it include the intended recipient, the named recipient?

A It had the recipient as Shureka White and gave the address as Shenandoah Circle in York, South Carolina.

Q And was Agent Rawl made aware of the alert and the indicators -- the alert by Ben and the indicators you observed in the package?

A Yes, sir.

Q And did -- with that information in mind, to your understanding that Agent Rawl had petitioned for a search warrant to open the package?

A Yes, sir.

Q Was the intended recipient address, the Shenandoah Circle address, was it checked to determine whether it was an actual address?

A I believe we checked to make sure that was an actual address, but the name did not come up accurate, because I guess the spelling of it was incorrect, and most of the time if you're going to get a package, especially when somebody you know they're going to put the correct spelling.

Q And this all occurred in Rock Hill, York County, South Carolina?

A Yes, sir.

MR. SHELTON - Nothing further at this time.

CROSS EXAMINATION

BY MS. MOODY

Q Agent Finch, ---

A How you doing?

Q --- good morning.

A Good morning.

Q I'm a little confused, ---

A Okay.

Q --- so I want to clear this up with you. Did you notice the package first? You said someone contacted you?
A Right. I was contacted by Special Agent Dennis Tracy who currently works for SLED.
Q And so he noticed the package or ---
A Someone notified him.
Q Okay.
A Yeah. I don't know exactly how he got the information, but it's not like we were working a sort in Columbia, it was coming up here. It was -- it didn't come through Columbia, so we didn't see it that morning. Yeah.
Q So when you saw -- you looked at the package after being alerted to it.
A I don't know if I looked at it ahead of time, but when we got to the UPS store, the parcel was there, yes, ma'am.
Q Well, let me specifically -- when you when through your narcotics parcel indicators, ---
A Right.
Q --- did you do that first, or did Ben alert on it?
A I don't know if I did that first or afterwards. It might've been one of those -- and I can't swear to what happened that day, but I don't know if we looked at and got the indicators and then put it out. What typically would happen was, I would put it out, because the less I'm looking at it, the less I get my odor on it.

Q Okay. And then ---
A If I touch that one, I'm going to -- if I touch the one that's suspicious, I'm going to go out and touch the other one so there's no -- well, he's alerted to the one he's got his scent on.
Q Okay.
A Yeah.
Q So then you also indicated that there was no phone number for the recipient and then you said the name -- the name spelling was incorrect. Is that only as to Ms. White's name on the package, or was there another ---
A There was another name kind of -- it was typed on there, and we didn't -- because it was coming from a UPS store we didn't check that name, because obviously that person whose name's on there doesn't live at the UPS store.
Q Okay, so the actual seal that has the recipient's name on it and the return address, ---
A Yes, ma'am.
Q --- the return address might've been wrong -- the name ---
A Yeah. They could put anybody's name in there.
Q Okay. You indicated that the seams were covered, like that's a indication -- is that something they train you to look for or ---

A Yes, ma'am, it's not one in particular indicator. As you can see the sheet's got several of them, but that's one of the things we look at. If you're looking at -- say, you working a FEDEX belt or UPS belt and you see something with a -- everything taped up, well, you're going to put a little more interest into it; you're going to be, well, like let me look at that. And then if you see there's nothing else on there, then you let it go. I mean a lot of times Christmas parents, grandparents or whoever will seal everything up, because they want to make sure it doesn't fall out. Well, the same thing comes with drugs, too; they want to make sure nothing falls out. So just because it's taped up doesn't mean there's stuff in there, but it is an indicator there's possible illegal activity involved. Does that make sense?

Q Yes. As to Ben, you said that he was trained to aggressively alert.

A Right.

Q And when it's aggressive alerting, it's just scratching.

A Right.

Q There's no other kind of indicator ---

A Well, you -- and that's one of the reasons you have to train and be certified as a team, because -- just because your dog is an aggressive alert, that means he scratches.

Well, the older Ben got, the less he would scratch a bunch, because he didn't tear things up, and he would scratch one time and look back at me. I -- I could read him, and the first time we got certified, they asked is your dog gonna alert, and because he was -- I'm not going to say lazy, but he just didn't tear things up, and that made him a great parcel dog. I mean he wouldn't sit there and scratch like some dogs and bite at it, he would scratch and look back and me and wouldn't leave it.

Q Okay. And so on this particular date, that was consistent with the ---

A Yes, ma'am, was consistent with everything else he had done.

Q Okay. Now, as to your report, you read something where you -- I'm assuming this is the report from the October 30th -- the date has 10/30 --- 30/12?

A 10/30/12, yes, ma'am.

Q In your -- that's the correct date?

A 10/30 ---

Q You have -- in your report you have 10/30 -- well, 10 ---

A Oh, I see what you're talking about. I got 10/30 -- 3012, so it was a typo or a fact figure there, yes, ma'am.

Q All right.

A It's supposed to be 10/30 2012.

Q Okay.
A We hadn't yet got to 3012.
Q Okay. So as far as you read -- I guess it was kind of your write-up of the -- or the summary of the report, I think you read some additional -- do you have additional report as to how he alert ---
A No, it's in here. It talks about how he -- I observed and sniffed the parcels that he passed, gave a quick and sudden head turn; as he passed he indicated a change of behavior; I rewarded him, then had it sniff through remaining parcels and no change in behavior.
Q Okay. Can I get a copy of that report? That's not what I have here. This is from your 2012. Can I show you this?
A Yes, ma'am, you can show it to me.
MS. MOODY - May I approach, Your Honor.
THE COURT - Sure.
A I'm reading verbatim. Which one you talking about ma'am. Am I reading it wrong?
Q No, you're not reading it wrong. It just stops. That's why I was asking.
A I don't know, but I'll be glad to give you this one. I mean it just says what was -- what was located inside there.
Q Okay.

A Yeah.

MR. SHELTON - Judge, for the record, Mr. Finch had e-mailed me a copy of the report. Sometimes in electronic media we don't get everything, so we'll make sure that, you know, -- it's not something we're hiding. We'll make sure Ms. Moody has the full report.

MS. MOODY - Okay. I beg the Court's indulgence.

THE COURT - Yes, ma'am.

MS. MOODY - I have no further questions for this witness.

MR. RUTHERFORD - Just briefly, Your Honor.

CROSS EXAMINATION

BY MR. RUTHERFORD -

Q Agent Finch, you were contacted and you came to the facility. When you got there, you had never seen the package before. Correct?

A I'd never seen it, no, sir.

Q But given your experience, the package did not look like it had been tampered with at all? It wasn't opened and ---

A No, sir.

Q --- all the tape was still sealed?

A Yes, sir.

Q My understanding was glued? All the glued was still in place?

A I'm not sure if it was glued, but I know all the seams were taped.

Q Okay. After Ben hit on it, did you then take the package and open it? Was that your job or was that ---

A Once we got a search warrant, we opened it, yes, sir.

Q You opened it or ---

A Myself and Agent Rawl were there.

Q Who opened it?

A I couldn't tell you who got the knife out and cut it out, no, sir.

Q All right. So a description of the package later on that indicates the -- I guess, the flaps were glued down. Who would know that?

A That would be myself and Agent Rawl, but I don't remember -- if it says it was glued down, then it was glued down.

Q Yeah, but according to who?

A Those of us that was there.

Q Who? Not -- like who exactly ---

A Myself and Agent ---

Q I tell you it was glued down ---

A Right. Well, both of us were there. If it's in my report that it was there. If it's in somebody else's report, then they would've known that too, but myself and Agent Rawl were there.

Q Okay. And the glue on the flaps along with the tape is an indicator. Is that right?
A Yes, sir. They're trying to really make sure nothing gets out.
Q Right.
A Yes, sir.
MR. RUTHERFORD - All right. No further questions, Your Honor.

RE-DIRECT EXAMINATION

BY MR. SHELTON -

Q Agent, did you prepare the affidavit for the search warrant including a checklist for narcotic parcel indicators?
A I'm not sure if I'm the one that physically typed it or Agent Rawl was the one that typed it. I know we have -- because this is what myself and Agent Tracy did, we had these things, so we just pretty much went in and filled in the blanks.
Q So, but there's a checklist that's our ---
A That checklist is the one I provided, yes, sir.
Q Okay. And so the checklist is a list of potential indicators enumerated one through nine. Correct?
A Yes, sir.
Q And not every one of those indicators is selected as part of the affidavit in this case.

A Right.
Q Was the one dealing with the flaps or -- in the box glued down, was that one?
A That was not glued -- that was not checked.
Q Okay. And is that -- so that was not part of the probable cause assessment for this search warrant.
A Right.

MR. SHELTON - Okay. Nothing further.

RE-CROSS EXAMINATION

BY MR. RUTHERFORD -

Q All right, so when I was asking you about the flaps being glued down, they weren't glued down?
A I couldn't answer that question, so according to the parcel indicator, that was not one of the ones checked.
Q Okay. So when I was saying that to you, you were just responding just in general terms if it was, but not necessarily ---
A Right, ---
Q --- this ---
A --- after reviewing this it says they were not. I couldn't recall. If I could recall they were glued, I'd have said so. That's the reason I said I'm not sure, but one of us (sic) were the ones there, and after reading this, and number three wasn't checked, which indicates the

glued down, that would make -- that would lead me to believe they were not glued down that day.

Q But that doesn't also indicate to you the fact that who checked it off -- I'm sorry -- that does not indicate to you that you checked those off, just that those were checked off so the package was not glued. Is that right?

A I'm not sure what ---

Q You still don't know who opened the package.

A Myself or Agent Rawl opened the package.

Q No, when I say who, I mean one person.

A Both of us were there.

Q Both of you were there, but both of you all stood together and opened the package or did one of you do it?

A I don't recall.

Q Well, that's a question. If you still don't know ---

A Yeah, I don't -- but one of us were the ones -- both of us were there at the time it was opened.

Q Okay.

MR. SHELTON - That's the proffer of this witness, unless Ms. Moody has ---

THE COURT - Ms. Moody, do you have any additional follow-up questions?

MS. MOODY - No, sir, Your Honor.

THE COURT - Let me ask you this questions, please, sir.

MR. FINCH - Yes, sir.

EXAMINATION

BY THE COURT -

Q Would you normally know if it's glued down until after you get the search warrant and open it?

A If it's just got one seam of tape acrossed (sic) it and you go to lift the side of it -- because it -- the box is coming down there and you see it and you just -- typically just pick up the side, if it's glued down, it won't come up, or if it's moved and another box hits it, if it pops up, then you know it's not glued down, but like I said with the Belk and Amazon packages, they put one strip of tape on there and hope it gets there. Whereas, most drug packages, they tape them down -- and we've seen them where they glue and tape them down, but that's usually the extreme. A lot of times they glue it or tape it.

Q Yeah, my question though, is -- obviously you can see the tape.

A Yes, sir.

Q But can you necessarily see the glue until ---

A No, sir.

Q --- you try to take -- open it up?

A No, sir.

Q And so, you know, whether you got there -- have to be something real obvious to make it part of an affidavit for a search warrant, wouldn't you?
A Right.
Q But you -- it might've been there, wouldn't necessarily known.
A Yes, sir.
Q Okay. But at any rate it wasn't something you submitted in the affidavit to get the search warrant.
A Right. It was not something we -- because we'd have -- if we'd have seen that we'd have put that in there.

THE COURT - All right. Any follow-up questions to what I asked?

MR. SHELTON - Not from the State.

THE COURT - Anybody?

MS. MOODY - No, sir, Your Honor.

THE COURT - All right, thank you, sir. You can stand down.

MR. SHELTON - Your Honor, next we would call Agent Aaron Rawl.

AARON RAWL, AFTER BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS -

DIRECT EXAMINATION

BY MR. SHELTON -

Q Morning.

A Morning.
Q Please identify yourself for the Court.
A Aaron Rawl, R-a-w-l.
Q And what is your current job or occupation?
A I'm a special agent with the State Law Enforcement Division.
Q And were you with SLED in October of 2012?
A I was.
Q How long have you been in law enforcement?
A To this day I -- a little over seven years.
Q And do you have state-wide jurisdiction as a SLED agent?
A I do.
Q Were you involved in the investigation of a suspicious parcel related to this case on October 30th, 2012?
A I was.
Q And can you explain how you got involved?
A Agent Frank Finch called me, along with Dennis Tracy, and said they had a suspicious parcel, to meet Frank up in Rock Hill at the UPS -- at the UPS outlet.
Q Did you got to the UPS facility?
A I did.
Q Did Agent Finch have Ben, his dog, with him?
A He did.
Q Did they conduct a package line-up?

A Yes.
Q Did you speak with Agent Finch afterwards?
A I was with him the whole time.
Q Okay. Did Agent Finch indicate whether or not Ben had alerted on a package in the line-up?
A Yes.
Q And was it the package in question?
A It was.
Q Did he -- did Agent Finch also indicate to you he'd observed indicators that it might contain illegal drugs?
A Right, he did.
Q And was that from his inspecting the exterior of the package?
A Yeah, looking at the box and the dog alerted to it.
Q And so with that information in hand, did one of you fill in a pre-made checklist referencing the indicators --
A We did.
Q -- on the parcel itself?
A Yes, sir.
Q And was that included as an attachment to a search warrant application that also had other probable cause including the dog sniff alert?
A Yes.
Q And did you -- were you the affiant on that search warrant?

A I was.
Q And had you -- you had first-hand knowledge of some of it, and you also talked with Agent Finch about the whole thing. Correct?
A Right.
Q I'm going to show you what's been marked as Court's Exhibit Number 1. Take a moment to look at this.
A (Witness complies)
Q What is that you hold in your hand?
A It is a search warrant from that day.
Q And how many pages are in it?
A Five including the front and the return.
Q Okay. So the front is a cover-sheet?
A Right.
Q And the last one is the return?
A Correct.
Q Who typed this search warrant?
A I did, me and Frank Finch.
Q And you were the affiant on the search warrant?
A I was.
Q And this was the search warrant used for what -- what was the subject of this search warrant?
A The suspicious parcel.
Q And this was on October 30th, 2012 at the UPS facility in Rock Hill?

A Correct.
Q And is this the original search warrant that was produced during this investigation?
A It is.
MR. SHELTON - Your Honor, I would move to have this entered as a Court's Exhibit.
THE COURT - It's admitted as a Court Exhibit without objection.
(WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT NUMBER 1.)
Q Agent Rawl, did you see a sworn magistrate in York County to apply for this search warrant?
A Magistrate Davenport.
Q And he's in Rock Hill?
A Correct.
Q And did you meet with him in his office?
A We did.
Q Had Magistrate Davenport been involved in the investigation at all?
A Not until that point, no.
Q Did Magistrate Davenport review the affidavit you submitted?
A He did.
Q Will you please read the probable cause affidavit?

A In South Carolina Law Enforcement Division we were provided information regarding a suspicious parcel at the UPS facility at 580 Mount Gallant Road in Rock Hill area of York County, South Carolina. Agents observed a suspicious parcel being shipped from Rialto, California that had numerous indicators of narcotics parcel trafficking numbers one, two, four, five and nine. The parcel was subjected to a drug-detection canine and a positive alert was observed. Agent Finch and Canine Ben were utilized in our certified drug detention team.

Q So the indicators referenced one, two, four, five and nine, are those in relation to an attached checklist?

A They are.

Q And is that a pre-made checklist?

A It is.

Q Are all of the boxes checked on that checklist?

A They are not.

Q Just the ones that were enumerated in the probable cause affidavit?

A Right.

Q Could you please read the ones that are enumerated beginning with the number associated with them?

A Yeah. Number one, the parcel was being shipped next-day air. This is one of the most expensive services the parcel services offer. I know from my training and

experience that narcotics traffickers will use this service so that the narcotics are out of their control for the least amount of time. In addition, delivery is usually before 10:30 a.m. so the recipient knows when to expect the parcel. Number two, the parcel was being shipped from a third-party private shipping center, UPS store or FEDEX Kinkos. I know from my training and experience that narcotics traffickers will use a third-party shipping store so the true identity of the shipper cannot be -- or -- so the true identity of the shipper can be conceived. Number four, the phone number for the receiver or shipper of the parcel listed on the shipping label or weigh bill was -- was called or not listed. The phone number was either disconnected or illegitimate. I know from my training and experience that narcotic traffickers will list illegitimate phone numbers or omit numbers completely to conceal the true identity of the sender and/or receiver of the narcotics parcel. Number five, the parcel had tape covering the seams of the parcel. I know from my training and experience that narcotics traffickers will tape over the seams of narcotics latent parcels in an effort to contain the odor of the narcotics inside the parcel. And Number nine, the names listed for the shippers and/or recipients were bogus, vague or incomplete. Traffickers will commonly not list complete names or use completely

incorrect information in an effort to distance themselves from the parcel of narcotics.

Q I'm going to refer your attention specifically to number four. There's a long list regarding the phone number. Was there a phone number listed in relation to this package, a phone number for the sender listed?

A No.

Q So in particular, the applicable thing was the phone number for the receiver -- phone number for the shipper of the parcel was not listed.

A Right.

Q So the other things about it being a disconnected number, illegitimate, those are not relevant.

A Yeah, right.

Q They were just in there as part of the ---

A Correct.

Q --- the pre-made checklist. Were you sworn in before giving this affidavit and submitting this certi -- sworn application to the magistrate?

A I was.

Q And did you provide Magistrate Davenport with any oral testimony to supplement this search warrant application?

A I did not.

Q Did you sign the affidavit and swear what it contains is the truth?

A Yes.
Q Did Magistrate Davenport ask you any questions about the search warrant?
A I don't think so, no.
Q Did you note anywhere -- make any notes or anything indicating any further information you provided to him?
A No.
Q So the best of your recollection there's nothing further?
A Correct.
Q Did Magistrate Davenport sign the search warrant?
A He did.
Q And what did you do with the search after Magistrate Davenport signed it?
A We went and served it on the parcel?
Q And who participated in the execution of the search warrant?
A Me and Frank Finch.
Q Did you leave a copy of it with the UPS facility?
A We got one back to them, yes.
Q And did you file the return with the magistrate?
A I did.
Q And during the execution did you -- did you and Frank Finch open the package?
A We did.

Q And what -- what did you believe was inside?
A A kilo of cocaine.
Q And at that point did you then alert agents from the drug unit ---
A We did.
Q --- for York County?
A Right.
Q Did all of this happen in Rock Hill, York County, South Carolina?
A Yes.

MR. SHELTON - Nothing further at this time.

CROSS EXAMINATION

BY MS. MOODY -

Q Agent Rawl, ---
A (Indicating yes)
Q --- good morning.
A Good morning.
Q You went through your narcotics parcel indicators, and one of the indicators is the bogus phone number.
A (Indicating yes)
Q Do you have a copy of the parcel information sheet from UPS?
A I don't.

MS. MOODY - May I approach the ---

THE COURT - Yes.

Q All right, this -- when you are referring to the package, the parcel, are you -- in your check number, your indicators, is that what you're looking at?
A Correct.
Q Okay. And earlier you said that there was no phone number with regard to the shipper's ---
A Correct.
Q --- name, so on that document of that UPS label, is there a phone number up under the shipper's name?
A There is.
Q Okay. Did you all contact anyone with that number?
A I'm not sure if we did or not.
Q Did UPS have any information from Rialto, California?
A I don't -- I don't know.
Q What, if anything, did you all do to determine where the package came from and whether it was a person from a shopping center?
A I'm not -- it just -- it says the UPS store, number 6778, but I'm not sure.
Q So ---
A I -- I didn't do anything to call that number.
Q Did anybody else ---
A I'm not sure. I don't know.
Q Okay, so let me get this straight. It was you and Mr. Finch that dealt with this parcel.

A Correct.
Q Okay. And as far as UPS is concerned, when you all were notified, did anybody from UPS say what made them alert or contact you all?
A I wasn't contacted by UPS.
Q Okay. So you were contacted by who?
A Frank Finch and Dennis Tracy.
Q Dennis Tracy. Okay. Do you know if Mr. Tracy contacted that number?
A I don't know.
Q Okay. So when you presented this affidavit to the magistrate, you weren't certain whether there was a bogus person on the other end.
A If they checked that box, either Frank Finch or Dennis Tracy had checked in on that number.
Q Okay, well, let me -- who actually filled out this indicator?
A The indicators -- the warrant was typed by me and Frank Finch. He provided the indicators, so he went through -- he's the certified drug -- drug handler and the parcel interdiction, and he -- we went through each one of them and that's what we checked; that's what he said was a good ---
Q So ---
A --- indicator.

Q --- I'm sorry, you were about to say.
A That's what he said was a good indicator.
Q Now, as far the affiant and the date, whose signature is that below?
A On the affiant?
Q Yes, sir, ---
A That's mine.
Q --- on the narcotics parcel indicator.
A That's mine.
Q Okay. So when you signed this as a affiant, are you affirming that these are indicators that you personally know of, or these are indicators that you've told?
A Or that information's been provided to me, yes, from a -- from another law enforcement officer.
Q I'm sorry, could you just ---
A From another law enforcement officer, yes.
Q Okay. So what did you observe about this package with any of these indicators? Was there anything or you just relied on Mr. Finch?
A Relied on Mr. Finch.
Q Okay. So when you took this to -- I think you said this earlier and correct me if I'm wrong -- when you took this to the magistrate, the magistrate didn't ask you any questions? You didn't discuss it with him?
A No.

Q You just gave it to him and said this is -- I need this search warrant?
A Correct. Well, I mean I didn't say I needed the search -- I said I have a search warrant for your review, and ---
Q Okay. So ---
A --- Officer Finch was there with me to answer any questions if he had any. I don't think he asked any questions though.
Q Who was there with you?
A Finch.
Q Okay. So let me understand. When you all went together to deal with this package, Mr. Finch and Ben ---
A Ben wasn't -- wasn't in the office with ---
Q Well, not with the magistrate. I'm saying when you went -- when you initially got contacted and you came to Rock Hill ---
A Right.
Q --- or went to UPS ---
A Right, to the facility.
Q Okay. Mr. Finch performed all the task with Ben ---
A With Ben.
Q Okay. Do you recall whether he did the indicator first or if he did the task with you?
A I don't know. I was there observing.

Q Okay. So when he came back and he gave you this sheet, as far as you know all these things had been done?
A Correct.
Q Okay. Were there any tasks that Mr. Dennis Tracy did?
A No. He got there -- he informed us and then he came later once the search warrant had been executed.
Q So you don't know specifically whether or not all these indicators were there. You just know that this is what Mr. Finch -- well Agent Finch -- I keep saying -- I'm sorry ---
A No problem.
Q --- Agent Finch told you about the package.
A Correct.
Q Okay. So when you say the delivery at 10:30 a.m., what time did you all get there to look at this package?
A It was first thing in the morning. I'm not sure what time we got there.
Q Was it before -- it was before 12:00?
A Yes.
Q Okay. When you first thing in the morning, what do you mean by first thing in the morning? Like 8:00?
A Yeah, somewhere in there.
Q Okay.
A I mean I got a phone call when I woke up in the morning to go to work and say go to Rock Hill.

Q And you went first.
A Right.
Q Okay. All right. But you did get to look at the package.
A I looked at it, yes.
Q Okay. And so it was sealed on all the seams.
A Right.
Q Okay. Other than that, that's the extent of your interaction with the package ---
A Correct.
Q --- doing any kind of work as to bogus names, ---
A Correct.
Q --- checking it and all that stuff.
A Correct.
Q Okay.

MS. MOODY - Thank you. I don't have any further questions.

(WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS NOT REPORTED.)

MS. MOODY - Thank you. No further questions for this witness.

THE COURT - Mr. Rutherford.

MR. RUTHERFORD - Thank you, Your Honor. May it please the Court.

CROSS EXAMINATION

BY MR. RUTHERFORD -

Q Agent Rawl, you initially testified that you were with Agent Finch the entire time at the facility. Is that correct?

A Correct.

MR. RUTHERFORD - I'm sorry. Your Honor, would it be appropriate at this point to ask to sequester the witnesses? And the only reason why -- why I say that, I mean this was seemingly innocuous to me and then it turned into testimony by group as to who did what and who checked what and who opened what, and so it is concerning to me that if we're asking questions and expecting answers that witnesses not being in the courtroom hearing questions prior to their testimony, so at this time I would respectfully make a motion to sequester the witnesses in this case, obviously, except for the case agent.

MR. SHELTON - Yeah, the State has no problem with that. Marvin Brown's the case agent.

THE COURT - All right, sir.

(WHEREUPON, WITNESSES EXITS THE COURTROOM)

MS. MOODY - Can we put -- let the record reflect that Agent ---

THE COURT - Yes, ma'am. Record will so reflect.

Q I'm sorry, Agent Rawl, so you were with Agent Finch the entire time that you were at the facility. Correct?

A Correct.
Q And so you watched as Ben went over the packages. Correct?
A Correct.
Q So then who opened the package?
A I'm not sure who -- if -- I'm going to say that I probably did, because I carry a knife with me all the time, so I'm sure I probably opened the package after the warrant was served on it, but I can't be sure. I don't know.
Q Okay. And so who set the package line-up out?
A Finch does that.
Q So Finch touches the packages before he sets the line-up?
A Correct. I guess. I'm not a parcel interdiction expert; he is.
Q No, but you were with him.
A Correct.
Q So who set the line-up?
A Frank did. I didn't do it.
Q So you're saying you didn't do it, because you don't want me to ask you another question. You're saying you didn't do it because you saw him set the packages out.
A Correct.

Q Okay. So you watched him set these packages out. Did he know in advance which one was the package that was the target?

A I'm sure he did, yes.

Q So he knew which one was the target package. Did he touch that one first or last?

A I don't know.

Q Do you think that's significant?

A I don't -- I don't think so, no.

Q Do you think that if a package smells like drugs and I touch it, that it would get on my hands?

A I'm not sure; I don't know. I don't think so.

THE COURT - What difference does it make, Mr. Rutherford? I'm not trying to cut you off. Sounds like you're making a mountain out of a mole hill. What ---

MR. RUTHERFORD - Well, I don't ---

THE COURT - What are you getting at? What's the ---

MR. RUTHERFORD - That if Frank Finch is the one that touches the packages and he touches packages with drugs, the odor of drugs then on his hands and he touches other packages ---

THE COURT - Well, why wouldn't the dog alert on the other packages?

MR. RUTHERFORD - I don't know. That's what I'm asking.

THE COURT - Yeah. I mean -- you're making -- I don't make any sense out of that. If there was enough of a - if he could touch on the outside and get enough on him to put it on the other packages, then he would alert on the other packages. I mean ---

MR. RUTHERFORD - Your Honor, my recollection was that Officer Finch -- Agent Finch said he didn't touch the packages.

THE COURT - Well, I don't know that he said he didn't touch the packages. I'm trying to recall what his testimony was on that. Do you recall?

MR. SHELTON - I recall, Your Honor. He -- I believe I asked him if he touched the packages. He said if he wouldn't touched one, he would've tried -- he would've touched -- touched them as little as possible, but if he touched one, he's going to touch all of them, so basically his scent would be on all five packages.

THE COURT - Yeah, okay. All right, honestly ---

MR. RUTHERFORD - And, Your Honor, that's what I'm getting at, is who did all this, who laid these packages out, who opened them ---

THE COURT - Well, ---

MR. RUTHERFORD - --- who then put all this stuff on the affidavit to tell the Judge that it's okay to go in a package if nobody can remember who laid them out, who opened them, how does it he know -- he doesn't know that the phone number was wrong; he doesn't know who laid the packages out; he doesn't know who opened it. It then gets to be that they -- somebody told them there was suspicious package, they go look at it, dog runs over it, they just start checking boxes. Nobody can tell me who -- who called the number that's listed on the shipping label.

THE COURT - Well, I mean you can get into that, but that's not the issue you're asking about. You're asking did he touch these packages, and I'm saying if he did, so what.

MR. RUTHERFORD - No, I don't disagree with you, but it goes to the culmination of, if you don't know who opened the package, you don't know who set the line up ---

THE COURT - Well, I'm not getting away from them, but I think he's saying -- I think Officer Finch, Deputy Finch testified that he set them out there in a certain order, but he touched the package as little as possible not - so as not to put his scent on them.

MR. RUTHERFORD - Right. Your Honor, not to correct, but I believe ---

THE COURT - And this -- and the agent says he thinks he set them out there; he didn't set them out there. He did say that, so he assumes that -- this is in 2012. He assumes that the person in charge of that with the dog set them out there and he -- so I mean -- what's so -- where do we go? Now, on these other issues -- you can deal with those other issues, but I'm just talking about this one issue.

MR. RUTHERFORD - Right.

THE COURT - What difference does it make?

MR. RUTHERFORD - Oh, I'm not going to jump in that that much more, but again, it gets to the culmination of you said -- you told the Judge it was a bogus phone number.

THE COURT - I mean you can save that for the jury. I mean all I'm trying to determine that probable cause to have a search warrant ---

MR. RUTHERFORD - Exactly, and which goes to the affidavit which was submitted that the bogus phone number may not even be bogus, which is one of the ---

THE COURT - Well, you can ask him about that. I'm not -- I wasn't questioning -- I was just questioning -- you kept asking him over and over and over again about who set them out, who set them out, who set them out, and I'm saying what difference does it make who set them out.

MR. RUTHERFORD - I totally agree. I asked him about the packages being glued ---

THE COURT - You can ask him about the other things.

MR. RUTHERFORD - I asked him about the package being glued, and Agent Finch, he said, well, if it's glued then this, and you followed up with, well, you wouldn't know whether it's glued and if you tore it with the package. He said, well, yeah, you would, but this one was not checked, so it wasn't glued. So what I'm getting at is ---

THE COURT - Yeah, but he also said, you have to open the package to determine if it was glued or not, and he couldn't open the package ---

MR. RUTHERFORD - Then, Your Honor, somehow that should not be an indicator to get a search warrant ---

THE COURT - Well, I mean he didn't check it. He didn't check it, and maybe it should be, but now sometimes I'm assuming that if somebody goes overboard with the glue that it can be obvious from the outside, that it's sticking out or, you know.

MR. RUTHERFORD - Right. I agree.

THE COURT - You see what I mean?

MR. RUTHERFORD - Yes.

THE COURT - We don't know about that.

MR. RUTHERFORD - Well, we expect testimony if that was the case and a ---

THE COURT - But he didn't check that. That was not an indicator, so they didn't see any obvious gluing, but I'm saying we don't know if there's any glue or not, because you -- you wouldn't necessarily know that unless it was an over-abundance of glue that appears from the outside. You wouldn't know it until you tried to raise the flap or tried to get into the package.

MR. RUTHERFORD - Right.

THE COURT - And to tell you the truth, that's the point I was trying to make. Would you necessarily know until ---

MR. RUTHERFORD - Until you tear into the package.

THE COURT - --- you cut into and open - tried to open the flaps, then you would know if it was glued or not.

MR. RUTHERFORD - Yes, Your Honor.

THE COURT - But you wouldn't necessarily know that unless there was an over-abundance of glue that appeared from the outside.

MR. RUTHERFORD - Exactly.

THE COURT - But it was not checked on the checklist.

MR. RUTHERFORD - That's correct.

THE COURT - Okay.

MR. RUTHERFORD - So number nine dealing with the phone numbers was checked, but this agent cannot testify as to ---

THE COURT - Well, I mean you can ask -- you can go from there. I'm just trying to ---

MR. RUTHERFORD - Yes, sir. Okay.

Q Agent, number two on the checklist, says the parcel was shipped from a third-party private shipping center. How do most people ship packages?

A They mail them; they put their return address on it.

Q No, no. As the number two, the private shipping center, which is number two on your checklist. You are an expert in this field. Correct?

A I am -- Frank Finch is the parcel interdiction expert.

Q Okay, but do you have any expertise in the shipping of packages that you delivered this search warrant to the Judge with number two checked, so you were just a delivery guy.

A I had Frank Finch with me for any questions on this indicators.

Q Right. But the indicator number two, you wouldn't know whether people actually do ship them from third-party shipping centers or whether they ship them from ---

A Well, in my -- in my personal experience, if I'm going to ship something, yeah, I may take it to a third-party,

but the return address is going to have my name and my address on it, not the UPS ---

Q Right, no, that's another indicator. I'm just interested in number two.

A Well, that's what it says, it's being shipped from a third-party private shipping UPS or FEDEX Kinkos.

Q Right, and so the question is, if that is an indicator of a suspicious package, how do most people ship?

A Through the postal service or they take it directly to UPS or FEDEX.

Q Okay. So -- and it being shipped next-day air, again those are things that you're just marking off to say that that's why this was suspicious. Correct?

A Correct.

Q Okay. So the phone number, you don't know whether that was valid or not. You don't know.

A Correct, I don't know.

Q And you said the name was bogus or incomplete. How was the name bogus or incomplete?

A There's no address to the name except for the US Postal Service or the UPS shipping store was the return address.

Q Okay. So it just had phone number and the UPS shipping store.

A Well, it had somebody's name and phone number and their return address was the UPS shipping store.

Q Okay. Okay.

MR. RUTHERFORD - No further questions, Your Honor.

MR. SHELTON - No re-direct.

THE COURT - Do you have a follow-up to his questions?

MS. MOODY - No, sir, Your Honor, we just wanted to move this shipping label -- I need to get a copy real quick -- shipping label in as an exhibit.

THE COURT - No objection, Mr. Rutherford?

MR. RUTHERFORD - Oh, no, Your Honor.

THE COURT - Okay. Admitted without objection.

(WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT NUMBER 11.)

MR. SHELTON - Your Honor, at this time I would ask the Court's permission to re-call Frank Finch to deal with the phone number question.

THE COURT - All right, thank you, sir, you may stand down, sir. Just leave the exhibits right there if you would for the court reporter.

MR. SHELTON - Your Honor, is that allowed for me to re-call ---

THE COURT - Sure.

You continue to be sworn.

MR. FINCH - Yes, sir.

FRANK FINCH, AFTER BEING PREVIOUSLY SWORN, TESTIFIES AS FOLLOWS -

DIRECT EXAMINATION

BY MR. SHELTON -

Q Agent Finch, you testified earlier that you would want to check off the checklist for the actual parcel indicators.

A Yes, sir.

Q And there's one indicator relating to phone numbers.

A Yes, sir.

Q Would you please enlighten the Court as to what specific indicators were? There's kind of a laundry list of thing, but what specifically about the phone numbers on the shipping labels?

A Yeah. I'm going to read this. The phone number for the receiver or shipper of the parcel list on the shipping label or weigh bill was not called or not listed. The phone number was either disconnected or illegitimate. From my training and experience narcotic traffickers will list illegitimate phone numbers or omit phone numbers completely to conceal the true identity of the sender and/or receiver of the narcotic parcel. In this case there was not a phone number for the receiver. There was a phone number for the

recipient, but the thing I focus on was the receiver, and the reason that most companies list phone numbers is if it gets lost or they have a question about it, they can call the receiver and say, hey, were you expecting this, you know, it got delivered to 123 Main Street instead of 123 North Main Street, and that's the reason most legit parcels have phone numbers for receivers and the senders, but in this case, the reason that's checked was because there was no phone number for the receiver.

Q Now, to be clear, there was a phone number for the shipper.

A Yes, sir.

Q Did you call that phone number to verify whether that was an accurate phone number?

A Don't recall if I did, which probably means I did not.

Q Okay. But again, what you were focused on as to that indicator related to no phone number listed for the recipient of the package ---

A Yes, sir.

Q --- in Rock Hill.

A Yes, sir.

MR. SHELTON - Okay. That's my question, Your Honor.

THE COURT - Okay, any follow-up?

CROSS EXAMINATION

BY MS. MOODY -

Q So Mr. --

A Finch.

Q Mr. Finch -- I'm sorry -- Agent Finch, -- I'm sorry -- the -- how did y'all -- how do y'all or do you at any time look into who the shipper is? Do you verify it on the other end with the third-party shipper?

A No, we don't contact the third-party shipper, because the ones coming from the west coast, this is typically when they're closed, so you can't call them. If you get something that's 7:00 o'clock in the morning here, it's, what, 4:00 o'clock in the morning there, so you can't -- they're not up.

Q Okay.

A And even then if you go into a UPS store or a FEDEX office and ship something, they're going to put down whatever name you want to, you want them to. Does that make sense?

A (No response)

MS. MOODY - Beg the Court's indulgence.

Q So after -- well, when there is no receiver's number, that's -- that -- the next step for you is to get the search warrant, to get the package open.

A Uh, especially once we got a dog alert like we had here, but uh -- I mean we go through and check them, and

that's just one of the ones we checked. That's not like the magical one; that's just one of the indicators.

Q No, I understand, I'm just trying to make sure I understand your process. So you get the warrant from the magistrate. After you see all these indicators on the package, you get the warrant from the magistrate and then you proceed on to open the package.

A Yes, ma'am.

Q And you don't do any other -- there's -- it's not part of your process to contact the receiver or anything like that.

A We don't want to call and let them know we're coming, no, ma'am.

Q No, I understand that. I'm just saying -- I'm just making sure that there's ---

A Right. No, we don't call them. Once -- once everything matches and especially once we've got a dog alert, we're not going to call them and say, hey, are you expecting a package. Yes, ma'am.

Q Well, obviously -- I'm just trying to make sure there's no other -- no other step that you have to take.

A No, ma'am.

Q Okay.

A You know, once we open it up and determine there's drugs -- if the time constraints fit, we would attempt control delivery.

MS. MOODY - No further questions. Thank you.

THE COURT - Yes, sir.

CROSS EXAMINATION

BY MR. RUTHERFORD -

Q Agent Finch, ---

A Yes, sir.

Q --- tell me again, did you -- were you the one that set up the package line-up?

A I'm not sure if it was me -- I can't tell you who set it up. If nothing else, I directed it, because I know how I like it, how my dog is used to running it, but I don't know if I set up or even if UPS set the package out for us. I'm not sure.

Q Okay. And whoever set it up, did you know on this particular occasion which one the target package?

A I don't know for sure, but because I actually saw the parcels, there's a good chance.

Q Okay. Now, these particular parcels, when they're laid out, are they like kind parcels, like ---

A We tried to get them as close to the similar size if you want (sic) to get it. I mean we don't like having a big box and then you put down a -- you know, an envelope

next to it, because it just -- it might come in to, well, one was so much different than the other one, so we like to try to get it as close to the same as possible.

Q And the -- would it be customary for you to set up the package line-up?

A If I'm the only working it, then I'm the only one who does it, but depending on the circumstances, if it's me and another guy working it and I -- while I go get the dog he sets it up or -- it's really no set in stone who sets it up.

Q Is there any danger in cross contamination of you touching the package and then ---

A Like I said earlier, typically if I set it up -- if I'm the one that sets it up ---

Q Right.

A --- then I'm going to touch ---

Q All of it.

A Right. I'm going to touch all of them, because that way it doesn't come into play, well, the only one you touched was that one. I want it to be question about what that dog did.

Q Exactly.

A I mean especially this dog. I read his Bio. He's pretty solid, 200 federal search warrants, and they don't give those out easily. So ---

Q And the reason why these parcel indicators follow a canine hit is because a canine hit alone would not be enough to get a search warrant?

A Well, it's just additional -- it's kind of like gravy. You got your steak; this is some gravy on top of it. You can get a search warrant just with a canine hit alone.

Q Federal Court?

A I believe you can. Especially one that's been -- I mean don't quote me on that, but especially one that's been that kind of reputation. I mean they always list a bunch of other stuff, because they like to see, you know, the names not match, but that's something that postal inspectors use, but, yeah, just the canine hit alone is typically good enough for a search warrant.

Q Okay.

MR. RUTHERFORD - No further questions.

MR. SHELTON - No re-direct.

THE COURT - Thank you, sir.

MR. FINCH - Thank you, sir.

MR. SHELTON - Your Honor, that's the State's proffer as to this issue. We're prepared to respond to anything from the defense.

MS. MOODY - At this point, your Honor, the only thing I would say is the parcel indicators are suspect to be -- however I think he responded enough so that I don't

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have much of a problem going further as far as who said what. I think there's a question -- I guess that's something we would have brought to the jury, but I understand the Court's ruling.

THE COURT - All right, thank you. Mr. Rutherford, would you like to make a motion regarding the search warrant?

MR. RUTHERFORD - No, Your Honor.

THE COURT - The Court obviously finds it's admissible. I find it's a substantial probable cause for the magistrate to issue the warrant and find it is admissible search warrant; it's proper. I deny any motion to dismiss the search warrant or the drugs resulting in the search warrant.

All right, what else?

MR. SHELTON - Your Honor, a couple of points of clarification. Just a -- there was talk about arguing these points to the jury. This has been settled as a matter of law, so the search warrant question is not open for discussion in front of the jury in the case in chief. Correct?

THE COURT - That's correct.

MR. SHELTON - Okay. I just wanted to be ---

THE COURT - That's a matter for the Court, not for the jury.

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MR. SHELTON - Yes, sir, I just wanted to be clear on that. Just -- we haven't decided for sure if we're going to bring all these folks back from Columbia to rehash the search warrant. That's why we're doing pretrial. You've decided as a matter of law the search warrant stands. So from here on the State could just intend to reference it as a search warrant that was obtained to open the package potentially. We'll discuss that, but ---

THE COURT - Don't plan to call the person that's done ---

MR. SHELTON - Yes, sir, I mean ---

THE COURT - --- to identify the package and ---

MR. SHELTON - Yes, sir, with -- with all of that -- with all that stuff, with all the identification and all that, but we don't intend to go into all this search warrant stuff again in front of the jury. It's already been settled as a matter of law.

THE COURT - All right, I don't think I'm following you. I think you've got to present your case to the jury with regard to the search warrant. I don't think they can challenge or argue to the jury the search warrant wasn't proper. They can't do that, because it's a matter of law, whether it is or not, but they can argue about whatever they want to nit-pick about with regard to the officers identifying it and that sort of thing. In fact,

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they can't question the search warrant though. The officer certainly can testify they went and got a search warrant, what information they gave to get the search warrant, they used the search warrant to open the package. I think they -- obviously you need to do that before the jury.

MR. SHELTON - Okay. I just wanted to be clear that this is a matter of law. I know -- I don't -- the defense attorneys know that. I just want to be clear for the record that this issue is settled after your ruling. I would just ask that Agent Rawl and Agent Finch be excused for the day. We don't have any other reason to have for pretrial.

THE COURT - You don't have any problem with that, do you?

MR. RUTHERFORD - No objection.

THE COURT - All right, they can be excused for the day subject to being re-called obviously for the trial.

MR. SHELTON - Yes, sir.

Judge, I think next -- just kind of checking off our to-do list here. I think next we need to have a Denno hearing, so we would go ahead and call Leland Harrelson.

LELAND HARRELSON, AFTER BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS -

DIRECT EXAMINATION

BY MR. SHELTON -

Q Hello.
A Hello.
Q Please identify yourself to the Court.
A My name is Hugh Leland Harrelson, Jr.
Q And what's your current job or occupation?
A I'm employed by the Rock Hill Police Department, and I'm currently assigned to the York County Drug Unit.
Q Where you with the drug unit on October 30th, 2012?
A Yes, sir, I was.
Q Are you familiar with Miranda warnings?
A Yes, sir, I am.
Q Did you have occasion to advise Jacquese Underwood of his Miranda rights?
A Yes, sir, I did.
Q And did you advise him in conjunction with the search warrant executed at Shenandoah Circle?
A Yes, sir, that is correct.
Q And was this a written advisement that you also read out loud to him?
A Yes, sir.
Q I'm going to hand to you what's been marked for identification as Court's Number 2.
A Yes, sir.
Q Do you recognize that?
A Yes, sir, I do.

Q What is it?
A It is a copy of our -- has a copy of the Miranda on here and also who I read it to and the time and date.
Q And is this in relation to this case?
A Yes, sir, it is.
Q And who did you read the advisements to?
A I read it to one person which was Jacquese Underwood?
Q And on what date and time?
A It was 10/30/2012 at approximately 2:16 in the p.m.
Q And did you advise Jacquese Underwood of his Miranda rights verbally?
A Yes, sir, I did. I read it -- I would have read this verbatim from the page.
Q And what you hold in your hand, Court's Number 2, is that the original form you used?
A Yes, sir, it is.
Q And did you fill out the information on the form?
A Yes, sir, I did.
Q And after you advised Underwood, did he sign indicating that he -- so -- been so advised?
A Yes, sir, he did.

MR. SHELTON - Your Honor, I'd move this in as Court's Exhibit Number 2 at this time.

MS. MOODY - No objection.

MR. RURTHERFORD - No objection.

THE COURT - Admitted without objection.

(WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT NUMBER 2.)

Q Where were you and Underwood when you advised him of his rights?

A At the residence on Shenandoah.

Q Were you inside or outside the residence?

A Inside.

Q Was anyone else present?

A Sergeant Lubben was present and Officer Rawls.

Q Was Underwood under arrest at the time?

A Yes, sir, he was.

Q Was he in hand-cuffs?

A I believe so.

Q And what rights, specifically, did you advise him?

A His Miranda rights.

Q And could you read those verbatim from the form that you advised him?

A Yes, sir. You have the right to remain silent. Anything you say can and -- can be used against you in Court. You have the right to talk to a lawyer for advice before answering any questions and to have your lawyer present during questioning. You have the right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer,

but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer and you may stop answering questions at any time you desire.

Q Did you threaten Underwood in any way?

A No, sir, I did not.

Q Did you identify yourself to him as being a police officer?

A Yes, sir, I did.

Q Were you in uniform or were you in plain clothes?

A I was in plain clothes, but I had my badge around my neck, as I do today.

Q Were you carrying a service weapon?

A Yes, sir, I was.

Q And did you -- did you draw that weapon at any time?

A No, sir, I did not.

Q Did you promise Underwood anything in exchange for talking with you or any other officer?

A No, sir.

Q Did he appear to be under the influence of any alcohol or drugs at the time?

A No, sir.

Q Did he appear coherent?

A Yes, sir.

Q Did he appear to understand his rights?

A Yes, sir.
Q Did he ask you any questions in regards to his rights?
A No, sir, he did not.
Q Did he ask for an attorney?
A No, sir, he did not.
Q And did you ask him any questions?
A No, sir, I did not.
Q Was he later questioned by Commander Brown?
A Yes, I believe so.

MR. SHELTON - Nothing further for this witness.

CROSS EXAMINATION

BY MS. MOODY -

Q Mr. Harrelson, did you participate in writing up the incident report in this case?
A I'll have to go back and look through my notes. Do you mind?
Q Okay.
A In writing the actual incident -- the case summary or the ---
Q It's what you all call the case file summary.
A No, I did not write it.
Q Okay. So you indicated that Mr. Underwood signed the advisement of rights form.
A That is correct.

Q Okay. And I'm unclear as to where he signed that advisement of right form.
A He signed it just -- right here behind his address.
Q No, you said it was at the address, or was it at the detention center?
A No, this was at -- this was on Shenandoah Circle where he signed this particular piece of paper.
Q So when -- help me understand -- he didn't ask for an attorney. He signed this just -- you presented him the paperwork and that was it.
A No, I ex -- I read him his rights and I explained to him that he's signing this stating that he understands his rights.
Q And at that location, did you all begin to question him?
A I did not.
Q All right. Were you there to see anybody else question him?
A No, ma'am.
Q Okay. So was he -- were you in his presence at the entire time when you got -- when you got the advisement of his rights?
A I -- I don't believe so.
Q Okay. So when you got to Rock Hill Police Department, did you again advise him of his rights?

A No, ma'am, I did not.
Q Okay. So you're just saying at the Shenandoah, no one other than you advised him of his rights and he did not request for his attorney.
A To my knowledge I advised him of his rights. I could not tell you if another officer came up after me out of my presence and advised him of his rights, but I advised him of his rights, and he signed this particular form which I read from.
Q And then what else, if anything, happened after he signed that particular form?
A I couldn't tell. I did not have any other interaction with him.
Q Okay. So you left?
A I was -- I was present, but I was not standing next to him the whole time. I believe I probably went and handled another task.
Q Now, help me understand. When you gave him -- you advised him of the rights, what -- was that immediately when you all came into the house?
A I read the search warrant first, and then I advised him of his rights after.
Q Okay. And how long after that was he taken into custody and taken to Rock Hill Police Department?
A I couldn't tell you.

Q Is there anything else you did with him?
A No, ma'am. This is the only interaction I had with him.
Q Okay. And so what was your purpose of giving him his rights?
A As part of our standard procedure, whoever executes the search warrant, we always have a Miranda rights form with the search warrant, and we read it directly after we execute the search warrant. It's a standard practice in the drug unit.
Q All right, so after you read him the search warrant, you read him his Miranda rights, do you ask him who he is, what his name ---
A I asked him -- I asked him name, his date of birth and his address, which are also here on the form.
Q And with that search warrant, you brought the search warrant, he was not one of the persons that were -- that you were seeking.
A I would have to go back and review the search warrant.
MS. MOODY - Beg the Court's indulgence. (Pause)
MR. SHELTON - Judge, the State will concede that Jacquese Underwood's not named in the search warrant. I think that was the question being posed. That was brought up yesterday in pretrial. There was no reason for the police to know that he was involved ---

THE COURT - I understand. Well, I mean you can show him the search warrant. He can look at the search warrant if he needs to answer on his own, but yeah, they're stipulating that he was not named in the search warrant. Do you need to ask him any more questions about that?

MS. MOODY - Right. I was -- it was going to take me back to my Miranda warnings.

(WHEREUPON, DOCUMENT WAS PROVIDED TO THE WITNESS)

A Yes, that is correct. His name is not on here.

Q Okay. So you were -- at that point he's not the person that you were looking for after you read -- read the search warrant.

A That is correct.

Q And so you didn't ask him any questions. After you read him the search warrant you went immediately into the Miranda warnings?

A Yeah, I executed the search warrant, which explains why we're there, what we're looking for or who we're looking for, and then I read the Miranda warnings directly after that.

Q Okay. And then after that, knowing that he's not the person in the search warrant, you didn't ask him any questions.

A I was not the case agent over the case. I didn't ask him any questions, no, ma'am.

Q Okay. So the case agent would be the person that would try and figure out where this person was or the people were for the search warrant.

A A case agent or another supervisor who was present.

Q Okay. So you advised him there were no -- you had no conversation with him, but are you saying that somebody else had a conversation with him or the case agent spoke with him after that point?

A If it was done, I'm sure it was, but it wasn't -- it was not in my presence.

MS. MOODY - Okay. No further questions.

MR. RUTHERFORD - None, Your Honor.

MR. SHELTON - Judge, I do have one follow-up.

RE-DIRECT EXAMINATION

BY MR. SHELTON -

Q On Court's Exhibit Number 2, there's an address listed for Jacquese Underwood, and I believe you said that you wrote all the information on here. Did you write that address down?

A I did.

Q Where did you get the address?

A From Mr. Underwood.

Q Is that after you advised him of his rights?

A That is correct.

Q But that wasn't specifically a question in relation to this investigation?
A No, and I did ask him, you know, his name, as I stated before, his name, date of birth and address.
Q And so the -- his address, date of birth and name are more for identification purposes. Is that right?
A Yes, it says on here, you know, we print the suspect's name, date of birth and address on our form.
Q Okay, very good. But that again -- I just want to be clear, that's intended to reflect who was advised of their rights in the search warrant.
A That is correct.

Mr. SHELTON - Okay.

THE COURT - Yes, ma'am.

RE-CROSS EXAMINATION

BY MS. MOODY -

Q And so the answer to my question was, you did ask him that information, but after that there were no other questions that you observed or that you asked him.
A That is correct. I asked him his name, address and date of birth. I did not ask him any other questions after that.

MS. MOODY - Okay, thank you.

THE COURT - Let me ask you this question, officer.

EXAMINATION

BY THE COURT -

Q Is it your standing practice to when you serve a search warrant, sometimes a person may not even be named in a search warrant if you're searching a location. Is that correct?

A Yes, sir.

Q And is it your typical practice everybody you find at the scene where you are executing search warrant, to give them those warnings?

A That is correct, yes, sir.

Q And give everybody who's there, whether they're named in the search warrant or not?

A Yes, sir.

THE COURT - That's my understanding in all the cases that I've tried. All right. Just wanted to be clear on that. You need to follow-up on the questions the one I asked, from the State?

MR. SHELTON - Not from the State.

THE COURT - Any follow-up questions?

(WHEREUPON, NO RESPONSE)

THE COURT - Thank you, sir.

MR. HARRELSON - Yes, sir.

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MR. SHELTON - Your Honor, we'd ask that Investigator Harrelson be excused today until the trial next week.

THE COURT - No objection?

MS. MOODY - No objection, Your Honor.

MR. RUTHERFORD - No, Your Honor.

THE COURT - Thank you, sir. We'll see you next Tuesday.

MR. HARRELSON - Yes, sir.

MR. SHELTON - Your Honor, next we'll call Commander Marvin Brown.

MARVIN BROWN, AFTER BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS -

THE COURT - Counsel, hold on just a minute. We might need to take a break. Let me ask, does anybody need a break? Let's talk about five quick --- I'm sorry ---

MR. SHELTON - Absolutely.

THE COURT - I expect he'll be on the stand a while.

(WHEREUPON, RECESS TAKEN.)

THE COURT - Thank you. Keep your seats, please. Come on up, sir; you've already been sworn.

DIRECT EXAMINATION

BY MR. SHELTON -

Q Good afternoon. Would you please identify yourself for the Court.
A My name's Marvin Brown.
Q What is your job or occupation?
A I'm the chief investigator for the Sixteenth Circuit Solicitor's office, and I'm assigned as the commander of the drug enforcement unit here in York County.
Q Commander Brown, are you the case agent in this case?
A Yes, sir, I am.
Q And did you speak with Jacquese Underwood at the residence location during this investigation?
A I did.
Q And that was on Shenandoah Circle in Rock Hill?
A Yes.
Q And was that before or after he'd been advised of his Miranda rights by Harrelson?
A That was after.
Q And before you spoke with Underwood, had you been informed that Underwood had been advised of his rights?
A Yes.
Q And where -- where did you speak with Underwood, specifically?
A He was on the couch, and I was standing just in front of him a few feet back.
Q Inside the residence?

A Inside the residence. He was sitting on the couch.
Q Was anyone else present with you while you were speaking with him?
A I don't know; I think Sergeant Lubben was present.
Q Did you or Sergeant Lubben or anyone else threaten him in any way?
A No, we did not.
Q Did you identify yourself as being a police officer?
A Yes, when I walked in, I identified myself to Mr. Underwood.
Q Were you in plain clothes at the time?
A I was.
Q Did you have a badge visible?
A I did.
Q Did you have a service weapon?
A I did.
Q Was it pulled?
A No.
Q Did you promise Underwood anything in exchange for talking with you or any other officer?
A I did not.
Q Did Underwood appear to be under the influence of drugs or alcohol at the time?
A He did not.
Q Did he appear coherent?

A Yes.
Q Did he ask for his lawyer at this point in time?
A No, he -- he did not. He never asked for a lawyer.
Q Did he ask any questions about his rights?
A Not to me.
Q Okay. And did you ask him any questions about the investigation?
A Two or three, four, maybe.
Q Was he willing to answer those questions?
A At first he did.
Q What did you ask him and what did he answer?
A I identified myself to him. I -- when I walked in, Sergeant Lubben said he was Jacquese Underwood; I know him as Jacq. I've seen Mr. Underwood in the past, and actually I've arrested him in the past, so I walked around and we had small talk. I told him I had seen him father recently. I asked him about his arm, because last time I saw him he had a metal brace on his arm, and uh -- after -- after I identified myself and we had some small talk, then I asked him if he lived at the residence; he said he did not. I asked him where was the owner of the residence; he said she would be home at 6:00 p.m. I told him we found a white Samsung phone in the car. He stated that was his phone. I asked him about the package. He said he put -- he was the one that put the package in the trunk of the car. And then

I told him that we had Chief outside and he was under arrest, and at that point he said he didn't want to talk anymore. He didn't ask for a lawyer; he just said he didn't want to talk anymore, so I -- I didn't ask him any other questions.

MR. SHELTON - That's the State's proffer at this time. Nothing further as this time.

CROSS EXAMINATION

BY MS. MOODY -

Q Investigator Brown, good afternoon.

A Hey.

Q Now, you indicated that you spoke with him about where the owner was, who the Samsung phone belonged to and you asked him about the package. What was he was under arrest (sic) when you arrested him? What was he under arrest for?

A Trafficking in cocaine.

Q Did you ask him any other questions regarding what was in the package?

A Well, I was getting to that point, but he said he didn't want to talk anymore.

Q So when you say you were -- okay, so I wanted to come back to that. At first he wanted -- he would talk, but then he didn't want to talk.

A We spoke about his father; we spoke about his arm; we talked about who lived there, if he lived there or not. I

was getting to that point, but when I brought up the fact that Chief was outside, he said he didn't want to talk anymore, so at that point -- I didn't have a chance to get into where was the package going, what's in the package and all that.

Q So when you said -- when you -- when you were referring to Chief, you were referring to ---

A Duane Harrison.

Q Duane Harrison. And did he indicate to you anything else other than he just didn't want to talk anymore?

A That's -- he just said he didn't want to talk anymore. I was talking to him like I'm speaking with you now. I didn't pressure him or say -- or anything else. When he said he didn't want to talk anymore, I said, fine, that's okay.

MS. MOODY - Okay. No further questions.

MR. RUTHERFORD - None, Your Honor.

THE COURT - Thank you, sir.

MR. SHELTON - All right, Your Honor, you heard the statements that -- and the conversation Commander Brown indicated. Those are statements of Jacquese Underwood we would intend to introduce at trial. They were -- he was -- you heard testimony that he was advised of his Miranda rights. He did not -- he was not exercising any of his rights up until the point and so, obviously, Commander

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Brown assuming Mr. Underwood exercised his rights, he stopped asking him any questions, so it's our -- the State's position that everything up to that point is admissible.

MS. MOODY - Your Honor, we have no objections to that part, however, I would ask that -- and I'm sure this is just for housekeeping purposes -- if -- that Mr. Brown does not refer to him as Jacq be limited to referring to him as his name and not giving any information of how he knows him for, I guess, the prior arrest is what I believe he's saying.

MR. SHELTON - Your Honor, the nickname Jac is relevant in this case. The State intends to introduce through Commander Brown that he knows Jacquese Underwood as Jacq. Commander Brown knows he's not supposed to talk about prior arrest or prior illegal activity, but it is relevant for the jury to hear that he has known Jacq, Jacquese Underwood, for a period of time and he knows him to be Jacq. That is relevant in this case.

MS. MOODY - Your Honor, I disagree. I don't think that it is relevant as to whether he knows him as Jacq. He knows him. We don't have a problem with that. If it is related to the cell phone, the Samsung, he's already said that it's his phone. I don't think that he needs to refer to him as Jacq, which would give the

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indication that he's had interactions with him, because what other interactions would he have with Mr. Brown. As the chief investigator for Rock Hill City police and the commander of the drug unit, I think that that would lay some unnecessary inference as to my client being arrested before. I think they can get into the phone, and we'll go through all of that. He admits the phone is his, and it will say whose phone it is, if it has Jacq in the phone, in the messages which we'll get to, they can bring that in there, but I don't think they need to get it in through Mr. -- excuse me -- Chief Investigator Brown.

THE COURT - Why is it relevant to all that?

MR. SHELTON - It is relevant, because in Duane Harrison's phone Jacquese Underwood's phone number is listed as Jacq, his nickname, and it's also a -- an identifier Commander Brown knows him as Jacq, Jacquese Underwood, so -- but specifically, as to the text messages, which we can authenticate the messages and that it's these two men speaking through the numbers and everything, but the fact that it's listed in the phone as Jacq in Harrison's phone, and Marvin Brown knows Jacquese Underwood is known as Jacq. The jury can infer any number of things from things -- things that are brought up in Court. You know, we don't know what goes on in the mind of a jury, but that is not -- that's not 403 prejudicial; it is relevant

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to the case, because it goes to -- I would argue it goes to authenticate part of the State's evidence as Duane Harrison knows Jacquese Underwood as -- by the same nickname as Marvin Brown knows Jacquese Underwood, that being Jacq. In so many words I think that's something that's relevant for the jury to consider when they're considering all the evidence as a whole.

THE COURT - Well, I -- doing a 403 analysis it's relevant evidence, particularly if they've got a cell phone and part of their evidence is the cell phone and what's on the cell phone, the calls on the cell phone, and if Mr. Underwood is called Jacq on there and Commander Brown knows him as Jacq, that's just more -- obviously relevant to establish that he is the person Jacq perhaps that's on the phone, so I think it's -- I think it's relevant. The question is is it more prejudicial than probative under 403 analysis, and I don't think it is. I don't think it's more prejudicial than probative. I think it's more probative than prejudicial, because they've got to prove their case. Now, the careful thing about it is that how Commander Brown knows him as Jacq, and I think he should be limited to just saying that he's aware that he's -- he's called Jacq and leave it at that. I don't want to say through interaction by him or anything like that, just that he -- he knows that he is called Jacq, in fact, if he knows that. And so

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that's as far as he should go with it. That would be my only concern about whether it'd be more prejudicial. If he tried -- if he says it in such a way that he kind of identifies him as somebody that he's arrested before and dealt with in drugs before -- as long as he says, I'm -- I know that he's called Jacq or goes by that name and leave it that, and that couldn't -- doesn't indicate anything about any prior drug conviction or any other kind of conviction. And I think the cases are clear on that.

MS. MOODY - I'm sorry?

THE COURT - The cases are clear on that, that they can do that as long as -- they've even allowed it where, you know, he was -- they've said he dealt with him before, but I don't want them to go that far in this case. I would just say, as long they don't identify particular offenses or anything like that, because -- but -- but in any event, I think as long as he doesn't talk about any interaction with him previously or anything like that, just talks about that he -- he know he is called Jacq, he has -- he has the name Jacq, he knew he has a nickname Jacq or something like that. As long as he says it like that without getting into any kind of prior interactions between the two of them, any involvement with any criminal offense or anything like that, arrest or anything like, as long as he doesn't go there I would allow it.

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MR. RUTHERFORD - Your Honor, but as it relates to my client, the use of his nickname by Agent Brown on the stand when he says we have Chief outside, using, Your Honor's same analysis, I don't know that he knows my client like that, and so we would object to the use of that nickname as a moniker, because again it shows some ability -- then he may know Jacq outside of arresting him -- I don't know -- but he doesn't know my client that way, so we would object to his use of the word Chief. If it comes out through testimony otherwise, that's fine, he can re-use it, but I think that initial -- it shoes something that does not exist.

MR. SHELTON - Your Honor, Commander Brown does know Duane Harrison; he knows him as Chief. By the time Commander Brown testifies in front of the jury, the jury -- we intend he will be one of our last witnesses. The jury will have heard, we expect, from other witnesses who know Duane Harrison as Chief or know that to be a nickname of his as Chief. So -- I mean it is relevant in that respect as an identifier.

THE COURT - Well, I -- for the same reason I gave earlier, I think if he knows of his own knowledge that he has that nickname, Chief, and is aware of that, then I think he can testify to that as an identifier and the fact that he said that to him -- and that caused Mr. Underwood

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to decline to answer any further questions when he said that to him and I think that's certainly probative in the case and something the State's allowed to go into. I think -- again, my -- my concern would be that he not identify him as any -- I've known him for quite a while or I've dealt with him before, something like that, just something that he's aware of that he's had the nickname Chief. He can say that. There's all kind of ways he could know that, but um -- and leave it at that. I don't want him to go into any kind of prior interactions or knowing him through any kind of criminal proceedings or anything like. As long as we just -- he knows him, that he goes by the name -- nickname Chief, and leave it at that. I think it's more probative than prejudicial under the facts of this case.

MS. MOODY - Well, I just want to be clear. Is there another report that is written, because the indication -- everything else that he said in terms of what he asked my client was clear, and I don't want it to be the inference that because he said Chief, that's why my client decided to stop talking to him. That's not indicated in this incident report. It just says that he stated the white phone was, belonged to him and the Yukon was searched also incident to the arrest for probable cause. He asked him certain questions, and it is not indicated in here that that's -- I mean that -- when you made the comment, Your

Honor -- is not indicated as a question as to whether he knew him Chief or anything ---

THE COURT - No, no -- I'm saying -- but I'm just going by Commander Brown's testimony from the stand. That's all I know. I haven't any of the reports or anything, but he said I told him we got Chief outside and then he -- after I told him that, he declined to answer any more questions, said he didn't want to answer any more questions. I was just going by his testimony, not by any report.

MS. MOODY - Okay. Well, I just would -- if there is any other report that says that my client said he didn't want to answer any more questions, it's not in the report is what I'm saying. Do you get what I'm saying? I don't know if there's another incident report that's written up.

MR. SHELTON - I'm not aware of any other reports. We've given the defense everything we have in our possession.

THE COURT - Well, I think Commander Brown can testify as to what happened. That's what I was going by, his testimony from the stand just now.

MS. MOODY - Okay.

THE COURT - Anything else?

MR. SHELTON - Not on this issue, Your Honor. We still have a couple other proffers. I guess that begs the

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question now, looking back, I think it was a very good decision for us to push the jury back to a week from today; this has taken a lot longer ---

THE COURT - So do I.

MR. SHELTON - This has taken a lot longer than I anticipated.

THE COURT - And that's exactly what I was afraid of ---

MR. SHELTON - Yes, sir.

THE COURT - --- meaning this pretrial.

MR. SHELTON - But we do have a couple other proffers we'll need to make in relation to Ms. Moody's original three motions, the first two dealing with the text messages and dealing with Dalmicos Hemphill's testimony, so we may want to break for lunch. We could go through with Commander Brown on text messages and save Mr. Hemphill for after lunch, however, Your Honor, wishes to proceed, we'll -- we can address the Court on it.

THE COURT - Well, it's almost 12:30 now, so what do you want to do, counsel?

MS. MOODY - Whatever you ---

MR. RUTHERFORD - Whatever Your Honor sees fit.

THE COURT - All right, why don't we just go ahead break for lunch, and we'll take about an hour for lunch and then come back and get into it. I didn't know Commander

Brown was going to be that short as to this part of his testimony or I would not have taken a break, but I figured he'd be on the stand a while if he's the case agent, but in any event I didn't know he was just going to address that simple issue.

Let's be back at 1:30 and then we'll get started promptly about 1:30.

(WHEREUPON, LUNCH RECESS TAKEN)

THE COURT - Y'all got everybody you need?

MR. SHELTON - Yeah, I'm just going to get Commander Brown in here and we'll start back with him.

(WHEREUPON, BRIEF PAUSE)

(WHEREUPON, COMMANDER BROWN ENTERS THE COURTROOM)

MR. EPTING - May it please the Court. Your Honor, the next motion I think the State wishes to address is the motion by defense counsel to limit the prior use of any text messages prior to the October 30th arrest date. Your Honor, in viewing the text messages in the presentation I believe it would be beneficial to the Court to hear kind of a factual summary of what we found that day and how that might fit in with the text messages of ---

THE COURT - Commander Brown, you're previously sworn. You continue to be under oath.

MR. BROWN - Yes, sir.

MARVIN BROWN, AFTER BEING PREVIOUSLY SWORN, TESTIFIES AS FOLLOWS -

DIRECT EXAMINATION

BY MR. EPTING -

Q And just for the record, Commander Brown, would you please state your full name for the record?

A Marvin Brown.

Q And what's your occupation?

A I'm a certified police officer. I work for the Sixteenth Circuit Solicitor's office assigned to the York County Multi-jurisdictional Drug Enforcement Unit as a supervisor.

Q So you're a supervisor for the DEU?

A Yes, sir, I'm the commander or on a captain rank.

Q At some point were you involved in an investigation into a Duane Harrison and a Jacquese Underwood?

A I was.

Q Before we get into the text messages and your potential expertise, could you please give the Court a brief rendition of the events of that day?

A That was on October 30th, 2012. It was the day before Halloween. I received a call about 10:00 a.m. from Frank Finch. Frank was assigned to the DEA office in Columbia. He was a task force agent; he was a canine handler, and Frank said that they had came up and did a partial -- a

parcel -- not partial - a parcel interdiction on a package that contained one kilogram of cocaine, that they had obtained a search warrant, opened the package and it did obtain a kilo, wanted to know if he wanted to do a control delivery, and I told him just to meet me at the Rock Hill office and we would sit down and discuss it.

Q Okay. And did y'all come up with a plan to conduct that control delivery?

A Yes, we met at the Rock Hill Police Department. Officer Jim Lubben typed up a anticipatory search warrant for the address that was on the package. Lieutenant Ligon who also works for the drug unit took out the kilo of cocaine and put in an imitation kilo and I conducted a plan of what everyone would be doing that day.

Q Okay. Was one person assigned to surveil the incident?

A Immediately I sent one person down to the house on 1162 Shenandoah Circle to -- I sent them down in an undercover vehicle, just one person, because it's a neighborhood of one way in, one way out. I sent one person down and told them to be sure to be able to the see the entire front of the house, because our plan was to deliver the package.

Q And what did that person observe while y'all await to deliver the package?

A It was Officer Leland Harrelson. He went down; he was on the radio, and shortly after he arrived he said he observed a Yukon traveling up and down the street with North Carolina tags; it appeared to be suspicious. It went up and down the street a couple of times and it was -- and at that time it was sitting at the top of the hill just looking down the street where the 1162 Shenandoah was located.

Q Was the vehicle slowing at any point as it was driving down the street?

A Was it -- I'm sorry?

Q Was it slowing down at any point driving down the street?

A Yes, it was traveling up and down the street slowing down in front of the house; he would ride up to the top of the hill where there's a stop sign, turn around and go back to the other top -- top of the other hill, then a -- the hill with the stop sign -- Officer Harrelson couldn't see all the way to the stop sign, but up the hill he could see the vehicle go up and turn around at the top of hill and just sit at the top of the hill, and from where the Yukon was sitting, you could see the house, the target house.

Q And it was slowing down by the target house, if I understood ---

A Yes.

Q --- your testimony correctly.
A According to Officer Harrelson, it was slowing down in front of target house.
Q Was there any activity inside the house?
A Not at that time. The house looked to be vacant. Shortly thereafter he did see, actually, it was Mr. Underwood looking out the -- opening the blinds and peeping out the window, but that was after the package had been delivered.
Q Okay. So if I got it right, a Chevy Yukon we later learned was driven by Chief Harrison is driving around the neighborhood in a manner you consider suspicious. Is that right?
A Yes, and I think it's a GMC.
Q GMC?
A Yeah.
Q And someone inside the house after the package was delivered is looking outside, looking through the upstairs blinds. Is that right?
A Yes, Mr. Underwood was looking out.
Q Mr. Underwood? And that begs the question at some point, was the package delivered?
A Yes, we had Officer Harrelson standing there -- standing there -- was in the undercover vehicle the entire time while we were getting ready. That's procedure.

Normally I'd like to put two or three in a neighborhood and actually sometimes we try to video-tape, but in this particular case we only put the one officer down there and we got an unmarked van, the UPS clothing. It took a while to put all this together. We had to get a search -- anticipatory search warrant signed by the Judge, so it took quite some time to put this together.

Q Did the van deliver the package?

A Yes, the van did deliver the package.

Q And did somebody immediately come out to get it?

A No.

Q What happened after the van delivered the package?

A Agent Dennis Tracy placed the package on the -- in front of the house on the front door, got back in the van and left. At that point Mr. Harrison (sic) come down and followed the van up 901 across 72 into Rock Hill on Saluda Street and we had a couple of surveillance cars following Mr. Harrison and the van went up -- and we told the guy in the van -- operator had a radio -- we told him to turn on a side street in Rock Hill. When he turned on the side street in Rock Hill, Mr. Harrison flipped around and drove back down to the neighborhood and we turned and followed him back. It was two, two or three miles or so. He followed the UPS van out of the neighborhood into Rock Hill.

Q And what did the -- what did the -- what did Mr. Harrison (sic) say the Yukon did once he entered back into the neighborhood?

A Went back into the neighborhood, drove past the house again, drove up to the top of the hill, turned around and came back, drove back past the house, up to the stop sign and stopped at the stop sign -- and this is 901 -- for a little traffic that morning, and he just sat at the stop sign and he was looking up and down the street. He did not pull out. The street was clear; he just sat there for a couple minutes.

Q Was the package still on the porch at this point?

A No, when he come back by, Mr. Underwood went out, picked up the package and took the package into the house after he come back by, after he followed the truck out of the neighborhood.

Q So the truck followed the -- what he thought was a delivery truck out of the neighborhood for a little ways. Correct?

A Yes.

Q Comes back into the neighborhood and drives back by again. Is that correct?

A Yes.

Q And only at that point does Mr. Underwood come out and pick up the package.

A Actually he drove up, turned around, come back down. When he come down, Underwood came out and picked up the package.

THE COURT - Excuse me. I'm a little bit confused.

MR. BROWN - Yes, sir.

EXAMINATION

BY THE COURT

Q If -- who followed the van out of the neighborhood and two or three miles into town, having pulled off on a street and turn around and came back? Are you saying Harrelson or Harrison?

A Well, there's two of them. Harrison and Harrelson -- Officer Harrelson was there -- Harrison was driving; I was following him into town -- into town.

Q Well, that's what I mean. But Harrison in his vehicle -- is that the Yukon?

A Yes, sir.

Q Followed the van in. It wasn't Harrelson?

A No, it's ---

Q Harrison.

A The defendant followed the -- in his Yukon followed the UPS van into town, and I followed the Yukon.

Q Yeah, I was just trying to be clear about that, because when you were saying Harrison, I really thought you

were saying Harrelson, so I thought he left and followed -- I was like, why was he following -- but you say it was Harrison in the Yukon?

A Yes, sir. Officer Harrison (sic) stayed at the scene the whole time. Harrelson stayed at the scene the whole time; Chief in the Yukon followed the FEDEX truck -- the UPS truck out and followed into town, and I followed the Yukon.

MR. SHELTON - And I apologize, Your Honor. I should ---

A And Lieutenant Ligon.

THE COURT - Yes, sir, I understand. I just wanted to clear. I thought he was saying Harrelson at right.

A I probably was.

DIRECT EXAMINATION

BY MR. EPTING (CONTD.) -

Q So Officer Harrelson stays at the scene observing the house the entire time. Is that correct?

A Until we decided to serve the warrant, and he got out of his vehicle and walked across the street.

Q Okay. So you have followed the Yukon driven by Chief out of the neighborhood as Chief is following the delivery van. Correct?

A Yes.

Q The delivery van goes down the side street. Correct?
A Yes.
Q The Yukon driven by Chief comes back into the neighborhood ---
A Circles through the Dollar General or the Family Dollar -- I think it was Dollar General Store -- come back out Saluda Street and went back to the neighborhood.
Q And at that point -- at some point as he's passing up and down the street from the target house, Mr. Underwood comes out and picks up the package of cocaine ---
A Yes.
Q --- which at that point is parcel -- is a postal parcel, brown box. Correct?
A Yes.
Q At what point did you -- did officers move in and make an arrest?
A I was about a block away watching Mr. Harrison.
Q Chief. Correct?
A Chief. I could see him through binoculars and he had on some white sunglasses, and he was looking down and he was looking back and forth, he was looking down, and I was watching him through the binoculars, but I was close enough I could see him, but I was really getting a real good look at him, and Officer Harrelson said that the garage door was opening up, and then a car started to back out. At that

point I went ahead and made the call for us to move in on the house and to move in on the Yukon.

Q And what happened after y'all started moving in?

A I moved in; I blocked the Yukon. I pulled directly in front of the Yukon, turned my blue-lights on and Officer Lubben who was in the car with me and Agent Rawl who was here this morning, jumped out of my vehicle -- they had vests with police wrote across the front -- ran up to the Yukon. At that point Mr. Harrison put the Yukon in reverse and backed up as fast at it could go down the hill. The two officers jumped back in my vehicle; I flipped my siren on, started down the hill. He spun around and he started up the hill, and the house is eight or ten houses up -- I'm not sure exactly -- it's on the left -- when he was passing the house, Mr. Underwood was standing out front, he was blowing the horn.

Q When you say he, that's Chief?

A Mr. Harrison was blowing the horn as he was going by. He was going by as fast as the Yukon would travel. I slammed on brakes and let the two officers out, because Mr. Underwood was standing in the front yard. Underwood ran in the house and slammed the door and locked it. I -- another car passed me, another police car and got behind Mr. Harrison and followed him to the next street; they turned right and then I accelerated to catch up to them, turned

left on the next street, which is Jessica's Way, pulled over and then took off again, drove a few more houses down, pulled over again, got out, left the car running, tried to run between some houses, had a big tall fence, come out from behind the houses, ran down and cut between some more houses, was running down the wood line, threw two phones and then -- I think he slipped, but the officers caught him, and at that point there was no struggle. He gave up and they cuffed him up and was walking him back down the wood line. In ---

Q Okay, so ---

A --- the meantime, Mr. Underwood still had not unlocked the door. The officers were beating on the door asking him to unlock the door, they had a search warrant for the house.

Q So Chief has run in the Yukon to another part of the neighborhood, bailed out and ran and was apprehended. Is that correct?

A Left the door open, left the engine running and took off running and two of the officers chased him down.

Q And as he's running, he's throwing out two phones. Right?

A Threw two phones in the sewer line.

Q And while this is going on, Underwood is back at the house locked inside his house.

A Yes. He tried to run out the back. The officers ran around back and when he ran out the back he saw them, he turned and went back in the house, so the front and back door was locked, and the officers were beating on the door telling him to open the door, had a search warrant. The ram that we normally use to force the door with happened to be in the second vehicle that was chasing Mr. Harrison, so he had to jump in his vehicle and bring the ram back down to the house.

Q Did y'all recover any cocaine from the vehicle that was parked on Shenandoah Circle?

A Yes, the package was in the trunk of the -- in the trunk or the back of the -- it's a Chevrolet Impala, I believe it was -- it was in the trunk.

Q Had it changed in any way since the last time that you saw it?

A No, it was still in tact. It had not been opened.

MR. EPTING - Beg the Court's indulgence.

Q The phone that Chief Harrison threw as he was running in part of the neighborhood, were those recovered?

A Yes, those two and a third phone was recovered from the rental vehicle.

Q Who recovered the phone?

A Officer -- is Vreeland? Rock Hill City Officer named Vreeland recovered one phone and Officer Beck who works for

the drug enforcement unit recovered the other phone, and I was there when the phones were recovered. We actually took a couple of pictures before we picked them up.

Q And eventually after everyone was situated, did y'all take the steps after search warrant to try to retrieve information from those phones?

A Yes, we did a search warrant. There was three phones from Harrison, and three phones that may have been attributed to Underwood, and we did a search warrant for six phones.

Q I'm referring you to what's been marked -- what has been marked -- not for identification but your records as Item Number 4, Boost Mobile recovered from the woods where Chief Harrison ran.

A That was the one that Officer Beck recovered.

Q Officer Beck recovered that one?

A Yes.

Q Were y'all able to extract any off (sic) --information using the software that's available to you?

A Yes, we -- from that particular phone we obtained several text messages.

Q Were able to extract or did you have to photograph it?

A We photographed some; we downloaded some. I believe that was one of the phones we were able to download.

Q Well, before we get into -- into the others, I want to ask you something -- I'm asking on your expertise in package interdiction.

A Okay.

Q Could you explain to the Court what training first of all you might have in investigating and making cases on packaging or ---

MS. MOODY - Excuse me. Your Honor, I thought we were just dealing with text messages on this motion. Are we dealing with the package or the text message?

MR. EPTING - Your Honor, his expertise in package interdiction in the investigations will shed light on the usefulness of the text messages, as far as their methods and procedures.

THE COURT - All right, proceed.

Q Please tell the Court any training you might have.

A We call it pack -- package or parcel interdiction. I've worked many, many, many cases in the past. I worked FBI, DEA, ICE on parcel interdiction. I've had -- we've had as many as four canines on the drug unit. I supervise the drug unit. I've actually taught other officers about the proper way to do parcel interdiction, and I'm guessing probably at least 50 control deliveries or more; some went to federal court; some went to state -- have gone to state court. We've delivered as many as four in one day, so

everything that Officer Frank Finch testified to today on the stand, I'm very familiar with.

Q So how -- so of those 50 -- of those 50 controlled deliveries that were made, how many of those were you personally involved?

A Well, that was more than 50, but those I was personally involved with the actual controlled delivery of those packages over the years. It's probably many more than 50; I was just -- I don't know how many, but it was least 50.

Q Have you had opportunity to deal in parcel interdiction cases involving cocaine?

A Oh, yes, many times.

Q Have you had experience in debriefing or discussing with cooperating individuals who are involved in actively sending or shipping drugs or trafficking drugs?

A Yes, we make an attempt to interview every single person we arrest, if all possible.

Q And in discussing those matters with you, do they discuss their methods in deliveries of packaging the drugs as well making sure they get to the spots where they need to get to?

A Yes.

Q And you've said you've taught courses to other law enforcement about this very subject?

A To other narcotic agents how to do proper search warrants, how they lay the packages out, what type search warrant you do at the facility, the type search warrant you have to do -- the anticipatory type search warrant that you have to do before you deliver the package, the time-frame, all the factors involved in parcel interdiction.

MR. EPTING - Your Honor, at this time the State would seek to offer Commander Brown as an expert in parcel interdiction, particularly in trafficking illegal drugs, particularly cocaine through the mail.

MS. MOODY - I would object, Your Honor. He's only said that he's participated, that he has not discussed any kind of training that he has gone through that would say that his participation is correct, the correct method in, I guess, as parcel -- um ---

MR. EPTING - Interdiction.

MS. MOODY - --- interdiction. Sorry.

MR. EPTING - I've had the same problem.

Your Honor, I believe the rule allows a person who's qualified both by formal education as well as by personal experience.

MS. MOODY - But his personal experience, Your Honor, would have to be based off of some kind of certification and some kind of standards. Just because

he's participated doesn't mean that he's participating correctly or proceeding procedurally.

MR. RUTHERFORD - And, Your Honor, I'd like to be heard -- she's behind me, so I'm looking at you and I can't tell when she stops and I don't want to interrupt.

THE COURT - Go ahead.

MR. RUTHERFORD - Your Honor, he is a narcotics agent, and respectfully, he's -- he's a narcotics agent. That's what he does. That does not mean that every police officer, every narcotics agent gets to come in here and then give opinion testimony. That's not the way court works. The fact that he's done it for a number of years does not mean has taught courses. He said that he -- he has taught other agents. He didn't say he taught courses on it. He's instructed other agents on how to do it. I imagine police officers do that all the time. The fact that you're a trooper and have been a trooper 25 year does not mean you automatically get to the MAIT Team. Those are people that are trained to investigate the accidents, to do the markings, do all that. The fact that you've investigated accidents for 20 years does not make you an expert with the ability to give opinion testimony. And further, this drug parcel interdiction, I don't know that that's a science. What we're talking about is the ability to give expert testi -- opinion testimony on a science. If

this were a gang case, then he can come in and say I've taken 22 classes on gangs, this is the stuff that gangs do. How do we even cross examine him on what parcel interdiction is from a narcotics agent standpoint? Is he trained to know how to deliver a package? A UPS agent is trained to do that; doesn't make him an expert. Is he trained to know what cocaine looks like when the dog scratches on it? Yes. So is another agent. The -- Agent Finch when he came in, he said he's taken class on it, he's certified in this, he's certified in that, and that's what gives him the ability to recognize these packages. What Commander Brown has testified to is that he's a narcotics agent. This is what he does. It doesn't mean that he then gets to curry that -- that in -- into the ability to give opinion testimony in Court.

THE COURT - Counsel, has he had training? You haven't asked him about he specific training he had in that regard. He testified that he has been heavily involved in handling those kind of cases, being involved in them and has instructed other agents on how to do it and that sort of thing. Has he had any kind of formal training on that?

MR. EPTING - I will put that question to Commander Brown.

A I've had training over the years, narcotics level one and two and State Commander School I had narcotics level

one and two, and Federal Commander School, I'm a guest instructor at the commander school they put on once a year. Sometimes I go some years, and some years I don't. I teach courses in basic narcotic search and seizure, now it's asset forfeiture to new police officers. I've been to numerous schools over the years, the police academy and several specialized schools in which parcel interdiction was part of the class. I've been in law enforcement for 38 years, and as a supervisor in commander of the drug unit, I'd say I've been involved in at least 50 of these type control deliveries. Several went to federal court, several went to state. More -- at least 50, not -- I'd have to go back and look at the last 38 years to see how many. We were doing parcel interdiction back in the 80s and 90s. We've been doing this for many years. I have been to several training classes that involved parcel interdiction, and I have been to some parcel interdiction classes, but I've -- they don't offer certification in parcel interdiction. Like as far as basic narcotics, there's not a certification of that either.

THE COURT - Well, counsel, doesn't -- he doesn't have to be qualified as an expert in a science. We're not talking about science.

MR. RUTHERFORD - Right, no, sir.

THE COURT - So we're not talking about science, scientific method and all that. We're talking about practical experience which is in -- in 38 years of police work and a lot of that involved in narcotics investigations, being involved in more than 50 parcel interdiction, being involved in those, making those cases that to court and that sort of thing, his training that he's got in a number of narcotic schools and that's -- so in part of his -- part of that curriculum was also on interdiction, and he teaches also in training sessions at the commander school. That's a higher level than normal just agency ---

MR. RUTHERFORD - But, Your Honor, he does not -- I'm sorry -- he doesn't teach in parcel interdiction. He just teaches narcotics.

THE COURT - Well, I ---

MR. RUTHERFORD - The precedent, Your Honor, unfortunately that we would set here is that from now on he would be able to be certified as an expert and in other cases give opinion testimony, because that's essentially what we're doing is allowing him to give opinion testimony, not just what he saw, what he heard, what he recognizes as a narcotics officer, but to be able to form and give that opinion to a jury, which is a dangerous precedent, because at what point are we not allowing every single police

officer to then be certified as an expert and give opinion testimony.

THE COURT - Oh, no, you -- obviously not every single officers out here working investigations and that is -- could be classified as an expert, but he is not your normal officer out there 38 years experience and all he's done, being commander as drug unit for how many years?

MR. BROWN - Eighteen with the drug unit. I was a lieutenant for ten years with Rock Hill.

THE COURT - I see your point though and I -- but I think what we can do -- what we can do is this. His testimony, obviously, and his knowledge and experience in those fields would be beneficial to the jury to help them understand, and obviously, they would have no knowledge about package or parcel interdiction or seizures -- search and seizures and that, although it's the kind of things and the procedures that are used in that regard, and so his testimony, obviously, would be helpful to them in being able to understand that, because -- the working knowledge of it. And so I think he is at least entitled to be able to testify about his experiences in that regard and what's done and what this means and what that means and how they normally do it in their procedure.

MR. RUTHERFORD - Absolutely, Your Honor, and we believe that you can -- he can do that without being certified as an expert. That's exactly the problem.

THE COURT - Well, I think he can too. He can testify as to all of that, his experiences ---

MR. RUTHERFORD - Right.

THE COURT - --- and that sort of thing, as to what this means and what that term means and how you do this and how you do that, and what the normal procedures of doing that. I think he can testify to that without being qualified as an expert.

MR. EPTING - The only concern I have is that we are getting -- in his knowledge of the techniques that are used, the kind of surveillance and the shipping the packages are outside what a normal person would experience. I would analogize what we're attempting to do by qualifying him as expert to qualifying any narcotics person with substantial experience in drug buys as an expert in recognizing the science between a drug dealer and a drug dealer. There's established precedence that that's okay; it's okay to qualify them as an expert. State vs. Jomar Robinson I believe is the case. If they're allowed to do that, to use their knowledge of ---

THE COURT - Hold on. You got a cite on that case?

MR. EPTING - I do not. I ---

THE COURT - I think police officers with experience in certain fields have been allowed to be qualified as an expert. Let's see what we've got.

MS. MOODY - Well, Your Honor, if -- I mean maybe we could go into further understanding what those classes are, because when he said he goes to commander school, is that like in administration of being a commander of a unit, or is that in, you know, how you set up or make a plan to interdict -- well, I cannot say the word -- parcel interdiction -- is that what it's about. From what he testified, I believe he said that he -- well, when you asked him his training, he said he's gone to police academy, he's been a part of -- he's taught at police academy, he's been a part of classes, 38 years of experience, 50 cases or more of participation and parcel interdiction classes that have been a part of his training when he's gone to commander school, when he's gone to the other narcotics level one and two, and then he's taught in search and seizure. The way I understood it from Mr. Finch was, specifically, when he went through certifications he went through -- for specifically dealing with his canine he went through a yearly process. I don't gather or I haven't heard anything here yet that says that Commander Brown has done that yearly as it relates to parcel interdiction.

Clearly the case -- the number of cases that -- just for an example, the number of cases that Mr. Finch, Agent Finch, has dealt with his over 300 cases, so it seems that that's what he does repeatedly. That's not this case here. I don't have a problem with Mr. Brown testifying about what the methods are, but I don't think he needs to be qualified as an opinion (sic) that the -- excuse me -- as an expert so that the jury is relying on his testimony in such a manner that it is -- that's just how it occurs with all interdictions.

MR. EPTING - Your Honor, I think there's a limiting instruction with every expert that would cure Ms. Moody's concerns, that their testimony is to be taken as any other testimony, give it no additional weight.

MR. SHELTON - Your Honor, if you're attempting to pull the copy of the Jomar Robinson case, Ms. Colton just advised that it references the statute dealing with experts a good bit and it plays out the standard in there dealing with experience being one of the factors. I'm going to try to find the key cite or a citation for the Court.

THE COURT - We've got it -- here it is right here. (Pause)

MR. RUTHERFORD - Your Honor, if the State could provide us a copy of the case that they're relying on, that would be helpful.

(WHEREUPON, DISCUSSION BETWEEN COUNSEL IS HELD WHICH IS NOT REPORTED.)

(WHEREUPON, PAUSE IN RECORD)

MR. SHELTON - Judge, do you need a copy of ---

THE COURT - We've got it.

(WHEREUPON, PAUSE IN RECORD)

MR. RUTHERFORD - Is Your Honor ready yet?

THE COURT - Yeah, I'm ready.

MR. RUTHERFORD - Your Honor, I would agree that he is certainly certified as a an expert in how crack cocaine is packaged and sold, but that's not what they're trying to get into, and maybe you should listen to where they're trying to take this expert testimony to see why it is so different than what they're talking about. With Agent Finch, he testified to the package being glued, to the package being taped, the seams, masking agents, all those things that I mentioned to science but have some basis in science. Parcel interdiction -- I'm not sure what they're talking about, but I have a feeling where they're trying to take it as it relates to text messages. That's problem here.

THE COURT - Well, I -- counsel, I understand your argument and grasping for straws for sure, and you're grasping for straws. And there's no question about that. I understand your concern, and that is, it's not the

package you can -- interdiction of a package or parcel. That's -- that's not your concern. Your concern is they'll be able to use certain things to establish the conspiracy between the two defendants it appears to me. You -- well, you -- I may have a different opinion than you -- and the jury may have a different opinion -- either one of us, but clearly, if they're able to establish these drugs and the drug chain and all that, assuming able to establish as a fact was the amount of cocaine that they're talking about -- there's -- there's no question of what they seized, the drugs and result of a search warrant and a suspicious package that came through UPS. So that's not the issue in the case. The case is how -- it appears to me -- is whether the two defendants were involved with that or not.

MR. RUTHERFORD - Yes, sir.

THE COURT - That's -- that's the question. And so -- so when you get into the -- if you get into the interdiction of parcels and packages whatever -- testifies about that is not -- it appears to me is not the real issue to your client. The clients -- is whether they can tie them into this somehow those drugs that were seized as a result of the search warrant. And so in the conspiracy part of it -- and your concern would be that Commander Brown as a result of his experience is going to be able to say, well, based on these text messages back and forth

between them and riding up and down the street there was as conspiracy for these drugs, to handle these drugs, and that -- if that's your concern, I understand that concern.

MR. RUTHERFORD - Yes, sir, Your Honor, if he would be able by his own opinion to say they were in the conspiracy rather than the jury be able to looking at ---

THE COURT - Yeah.

MR. RUTHERFORD - --- the facts and say ---

THE COURT - Yeah, here -- yeah, here's the thing, and this is where I would draw the line in any event. He cannot say -- in a criminal case it would be too prejudicial -- that these two individuals were involved in a conspiracy. And he can't make that ultimate conclusion, which is a matter for the jury to determine based on the facts in this case. But his opinion cannot usurp the jury's opinion on the innocence of guilt on defendant on the -- on this charge, specifically the conspiracy.

MR. EPTING - And, Your Honor, the State's in complete agreement. Our plan on using Commander Brown was to -- based on his expertise shed light on otherwise innocent behavior such as driving up and down the street in front of a house multiple times, what that might mean based upon his prior investigations of package interdiction and trafficking drugs ---

THE COURT - Oh, I think he can testify to that.

MS. MOODY - But I mean ---

THE COURT - Whether he testifies about it as -- so -- after he's qualified as an expert or not, whether he testifies it as an expert, he just testifies about his experience and what training he has and what experience he's had and cases he's made in the past and what happens -- he certainly can testify to that, what it means to him and based on his experience. He can testify to that, whether he does as an expert or just in his normal line of work as well as his experience.

MS. MOODY - Well, Your Honor, my -- and maybe I'm missing all this and maybe y'all have got a difference opinion on it, too, but I don't have a problem with him testifying as to that. That's what I thought he would testify to as to what he actually observed and based on his experience that's suspicious behavior that causes him to believe that there is a crime being committed. I get that part, but to have him qualified as an expert to bolster his testimony somehow over anybody else's that would testify, that's what I would object to. And I don't see that he has -- he does have quite a lengthy bit of experience in narcotics and being commander, and I respect all of that, I just don't think that for purposes -- I mean I think we're coming up with a false reason to say that he is an expert. If they're going to qualify him as an expert for narcotics

and that he's dealt with these cases before and he's made arrest associated with it based on his 38 years -- I believe it was 38 years -- of experience, I understand that, but as far as saying that he has more special knowledge than anybody else ---

THE COURT - He has a lot more than the jury and that's all that's required.

MS. MOODY - I -- I understand that.

THE COURT - Yes, ma'am.

MS. MOODY - I understand that, I'm just saying -- -

THE COURT - In South -- in South Carolina at least, State Courts.

MS. MOODY - Well, I'm just saying that as a parcel interdict -- I keep messing this word up -- interdiction ---

THE COURT - Interdiction. Say it again. Interdiction.

MS. MOODY - --- Interdiction --- expert I don't think that that's necessary. As far as him -- if they want to -- I think his title in and of itself says how much experience he has and when they get into his background they're going to get into all of that, that he has 38 years of experience. That speaks volumes in and of itself, but to try and bolster it as, oh, is much more superior than

anybody else that has testified, I don't think that's necessary. As I -- as I interrupted earlier, I said aren't we dealing with the cell messages, and so I'm a little bit confused as to whether they're saying he's an expert in understanding the cell messages or how he links it altogether, I'm a little bit confused. That's why I stood and said, well, aren't we trying to deal with the text messages.

MR. RUTHERFORD - And, Your Honor, we would ask to be permitted to voir dire the witness as to his expert and credibility at the appropriate time.

THE COURT - You can do that now.

MR. RUTHERFORD - Glad to wait on Ms. Moody. That's fine.

THE COURT - We're at that point. They've offered him.

MS. MOODY - And I objected. And I objected; I'm not sure whether the Court has ruled ---

THE COURT - I'm going to give you an opportunity to voir dire, and Mr. Rutherford wants to voir dire. Do you need to voir dire? You're in his way.

MS. MOODY - Sure.

THE COURT - I'm kidding. You're ahead of him, so he's got to wait on you. (Laughing)

MS. MOODY - Okay. Well, he can go first, so I just I can get my bearings together.

VOIR DIRE EXAMINATION

BY MR. RUTHERFORD -

Q Investigator Brown, tell me what is parcel interdiction.

A My definition of parcel interdiction is packages coming in the mail or UPS or FEDEX and we intercept it at - - usually at the facility, and then we do a controlled delivery of that package sometimes, and sometimes we just take it off line. It depending (sic) on the circumstances. It's a package that is suspicious in nature to us. Normally we -- and I have had four canines -- I've got two now -- on the drug unit. I have two interdiction guys actually work for me on the interstate, but that's a different type of interdiction. Parcel interdiction is these suspicious packages that come in and we normally invoke a canine. Sometimes they are broke upon. Some facilities actually open them up. When they suspect something in customs coming into the country, will open up packages coming into the country without a canine, and we then turn around and often times do a controlled delivery.

Q Okay. What I'm asking you is, what exactly -- if you are teaching classes on this, what exactly is parcel

interdiction, because I need to understand the limits of it so that we can make sure ---

A Okay.

Q --- that your expert testimony would be on package interdiction.

A Yes. Now, I teach on search and seizure, asset forfeiture and basic narcotics. I train other officers on parcel interdiction. When we have narcotic officers -- we have 22 agents now on the drug unit, and I teach them how -- if a package comes into the facility, how we go in, we do a line-up of the packages, we get a canine, we walk the canine around the packages. If the canine alerts to the package, then I show them how to type and draw up a search warrant to open the package. The Judge we go before, we sign it, we come back, we open the package, we give UPS a copy of it. Once the package is opened, if we determine if it's narcotics and we decide to do a controlled delivery, then I teach them how to do anticipatory search warrant, so that when we deliver the package, we can go in and retrieve the package and search the residence, and in with that, also, I teach them -- you know, we do the surveillance on the house, and then once we go in and do the search warrant, the proper charges is made after-the-fact.

Q Okay. Is that all that -- is that the entire scope of parcel interdiction?

A No, that's a summation of ---
Q Well, give me the entire ---
A --- I mean I ---
Q --- scope of it.
A It would have to be case by case, depending on what type drugs it is, where it's going, what neighborhood it's going into. It's not a black and white issue. It's -- it's -- it's -- you give me a specific case, I could tell you what my opinion is or how we should handle this specific case, but that's a generalization of that's what we normally do on parcel interdiction.
Q So your expert testimony would be what law enforcement should do when they have a suspicious package?
A Pretty much.
Q Okay. Is there anything else that I'm missing?
A You know, with the controlled delivery we have certain things that we do as far as putting officers in the neighborhood, watching for counter surveillance, how we want to delivery the package, what's the best way to address the neighborhood, and -- and often times, you know, I explain to the officers, the package many, many times does not go to the house; it's addressed to the neighbor's house or it's addressed to a vacant house across the street or -- and I alert them to all the different possibilities, or if it goes to that particular house, often times the

name is wrong; it has somebody's name other than the person who lives there. The return address is usually bogus; the return number is usually bogus. We have tracked some packages, actually, recently in California on both ends. We've done some packages from Arizona on both ends, but it's difficult to do because most of these packages come from a third party with a fictitious name. Now, when we get a real name and a real address, sometimes we track it back.

Q So, again, your scope of expertise on parcel interdiction is what law enforcement should do if they get a suspicious package. Is that right?

A Yes, on a broader scale.

MR. RUTHERFORD - No further questions as this time, Your Honor.

VOIR DIRE EXAMINATION

BY MS. MOODY -

Q Investigator Brown, is there a certification for parcel interdiction?

A There's schools for parcel interdiction, and I have two interdiction officers work for me, but I don't believe there's a -- there's a certification for law enforcement and a certain certification within law enforcement, but the answer would be I would think no. There's not a certification for parcel interdiction.

Q So ---
A There's a certification for the canine. All the canines are certified, but that's not just parcel interdiction. The canines are certified to alerting to narcotics in vehicles, homes, packages. It's a wide variety of certification, not just parcel interdiction.
Q Are you familiar with the National Criminal Enforcement Association?
A No. If they offer certification, I'm not aware of it.
Q What -- who do you -- if you were to get certification, what organizations do you go through to get certifications?
A I don't -- I have my training list downstairs. I've been in many, many, many classes. I don't know of a parcel -- I've worked with other agencies on parcel interdiction. I don't know of a certification on parcel interdiction. I guess you can certify people on just pretty much anything. I personally don't know of a class or something that will certify you on parcel interdiction.
Q Well, not just a class. I mean it's course work that I would think that you would have to take. I'm sure when you went through training as a narcotic's agent, you didn't just go through one class to reach a certain level of certification in narcotics. Right?
A Correct.

Q So it will likely follow that if you're going to be certified in something as detailed as parcel interdiction that you would be certified through not just one class but several classes of course work.

A Yeah. In the difference phases of narcotics, phase I is like basic narcotics, phase II you start getting into financial operations and things, and I have been to classes where they talk about parcel interdiction in great detail, bus interdiction. I went through an entire day of how to interdict packages on a bus, how do you get on a bus and ask people to step off the bus and all the packages remain and you walk the dog, don't squeeze the package, look at the package, if somebody abandons a package, what do you. So bus train interdiction is a little bit different from -- but it's -- that's still parcel interdiction, but it's not like this particular case with UPS, FEDEX, the large carriers, so I'm not sure if I understand or if I'm answering your question, but ---

Q I guess ---

A --- I've been to classes that has actually specialized in parcel interdiction and how you do that. There's a very good officer down in Spartanburg that does some of that, Ken Adcock. He teaches parcel interdiction, and I've -- I've been with him before, and he showed me some things early on in how to do parcel interdiction, and we took some

ideas from Spartanburg on some of their classes, but this has been going on since the 80s and 90s.

Q I -- I understand that. I'm not saying that you haven't taken any classes.

A Right.

Q I'm just saying in terms of being certified, there are programs in which you can go through that there are instructors that -- I mean just like if you're dealing with a canine, you go through that training, ---

A Right.

Q --- and then that's the person within that unit that deals with the canines, so you call Mr. Finch. Correct?

A Right.

Q So if there's a parcel, is it that they call you because you're the commander of York County Drug Enforcement Unit, or are they calling you because you're the only one in this region that deals with parcel interdiction? That's what I'm trying to understand.

A I'm not the only one that deals with it, but I can tell you, anytime the DEA wants a State search warrant a parcel interdiction in York County, they call me and ask me to do the search warrant for the parcel, because that's -- not only am I the supervisor of the drug unit, but my knowledge in that area -- I've been doing it for years and years and years, so any search warrant we're looking to

take to federal court, I end up typing up that search warrant and taking it before the magistrate or a circuit court Judge to get that search warrant signed if we're going to federal court. I can't recall of any other officers in York County that has typed up search warrants to go to federal court on parcel interdiction except for myself. Now, there's other officers can do it, just like that day, Sergeant Lubben typed up the search warrant for the anticipatory search warrant. Normally, Sergeant Lubben and myself would actually type up the search warrant for the package. Just so happened they used a Lexington County dog instead of a York County dog that particular day, so they did the search warrant.

MS. MOODY - No further questions for the witness, Your Honor.

THE COURT - Well, counsel, I don't know of anybody -- hadn't been brought to my attention of any kind of certification purely for parcel interdiction. There's a general -- there's search and seizures, parcel -- Commander Brown's now talked about going on buses; he's been trained for a whole day just on how to get -- go on a bus and get packages -- parcels off a bus and that sort of thing and how to do it. He draws up these search warrants in interdiction cases, even the ones going to federal court, they have him for that. He's been at it 38 years. I don't

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think there's any question -- I don't know of any information to indicate anybody in this State knows any more about it than he does. He might be considered the expert in the State and I feel after 38 years running the drug unit for 18 years, they've seen everything. He's had more than 50 cases in parcel interdiction and more -- he doesn't remember how many, but he's had all kind of training. I don't think anybody's had anymore. The key is -- and I could real all these cases to you, but there's no use in me doing -- look at the annotation on 702, and it is clear that in South Carolina that a person qualified as an expert must be -- have superior knowledge. It can be through -- and it doesn't have to be scientific. Obviously, this is not a science. This is how to practical -- carrying out the law and doing it within the law, search and seizure laws and -- and -- but it doesn't have to be science; it doesn't have to be any kind of training. It can be just plain old experience. All of the mechanics have been qualified as expert to testify concerning something about over the motor or something about the mechanics on an automobile, so I -- because they know a lot more about it than the average juror does and they can share that information with them, that's the whole key to it. So I'm going to find him qualified as an expert in the field of parcel interdiction procedures that are followed

in that regard, how those are carried out. I'm doing that based on his 38 years of experience, his 18 of it as commander of the multi - Multi-jurisdictional Drug Enforcement Unit of York County, also his -- all of the training he's had all of those years, teaching of those matters and other courses over the years, his being involved in more than 50 of these interdiction cases and following those through the preparation for state and federal courts, preparing search warrants in these kind of cases even at the request of cases going to federal court and that sort of thing. I think he certainly has superior knowledge on these matters and procedures and must follow -- and his experiences in that regard, certainly more than the average juror and more than the rest of us sitting in the courtroom as well, and so I find him qualified as an expert in this field. Now, here's the thing, that doesn't get in to any telephone issues necessarily, cell phone issues. That gets into procedures that he testifies that he follows and he is -- where his knowledge on them and what he's been qualified. Doesn't get in necessarily to the cell phone, but I have to see where we go on that, and that's what you were right, have to wait and see on that, but now on the cell phone issues, what extent of his knowledge he's able to testify about that as an expert just depends on what it is and what his opinions on it, but he

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cannot give an opinion as to the guilt or innocence of either defendant or whether they were involved in a conspiracy or not. He can testify about his experiences in that regard, some of the things that were found, but he can't testi -- give an opinion on the facts and evidence in this case as to whether it constitutes guilt of an offense in which -- charge or conspiracy. He can't testify concerning that.

MR. EPTING - Yes, Your Honor. We don't anticipate to ask him to draw that ultimate conclusion from any of the evidence that we're going to have him testify to as an expert.

THE COURT - Any other objection you want to make about testimony coming in -- even -- because he's being qualified as an expert in the field of parcel interdiction -- the procedures that are followed in that, what experiences -- now, that would go -- obviously, if delivering to the wrong house -- in particular intentionally delivering to a wrong house or a neighbor's house or an empty house, those kind of things, surveillance, how surveillance is carried out and weighed - - for that -- drugs to be delivered so they can picked up right away and that sort of thing, he can testify concerning those things if that's his appearance. Okay?

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MR. RUTHERFORD - Your Honor, for the record, I don't know that it was clear that Mr. Harrison objects to him being qualified as an expert. I think we have to put on the record. Although you can tell from my behavior, I didn't state that as such, so ---

THE COURT - Well, you haven't stated it. Do you object to him being qualified as an expert?

MR. RUTHERFORD - Yes, sir. Thank you, Your Honor.

THE COURT - Well, I surmised as such.

MR. RUTHERFORD - Yes, sir.

THE COURT - But you asked him about his qualifi - let me ask you this, counsel. You asked him about his -- I thought you might withdraw your objection as to parcel interdiction, because he was very thorough in the procedures that he followed and the experiences in that regard. I thought you might find him well qualified in that area.

MR. RUTHERFORD - Well, Your Honor, respectfully, I think that had solicitor gotten to in the narrative what they were going to solicit from him, we may not have objected, but we don't know where they're trying to go in the narrative, and so this parcel interdiction topic that, what does it mean?

THE COURT - Yeah, I'm sorry, and I'm not -- and you're not giving up your objection.

MR. RUTHERFORD - Right.

THE COURT - He's not qualified to testify to every possible thing that comes in as an expert, ---

MR. RUTHERFORD - Right.

THE COURT - --- and we'll wait and see on that, --

MR. RUTHERFORD - Yes, sir.

THE COURT - --- but the normal interdiction, I think it is clear that he's an expert in that field. Now, where he goes -- if he gets outside of what he's testified to is done in drug interdiction, then we're going to have to see. He says it's a broad field. We'll have to see. If you have a specific objection -- if they go outside of where he's already testified, then you can still object to that without ---

MR. RUTHERFORD - Yes, sir.

THE COURT - --- going against the ruling of the Court.

MR. RUTHERFORD - Yes, sir.

THE COURT - And I'll listen to you.

MR. RUTHERFORD - Thank you, Your Honor.

THE COURT - Solicitor.

MR. EPTING - Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. EPTING (CONTD.) -

Q Commander Brown, based on your expertise, is it common or uncommon for people engaging in drug trafficking through the mail to utilize counter surveillance?

A Oh, it's common.

Q Very common?

A Yeah.

Q And how is that conducted?

A People in cars, neighbors watching out. The -- a case before this we had a young man standing beside one of the roll-out bins watching for law enforcement doing counter surveillance. It's -- in today's time most drug deals we watch out counter surveillance and is common to have counter surveillance. People inside a house, people outside a house, especially now that we have the phones there to communicate back and forth and -- that's why I sent Officer Harrelson down to watch the house and look for counter surveillance and he picked up on the counter surveillance right away.

Q And the counter surveillance is communicating with whom in your experience?

A There are counter surveillances on parcel interdiction is communicating with the person receiving the package.

Q So if I understand your testimony correctly, in setting up control -- controlled deliveries of these drugs, the things you're looking out for is somebody accepting the package and somebody -- or somebody's doing counter surveillance. Is that correct?

A Yes. Yes, we've -- we've had them with -- now with phones and text messages we've had small -- people with walkie-talkies communicating. We've had people make certain sign language when we come into the neighborhood, but, yes, it's -- it's not uncommon to have somebody outside looking around letting the person on the inside know if they see anything abnormal for law enforcement.

Q So if I understand you correctly, in cars and houses, pretty much everywhere eyes can be looking out for signs that something's strange. Is that correct?

A Yes.

Q And they're going to inform the receiver of the package that something's strange and presumably they will pick up the package. Is that correct?

A That's correct.

Q Is it common or uncommon in your experience that the -- that these drugs are being addressed and sometimes shipped to houses that do not belong to the parties involved in the drug conspiracy?

A It's common. It's about fifty/fifty that it goes to the house, the proper house. Often times the name is changed. In this case the name was changed just a little bit, and I think that was just an error on the part -- it was not -- often times the -- usually the first name or last name is changed from Jack to Charles or something like that, but -- and many times it goes to the neighbor's house, because the neighbor's at work, they know the habits of the neighbors or there's a vacant apartment across the street or -- or -- it's not -- it's quite common to have a package delivered to another house in the neighborhood other than the right house, but when it comes to the proper house, it's very common for the name to be a little bit off so that we can identify a particular person.

Q Now, you mentioned neighbors at work, you mentioned vacant houses. Is it in your experience common for the people who are having these packages sent to their house to know these packages are coming, the house owners?

A No. We've actually had calls, a couple calls in the past where the homeowner happened to stay home that day for some reason from work and these packages -- two that I can think of right off top of my head where they called law enforcement and we went to their house, and they said, this package came to me, we opened it up and it's got these drugs in it and they gave us -- they turned the packages --

one in Fort Mill and one in York recently that -- not -- not recently but fairly recently that that has occurred and the package in Fort Mill we determined that it was the neighbor had a package shipped to his neighbor's house, and the neighbor just happened to take that day off from work and intercepted that package.

Q Based upon what you observed in the neighborhood that day, was there anything significant about Chief Harrison's actions?

A Officer Harrelson was the only officer in the neighborhood, and he picked up on the fact that we had a vehicle in the neighborhood driving up and down the street fairly slow with North Carolina tags on it, which turned out to be a rental vehicle, and when he passed the house he drove slowly and then my observation at the top of the hill sitting at the stop sign looking up and down the road just sitting there when the traffic was clear, was obvious to me that he was communicating or the look-out person for the person inside the house. It was at that point while the Yukon was at the stop sign that the other car started back (sic) up to leave and it's one way in, one way out in that particular neighborhood. And I could see the Yukon clearly and I could see the driver clearly. I could even tell what kind of glasses that the driver had on.

Q Is it common in your experience for the surveillance person -- person running counter surveillance rather, to notify the person that's waiting for the package when the package is there --

A Yes.

Q -- when they should come out to get the package?

A Yes.

Q And when it's safe to leave with the package?

A Yes, and any presence of law enforcement or any suspicious persons or neighbors walking dogs or you name it, they -- I mean they communicating back and forth to each other about anything that they need to be on look-out for.

Q Is it common in your experience that the drug trafficker who's receiving the package, that he not -- that he or she not open that package?

A Yes. It's -- it's common that -- the belief is if you didn't get -- if you didn't get it out of my pocket you don't have me, or if you don't open the package -- as long as you don't open the package, law enforcement can't charge you or can't get you for it, so quite often -- now, it used to we'd wait five or ten minutes and run in and the package would be open. Now, we run in -- we have to wait longer when we go in, the package -- quite often it's not open yet; they'll let it sit for 12 hours or 24 hours or they

won't open the package and they're told not to open the package, because if the package is not opened, they can always deny knowledge of what's in the package.

Q You may have already answered this, but in your experience dealing with drug traffickers who have cooperated where using the mail, how do they -- how do they select what house they're going to mail it to?

MR. RUTHERFORD - Your Honor, I'm sorry, his -- he testified that his expert testimony was limited to what law enforcement should do, not as to what is in the minds of someone sending the package, and when I asked him three times, he said what law enforcement should do if they have a suspicious package. The question he is being asked now is outside the scope of what he testified his expertise was and what he testified that drug -- that package interdiction was. I would argue, Your Honor ---

THE COURT - Well, he said it was broader than just what he gave you. If there's more to it than that, he can't cover all the details of it. Depends on the situation. So he didn't confine just to that, but that's where I found him qualified, however, ask your question again.

Q How is the location selected or communicated about where the drugs are being sent?

A I'm not sure if I understand your question.

THE COURT - Yeah, that's not a good question. Rephrase your ---

MR. EPTING - Yeah, and I probably asked -- I can't recall exactly how I phrased it ---

MS. MOODY - May I note my objection?

MR. RUTHERFORD - If he's going to rephrase it, I'll wait until he rephrases it to renew my objection.

MS. MOODY - And may I note my objection on the record even though we're waiting to see.

THE COURT - Well, you got to know what the question is first ---

MS. MOODY - I know. I'm just trying to get in there -- timing.

THE COURT - Follow the lead -- co-counsel.

MR. RUTHERFORD - Jumped up quick. I didn't see him over here. How about that?

Q How are the locations that the drugs are being sent to selected?

A Through our interviews with suspects as selected, many different ways, a neighbor's house that gone to work during the day, a neighbor who allows a package to be delivered, persons that -- people actually let packages come to their house and they're told not to open the package, but they agree to let packages -- another one recently where a package was delivered to the lady's house and she just

didn't open it, but it's many different reasons of why they pick these houses, but they usually pick something that's safe and rarely does the package have the name on it of the person who actually is receiving the drugs. I can't recall of the time when a package was sent to somebody and had their name on it and had drugs in the package.

MR. EPTING - That was -- that was my question.

THE COURT - Okay. Well, I think he can testify to that.

MS. MOODY - His -- I'm sorry, his answer -- your question is you can't remember -- I mean the answer is you can't remember?

A No, the part -- no, the answer is, that was just a small -- at the end people ship these packages to homes that they feel comfortable -- they ship it in other people's names, they ship it to neighbor's houses, but they -- rarely -- I'm trying to think of a time where a package would be coming to Duane Harrison and he would put his name on the package that's got drugs in it coming to Duane Harrison because they always want the -- have the plausible deniability of the package.

THE COURT - And I wouldn't use Mr. Harrison's name -- before a jury --

MR. EPTING - And I did not ask him this question earlier.

Q You mentioned a rental vehicle was used in this situation. Is that in your opinion indicative of drug trafficking there?

A It is. Rental -- lot of people use rental vehicles for a lot of different reasons, but people involved in drug activity often use rental vehicles, because they're not in their name and it's pretty common that we can seize vehicles if they have a certain amount of drugs in the vehicle.

MR. RUTHERFORD - Your Honor, I'm sorry. We would object. The answer was not in responsive. The question was whether rental vehicles are usually used in counter surveillance. The answer was about rental vehicles as it relates to drugs, not as it relate to counter surveillance.

THE COURT - Okay. All right, objection noted. If you want to rephrase it, I -- that is what you asked him I think.

MR. EPTING - I thought I said drug trafficking, but I ---

THE COURT - All right. If you want to re-state -- if you want to rephrase the question to him, that's up to you, but ---

MR. EPTING - No, I - I'll move on, Your Honor.

Q You testified earlier that a phone ---

MR. RUTHERFORD - No, I'm sorry, then -- there's an objection outstanding that his answer was non-responsive.

THE COURT - Yeah, I sustained it. I said if you want to move on and ask another question.

MR. RUTHERFORD - Yes, sir, ---

MS. MOODY - Can you please note my objection for the record there.

THE COURT - Okay.

MS. MOODY - Thank you.

Q You mentioned earlier, Commander Brown, that a phone was seized that was thrown in the woods by Chief Harrison. Correct?

A Yes, Officer ---

Q I believe ---

A Officer Beck, actually, saw him throw the phone.

Q And I believe you said that some information was retrieved from that phone. Is that correct?

A Yes, that's correct.

(WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS NOT REPORTED.)

MR. SHELTON - May I approach the witness, Judge?

THE COURT - Yes, sir.

Q Commander Brown, I'm handing you what's been marked as State's Exhibit 3 -- Court's Exhibit 3 through 10. Would

you please read through those and when you've completed reading through those, look up so I know you've read it?

A (Witness complies) Yes, these are photographs of text messages.

Q Start with the State's (sic) Exhibit 3. What is that?

A It's -- it's a photograph of the outside of her phone with the mobile number on the phone itself.

Q Is that the phone that was taken from the woods by Officer Beck thrown by Chief Harrison?

A Yes, this was the one that Beck recovered, not the other one.

Q Okay. So State's (sic) Exhibit 3 is just a picture of the phone with its phone number. Is that right?

A Yes, sir.

Q Could you proceed to Exhibit 4?

A Yes, sir.

Q What is that?

A It's a text message from that phone from -- to me to Jacq and it's got the address of where the package was delivered to ---

Q And what ---

A --- 1162 Shenandoah Circle.

Q And what date was that sent?

A The date was October 17th, which was two weeks before.

Q And that was sent from whom to whom?

A It was sent from Duane Harrison to Jacq Underwood.
Q In your experience in package interdiction, does the -- and this question probably answers itself -- does the location where the items need to be mailed, is that set ahead of time?
A Yes. The package come from California.
MR. RUTHERFORD - Your Honor, I'm ---
MS. MOODY - Objection.
MR. RUTHERFORD - --- I'm -- yeah. Sorry.
MS. MOODY - Objection. This -- if I'm understanding it, if it's Number 4, it just has a address on October 17th. The time in which he comes into this matter is on October 30th, and it just has a forward, FWD 1162 Shenandoah Circle.
THE COURT - Okay.
MS. MOODY - I think -- well, his -- his question was, is this, I guess, is consistent with drug trafficking ---
MR. EPTING - No, it's in your experience do people participating in sending drugs through the mail set the address they're sending the drugs to ahead of time.
THE COURT - That's what his question -- do they do this ahead of time, not on the same day, because they got to be ship -- consistent.
MS. MOODY - Okay.

Q That was State's (sic) 4. Correct?
A Yes, sir.
Q And that is the -- ultimately the address where the package that you investigated was sent to. Is that correct?
A Yes, sir.
Q What is State's (sic) 5?
A State 5 is a series of text messages.
Q Would you please read those messages from left to right, top to bottom, for the Court.
A The first one is from Jacq to me, you own it, question mark. The second one is from me to Jacq, duh, d-u-h, from me to Jacq, they up the street. The next one from Jacq to me, K, then from me to Jacq, I'm right here with the man, from Jacq to me, he's coming, from me to Jacq, in a second, from Jacq to me, K, from me to Jacq, -- I think that's now, n-o-w.
Q And when you say from me to Jacq, who's phone is this?
A Duane Harrison's phone.
Q And do you know Jacquese Harrison (sic) by any other name?
A Duane Harrison?
Q I'm sorry, no, Jacquese Underwood by any other name?
A I -- well, nickname on the street's Jacq. I know people call him Jacq. When we interview people and they

talk about him, they call him Jacq, and in the past we've dealt with him he's called Jacq.

Q Could you go on to the next page?

THE COURT - What was the date on that one? I didn't hear it.

MR. EPTING - That was October 6th, Your Honor.

THE COURT - 6TH?

MR. EPTING - That's correct.

A October 6th.

THE COURT - What's the purpose of that?

MR. EPTING - At some point, Your Honor, -- and it becomes more relevant -- a text goes from Jacq to Chief asking, did he drop -- did he drop, he hasn't knocked, and then Chief writes to Jacq in quick cessation, are you good, hello, you got it, you got it, you got it, and then five minutes later Jacq writes to Chief, got it, yeah. Based upon those text message exchanges I would like to ask Marvin Brown his opinion of what they were discussing.

MS. MOODY - Yeah, ---

MR. EPTING - If it was consistent with a lookout and a receiver, rather than if they are guilty, if that makes sense.

MS. MOODY - And I would object on that, because it doesn't have an address tied to it, it's several days before this 1162 address, Shenandoah. He went from October

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17th with Exhibit Number 4 to Exhibit Number 5 that is -- well, I can't do the math that quick -- but it's at least a week ahead of time and he doesn't identify what they're talking about, what -- you can't -- I can't discern what it is and it's purely speculation as to what is going on in this text, and I don't think that Mr. Brown is an expert in determining what is subjectively going on in someone's mind as they're texting something. Text messages can always be misconstrued as meaning one thing or another. The only people who know are the people who were texting each other. My other objection that I would note is that he jumped from this is Jacq. There has been no evidence submitted or offered here that would suggest that this is my Jacquese Underwood. Because he knows him as Jacq, that doesn't necessary mean this is Jacq in related to this young man here because it's in his phone.

THE COURT - Well, I didn't take any stock in that last statement. I think if they can tie it all in through a relationship between the two of them and they did on the day of the concurrence (sic) and identify him as such and they've got later text messages back and forth between them, I mean -- you know, that's evidence, that they knew each other and were carrying on these conversations before, which is relevant to the overall case for the State. That's not -- that's not the objection I'm concerned about.

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That one is nonsense, because if there's a connection between them, it wouldn't matter if it was two or three weeks beforehand if there's a connect between them. You're saying, well, it couldn't been another Jacq ---

MS. MOODY - Oh, I mean ---

THE COURT - --- well, it -- or it could be your client too and based on the other evidence, more likely is, but then that's up to the State to prove this, so they get to present their whole case. If you say it wasn't him, I mean, you know ---

MS. MOODY - I get that, Your Honor, but I'm saying that he may -- he slipped in there that it was Mr. Underwood based on this text from October 6th. I can ---

THE COURT - All he said was Jacq. That's all he said. He didn't say it was Mr. Underwood; he said Jacq.

MS. MOODY - He asked him about is this, what you know, Jacquese Underwood ---

THE COURT - He said does that indicate -- he said does that indicate to you anything about it, because, you know, basically the procedure in transporting drugs and having drug shipped and delivered. That's what he said. He didn't say was it Mr. Underwood. It's between Jacq and whoever's on the phone. In that case they said it was Mr. Harrison.

MS. MOODY - Well, I mean just -- well ---

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THE COURT - If it Jacq, it's Jacq.

MS. MOODY - I understand that it's Jacq, but I thought, if I'm not mistaken or maybe I'm mixing it up, that he said Jacquese Underwood. That's fine. As to these, I would just object that he direct -- saying -- I'm messing up this record here -- Exhibit Number 5 I would object to, because it doesn't -- it doesn't tell us what it is; we can't identify what it is; it doesn't go to this particular address that he initially spoke of on October 17th.

MR. EPTING - And, Your Honor, I believe we do need these text messages, and I do agree in a vacuum just with this in and of itself it's hard to make heads or tails, but when they're all put together and combined with what happened on the 30th, it shows a larger conspiracy to ship drugs through the mail. They have one service or look at, (sic) have the other pick it up.

MR. RUTHERFORD - Your Honor, ---

THE COURT - Yes, sir.

MR. RUTHERFORD - --- if Commander Brown is allowed to testify as to, again, what law enforcement should do when they have a suspicious package, that's one thing. If Commander Brown is allowed to testify that on the phone that they retrieved from co-defendant that his name was listed as Jacq and there was an address that was

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forwarded from someone else to that phone, then he can testify to that; that address certainly relates. As to any other text messages, he can't even show that they're relevant to anything. He has no clue what they were talking about, and certainly they were not in furtherance of a conspiracy that involved a package that was delivered on October 30th, so it's not just any text messages in someone's phone. I don't know -- I can tell you that I was picked up this morning at 8:30; I was not there when he got there, because I was at school, and the message came, are you there, I'm here, you're late. You can't then take that and say that relates to the shipping of a package.

THE COURT - Well, see, I -- I agree with that. How are you going to tie that in? I understand that you've got to show a conspiracy, and I understand that you're not limited to October 30th or the 29th or the 17th for that matter in proving a conspiracy, however, you have to be able to show that this is something in connection with a conspiracy, and not just that this is -- this is behavior that would be -- that would be compatible with people involved in a conspiracy, because this seems to be talking about another drug shipment drop or something, and ---

MR. EPTING - I believe that ---

THE COURT - --- and you can't -- but you don't have any proof that that's, in fact, what happened.

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MR. SHELTON - I believe in the totality it'll show that me, the person we're alleging is Chief, based upon his possession of the phone, is in constant communication with the person identified as -- in his phone as Jacq requesting him to make pick-ups, warning him about the police being in the area, telling him you know the police are in there, okay, now it's straight, come with me, uh ---

THE COURT - Well, that was the 30th. Are you saying this was on this Exhibit 5 you're offering?

MR. SHELTON - No, -- these are on various dates leading up to the 30th, the 6th, the 17th, the 18th and the 23rd, Your Honor.

THE COURT - Well, let's talk about this specific one. What's the date on that one? You're saying it's Exhibit Number 5.

MR. EPTING - Exhibit Number 5 is October 6th.

THE COURT - Okay. What about that one? What does it say?

MR. EPTING - It says that -- it says that Chief - is -- is waiting up the street, he's communicating with somebody identified as Jacq. He's asking -- he's asking him, is it straight, are you good. Jacq says okay. Chief says to him again in -- in a span of one minute, you good, you good. Jacq says to him, he haven't (sic) knocked, did

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he drop. I believe Commander Brown would testify that that is consistent with a person waiting inside the house for a postal package. Had -- the postal carrier has not knocked, did he drop the package there, and then at that point, Chief, again, says -- oh, me, -- I'm sorry, I keep calling him Chief -- me says to Jacq, are you good, hello, you got it, you got it, do you got it, and then five minutes later Jacq writes back to me, got it. I think that's consistent with what went on on the 30th, that he's waiting inside the house, he's waiting for the word from Chief to say it's okay to come out and get the package, and once he gets that message he comes out and gets it.

MS. MOODY - Your Honor, you don't know that he's in the house. It says, if I read it correctly, you on it, duh, they up the street, k, I'm right here with the man, he coming, in a second, k, now, it's straight, you good, k, you good, you good, he haven't (sic) knocked, did -- he haven't (sic) knocked, did he drop, you good, hello, you got it, you got it, do you got it, got it, yeah. I don't where they are. You cannot assume that they -- well, Commander Brown can't assume that they're in the house. There's no address associated with this particular -- and I'm not going on those; I'm just saying on this for October 6th. You don't know where they are.

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MR. EPTING - In a vacuum you certainly don't, but given what we know, what we've observed at the length of text messages that are fronted to the Court of a similar nature, of him -- one communicating to them saying, it's good, you get it, have you got it yet, ---

MS. MOODY - But you don't know what they got and just because one drug deal does not make a huge leaping conspiracy going all the way back to September 30th is what y'all have alleged. October 30th, then you have an address, and I could see if you had that with this, but they don't have that. We don't even know where they are. On October 6th I don't know where they are.

MR. RUTHERFORD - Your Honor, beyond that, the text messages that they would comport to say are consistent, then what are they consistent with? Maybe they should re-draw it in the text messages that they have on October 30th.

MR. EPTING - I don't believe that we have any text for the 30th, however, I -- I won't speculate.

MR. RUTHERFORD - So the day that the package was delivered, there's not a single text message on four phones, yet they would like Your Honor to go back to a month before and look at text messages and say this is evidence of a conspiracy on the 30th when they're not even consistent with any text messages that were sent on ---

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MR. EPTING - Well, Your Honor, I don't think we can say with certainty there were no text messages from that day, because one of the phones, I believe recovered from Chief, we never we able to unlock. It's protected. We don't know what's on it. A great deal of information my understanding was deleted from Mr. Underwood's phone inside the house if I have the information correctly.

MS. MOODY - We -- we can't -- we'd have to have an expert testify as to that, Your Honor, as to what was deleted. I have the phone here, and I've gone through every one of them and I looked for October 30th; there's nothing on October 30th in here, and it would show if it was -- if anything from -- the answer would be this phone, which I need make sure I know this phone number -- if it was ever deleted, it will say false or not. I haven't located the phone number, but, of course, I'll go back through it again and look for it, but I have not found anything on October 30th. This is the phone that they have and the phone that they are using now, this is that phone. They have six phones. There is one phone they're not going to be using; they never recovered that phone. The one other phone has a bunch of photographs on it, and I think it's two phones that have photographs on it. Correct?

MR. EPTING - Oh, I'm going -- I'm going to address something on that.

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MS. MOODY - Okay. So I mean ---

THE COURT - One of them they say was -- they were unable to unlock, so they don't know what's on that one.

MR. EPTING - Yes, sir.

MS. MOODY - Well, oh, ---

MR. SHELTON - If I may, Your Honor, ----

MS. MOODY - -- okay, I'm sorry.

MR. SHELTON - --- the number that is the Jacq stored contact in the phone, number four that Mr. Brown's referring to, we can link that to the -- a Samsung that was recovered from Mr. Underwood. It's a 678 area code number, and that is revealed in Harrison's phone. Through Mr. Underwood's Samsung he sends a separate message to a stored contact named Doey saying this is my new number, and it's the 678 number. So we can link through the Samsung and identify the phone number receiving text messages as Underwood's phone, however, we cannot link the phone number to any phones we have as evidence. One of the phones that we have was dead, and it was the phone that was in the upstairs bedroom, number five. Law enforcement was only able to extract data from the sim card. My understanding is that doesn't always reveal text messages and the like, that sometimes it's simply limited to photographs. We have not been able to get into that phone to date. We haven't -- frankly, we haven't explored that avenue, because we're

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out of time, but that was a phone in the upstairs bedroom. The -- number three, the other phone that Mr. Harrison threw in the woods is locked. It's a black grey phone; it's locked. We can't get into it without sending it off for a process called chipping off, which is risky, because the risk is, if it doesn't work the first time, it destroys all the evidence, so we tried -- we tried to use an update in the Cellebrite system to get into that phone, and we were unsuccessful, I think it was two or three weeks ago, so we ran into a dead-end with that phone. So we have two phones that we have not been able to get into. So to characterize it to say, we can't say that there were text messages, we can't say there were weren't text messages. So I mean -- and we're dealing with communication between -- we know it to be Harrison's phone and we know it to be Underwood's number. We just can't -- can't definitively associate that number with the phone in possession of the State.

MS. MOODY - Actually, Your Honor, they know as of 7/2012 that it was Underwood's phone, but when they sent off information for a phone with Sprint, it comes back as a Chris Paul (phonetic) P.O. Box Irvine, California. It does not come back as my client's phone.

MR. SHELTON -That's who's paying the bill, Your Honor.

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MS. MOODY - Well, he's in Irvine, California.

MR. SHELTON - That's where the package is from.

MS. MOODY - That -- well, that's a big jump, because the package is from Rialto, which is southern California. I can't remember where Irvine, California is, whether it's close to L.A. or not, but -- and I guess that's southern, too, but as of this date, the Samsung phone that my client is using is a 803-616- It comes back as registered to him. That's the cell phone that Marvin Brown talks about when he says he admitted that the white Samsung phone was his. That's this one. They don't have number three. They don't have that phone. They didn't find it on my client. In his cell phone, his Samsung, back in July of 2012 it was his phone. That's not his phone.

MR. SHELTON - It's -- Your Honor, it's September of 2012. A stored -- he sent a stored contact, this is my new number.

MS. MOODY - That's ---

MR. SHELTON - I always leave this other phone in the car; that's his Samsung; this is my new number. And that's the exact same number that Duane Harrison sent a text message to stored as Jacq, and it's coincidental? I mean that's the State's point here. The defense is trying

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to say they're not communicating, but we have all this other evidence that suggest otherwise.

MS. MOODY - I'm not saying -- I'm not saying they're not communicating. They can know each other. Just because you know someone does not necessarily mean that you're doing this conspiracy, this grand conspiracy that they are trying to create. They can know each other. There's no law against that. The number that I have that says he has a new phone number is 7/3. It's -- the date is July 3rd, 2012, and I have to go back if there's another one that says that, and you could possibly be right; that's in September, but as of this time when they are trying to find out who owns the phone, it has this individual, Chris Paul.

MR. SHELTON - That doesn't reveal who owns the phone, Your Honor. That is who's receiving the bill, who's paying the bill. We don't intend to introduce that, because it's -- it's not directly to point as to whose phone it is. All it shows is who's paying the bill.

MR. RUTHERFORD - Your Honor, but it gets to the - - I think we're into the weeds here when -- unless they're text messages relate to a furtherance of the conspiracy, they're simply not relevant. And these are too far away and too remote to be relevant. I understand their argument about the address; I can see how that could be relevant, but everything else -- every other text message that makes

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them out to be friends, if they get on the stand and deny that they know one another and deny -- I think they come in, but absent that, taking cell phone messages, taking text messages that are almost 30 days removed from the actual incident location when on the incident location there is not a single text message is overly prejudicial, and these text messages absolutely should not come in; they are not in furtherance of the conspiracy, and they do nothing except lead the jury to believe what the State wants them, that there must've been another package delivered. Well, find the package. Find the address, give me something that suggests -- and I know Your Honor's dealt with other cases; I've certainly dealt with State-wide grand jury cases where you go in other counties, you can pull the addresses, you can pull packages. I do in federal court. They go and pull and addresses. Fine. Show me that, then we'll Lyle it in if that's what they to do, but just text messages that are vague and ambiguous that no one could testify what is in two people's heads when they're text messaging back and forth almost a month before the incident date, there's no way they can come in.

MR. EPTING - And, Your Honor, Mr. Rutherford keeps referencing the incident date. We're not just trying the drug trafficking here; we're trying a conspiracy to traffic and even if those text messages were taken out of

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Marvin Brown's expert opinions and all that, I still feel that we should have the ability to present these to the jury. They can have their arguments about what's being said; we can have our arguments about what's being said, and the jury can decide the truth of the matter. If they are truly harmless and as generic as they say, then what's the harm, unless they are talking about drug trafficking, and if that's the case, it's -- it's evidence of their conspiracy to traffic.

MR. RUTHERFORD - And, Your Honor, again, that is exactly the problem, to take innocuous text messages that were almost 30 days prior to this event -- and the solicitor is wrong, this is not as the state-wide grand jury would allege or the feds would allege a continuing conspiracy. This is about a package being delivered on a certain date. The conspiracy must address that package being delivered, not just any and all behavior that may have done that seems like it was related to drugs. That package on that date -- if 30 days prior to they have text messages going to someone that says, pick the cocaine up, do this, blah, blah, blah, related to that package, otherwise, this is not ---

THE COURT - I don't agree with you, Mr. Rutherford, but I -- I'm still -- don't know that I necessarily in agreement with the State either. See,

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you're missing the boat when you say everything they put in has got to relate to the October the 30th delivery of that package somehow in furtherance of the conspiracy and something leading up to that to be part of -- no. You can have a drug conspiracy where there were four drugs being obtained -- Okay? -- over a six month period. You can have a grand jury testify to that.

MR. RUTHERFORD - Yes, sir.

THE COURT - Certainly can do that, so that's -- you're wrong about that.

MR. RUTHERFORD - But, Your Honor, remember those cases were -- where they alleged that, you're alleging that because of the state-wide grand jury jurisdiction, things that happened in other counties, that conspiracy was regarding that. You're showing that the text messages were regarding the actual conspiracy and this is the conspiracy that they were alleging, whether it happened some place else or not. I agree if they had said there was a package delivered to this address as well, we know that for a fact, our dog hit on it, it was gone before we got there, and these are the text messages surrounding that, then you've got this continuing conspiracy, but what we have here is an improper burden shift for them to show that these text messages were innocuous, and it's impossible for them to do that. Nobody even knows what they're regarding.

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THE COURT - Well, that's -- what I'm trying to weigh, whether conduct which would be consistent with some kind of drug drop, delivering the drop between these same two individuals, approximately three and a half, four weeks before the one in which they're charged today, whether that -- if it would be consistent with a similar occurrence to what happened in this case, is evidence that they were in an on-going conspiracy, not two separate incidents to which they're being charged, obviously. It would not come in, what they're offering these phone messages for, would not come in if they were trying to truly prove two different drug transactions on two different tracking situations. It wouldn't come in, no question about it, because they couldn't relate it to them. The question is, though, under the trafficking statutes, these conspiracies could be pretty broad, and the proof of them could be pretty broad, and that's what a lot of people overlook, and it's not just possession of the drug, transfer of the drugs, dropping of the drugs, whatever, shipping them through -- it's not just that. It's a conspiracy between two or more persons to carry-out a criminal intent and an act in that regard, and that's what it is. So, yes, you don't have to -- you're not stuck with what happened on October the 30th in the way of proving this conspiracy, but the question is, what I'm wrestling with is, whether proof of similar conduct

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involving these same parties is evidence of an on-going conspiracy, is evidence of that, so that they could bring it in. That's the question. Not to prove there was another drug transaction, but to prove that there was some on-going agreement between them and actions to traffic drugs. They're not offering -- they're not trying to prove there was some trafficking of drugs on the 6th, only that these -- they were working together on the 6th in similar --

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MR. RUTHERFORD - But that's the whole thing, working together to do what. It does not say anything. It does not do anything but shift the burden to them to explain what they were doing on the 6th, and that's the improper burden shift. That's the prior bad acts that they think they're getting into when ---

THE COURT - Well, I ---

MR. RUTHERFORD - --- they don't even know what they did.

THE COURT - No, you're confused. It's not a bad act. It's not proof of a prior crime. It's proof of a conspiracy, and that's what you're losing sight of.

MR. RUTHERFORD - But conspiracy to do what, Your Honor? And that's the problem. There's no ---

THE COURT - Well, if -- listen, if you got these facts here and very similar facts over here three weeks or

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three and a half weeks later, are they involved in a conspiracy to do this? Not that they're -- and there could be -- the jury would have to be instructed that they're not being charged with committing any kind of drug offense on this -- 6th, October the 6th or the 17th or whatever, but that's offered only insofar as evidence on whether or not there was a conspiracy, and that's what they have to be told, but is it -- is it evidence of a conspiracy, that's the question, not does it under (sic) -- fall under 403 -- 4(B), you know, common scheme or plan or that; it's not that, can't offer it for that. Is it evidence of an on-going conspiracy between the two of them; that's the question, and they're not being charged with the other one. That's when you can come under 404(B) I think and that. They're not being charged with that.

MR. RUTHERFORD - Well, Your Honor, also, again, I think you said it correctly, if they could show that those text messages were evidence of conspiracy because they also relate to text messages sent on that day. There were no text messages on that day, and they were -- because they don't have any -- well, say, well, because we didn't find them, we're going to go back and find something you did that resembles what we need you to have done on the 30th.

THE COURT - Why can't they do that if it is proof that they acted in same kind of behavior?

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MR. RUTHERFORD - Because there's no proof.

MS. MOODY - Well, the phone that they did recover, that -- they're saying they can't recover that other phone -- what they did recover is the one that we're dealing with. That's where these text messages come from. On this particular phone, the Boost Mobile, there are no text messages for October 30th or the 29th, if I'm not mistaken, and I'll go back to look, but ---

MR. SHELTON - That is correct, Your Honor, but what there are -- there's a phone call between these two men the day before or the day of. The State's argument would be they don't -- like on one hand, we don't have text messages; we don't have the 678 number. We know what phones they have in their possession. There's a phone that -- that both men have that the State couldn't get into. Are there text messages in there? We don't know. They don't have to communicate through text messages to communicate. Mr. Harrison driving back up the street is signal enough. He followed the delivery truck out of the dead-end ---

THE COURT - Well, I don't disagree with you on that part of it. You certainly can get all that in -- um -- and phone messages the day before and the day of; I think you can get that.

MR. SHELTON - It's -- so I just want to be ---

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THE COURT - It's a question of what you can get in on the 6th.

MR. SHELTON - Yes, sir.

THE COURT - That's the question right now.

MR. SHELTON - And just to be clear, it's just call logs showing that a phone call was made. We don't know the substance of the call, but again, these things are all taken as a totality. There's communication between these men and this -- all this activity prior in the month is relevant to the day in question, because this is the exact same activity they're doing.

THE COURT - Well, you might be able to -- you might be able to get in for -- to show there was communication between them, show there's on-going communication with each other; it doesn't prove anything, except they were in communication with each other. You might be able to get it into that first. But to get in the exact text messages, that's the question. I don't know. That's what I'm going to look at; I'm going to study on that one. What else?

MS. MOODY - Well, they were just on that one; that's it.

MR. EPTING - And, Your Honor, that would be ---

(WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS NOT REPORTED.)

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MR. SHELTON - And, Your Honor, for your review and for purely pretrial purposes, we would ask that Court's Exhibit 3 -- Court's Exhibits 3 through 10 be made part of the record.

MS. MOODY - Your Honor, I think we need to take each one of these separate and independent, because they don't all say the same thing, and if you're going to -- you're going to -- I understand you're going to consider this one. I don't understand what the Court said it was going to do Exhibit 5. They have Exhibit 6, 7 and 8, unless it's the same -- you were going to go down the same line of questioning.

MR. EPTING - I wasn't planning on asking any more questions ---

THE COURT - Then why you want to make them a Court Exhibit then?

MR. EPTING - For Your Honor's review.

MR. SHELTON - Judge, there -- there are different date -- these are different ---

THE COURT - Oh, you -- me to look at and make a ruling on the ---

MR. SHELTON - Yes, sir, because the same logic that we're discussing now is going to apply to all of the exhibits.

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THE COURT - I'll look at all of them. Make them Court Exhibits and give them up to me and I'll look at them. I don't know how much consideration I'm going to give them, but I'll look at them and decide whether they're involved or not.

MR. EPTING - Thank you, Your Honor.

MS. MOODY - I'm not clear. When you say you're not -- you don't know how much consideration you're going to give, are -- when you look at them all, you're going to decide totally all of them come in or ---

THE COURT - Well, there may be something about these others that tie them all in. We're talking about and on-going conspiracy they say they're trying to prove, and I'm saying, I'll look at them and see. I mean, you know, it might be -- you know, you might present a witness to the grand jury, you know, and that might not satisfy the grand jury, but you might present another witness that has some more information that he can tie it in and maybe another witness. Let me look at all of them, I'll decide, but I may not give it any more - you know, it might not make any difference to me in my ruling in it, but I'll look at them. They're offering -- want me to look at them. I'll look at them. I'll give you a chance to comment on them, obviously, if I'm going to all them. I'll give you a chance to comment on them.

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MS. MOODY - Okay, thank you, Your Honor.

MR. SHELTON - Your Honor, that's all the questions I have.

THE COURT - Any questions on cross?

MS. MOODY - No.

THE COURT - Might me like you tell your client sometimes, you say -- but go ahead.

MS. MOODY - I'm -- I'm not like that.

THE COURT - (Laughing) I'm kidding.

MS. MOODY - No, I'm feeling like if you -- we're going to wait and you'll give us the opportunity ---

THE COURT - Go ahead. Go ahead.. Ask him any questions you want to. I'm just kidding about that. I do have --- (laughing and inaudible) ---

MS. MOODY - I can understand. I'm just trying to get my bearings together. We've been -- beg the Court's indulgence one moment.

THE COURT - Yes, ma'am.

MS. MOODY - (Pause) No questions, Your Honor.

MR. RUTHERFORD - No questions, Your Honor.

THE COURT - Well, anything else from either on pretrial?

MR. EPTING - I believe that there was a question about testimony of a witness, Dalmicos Hemphill, ---

THE COURT - Yeah.

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MR. EPTING - --- that was objected to by Ms. Moody. We have -- it's been a while, but ---

MS. SHELTON - Yeah, he should be out there. We had a couple other --- I'll let ---

THE COURT - You going to let Commander Brown stand down, or are you going to keep him up there?

MR. EPTING - Yes, he's been there for quite some time.

COURT REPORTER - Judge, can we take a restroom break?

THE COURT - Yeah, let's take about five minutes and then we'll ---

MR. SHELTON - Well, and after that, Judge, we should have just a couple little housekeeping things.

THE COURT - Okay.

(WHEREUPON, RECESS TAKEN)

THE COURT - All right, we ready to proceed?

MR. EPTING - Thank you, Your Honor. This is in response to Ms. Moody's motion and on behalf of her client, Mr. Underwood, to limit any testimony from Dalmicos Hemphill, the State's case rebuttal, we're going to offer a proffer of what we would intend to introduce in our case in chief.

THE COURT - All right.

DIRECT EXAMINATION

BY MR. EPTING -

Q Please state your full name for the record.

A Dalmicos Hemphill.

Q Mr. Hemphill ---

COURT REPORTER - Has he been sworn?

DEPUTY CLERK - (Indicating no)

COURT REPORTER - He hasn't been sworn.

MR. EPTING - No, he has not been sworn. I'm sorry. Could you come forward and be sworn?

THE COURT - Oh, I thought -- you didn't swear him before he went up?

DEPUTY CLERK - No, sir, he came in while we were out.

THE COURT - Come on down and be sworn, please, sir.

MR. EPTING - I apologize about that, Your Honor.

DALMICOS HEMPHILL, AFTER BEING FIRST DULY SWORN, TESTIFIES AS FOLLOWS -

Q All right, Mr. Hemphill, we'll start over. All right? Would you please state your full name for the record?

A Dalmicos Hemphill.

Q Could you spell your first name for the record?

A D-a-l-m-i-c-o-s.

Q And, Mr. Hemphill, are you from this area?

A Yes, sir.

Q Have you been -- have you lived here your whole life?
A Yes, sir.
Q And do you know Jacquese Underwood?
A Yes, sir.
Q Do you know him by any other name?
A Jacq.
Q Do you know Duane Harrison?
A Yes, sir.
Q Do you know him by any other name?
A Chief.
Q Do you recall the day of October 30th, 2011?
A Yes, sir.
Q Did you receive a call from someone that day?
A Yes, sir.
Q Who'd you receive a call from?
A Chief's cousin JRock.
Q And make sure you keep your voice up so everybody can hear it.
A Yeah.
Q I believe you said Chief's cousin, JRock. Is that correct?
A Yes, sir.
Q What, if anything, did JRock say to you?

A Basically like -- he was like telling me what had happened, which I already had heard about, and he was like asking me can I go some -- to a different location.
Q Did he ask you to do anything at that different location?
A Pick up a package.
Q And what did you understand was in that package?
A Probably the same thing that was in the first. That's what I was assuming, drugs.
Q Drugs you said?
A Yes, sir.
Q And when you said you had heard what had happened, can you tell the Court what that was?
A When everything that happened at that house, like when the police arrested them.
Q And by them you mean -- by them, who do you mean?
A Jacquese and Duane.
Q So you heard they were arrested ---
THE COURT - Please speak up a little bit; I'm having trouble hearing you, so I'm sure attorneys are having a hard time.
MR. EPTING - That's right, and you can move that mic down a little bit closer. That might help some.
Q You heard they were arrested that day. Is that correct?

A Yes, sir.
Q And they asked you to pick up a package ---
MR. RUTHERFORD - Wait. I'm sorry, Your Honor. He said that they asked you to pick up a package. He said JRock; he said they.
MR. EPTING - I misspoke, Your Honor.
Q Did JRock ask you to pick up a package?
A Yes, sir.
Q And did you agree to?
A No, sir.
Q Why not?
A Because I didn't want to get involved in it.
Q Because you suspected that package to contain drugs.
A Yes, sir.
Q When, if ever, did you hear again from Chief Harrison?
A Like -- probably like three weeks after that.
Q Three weeks after that?
A Yes, sir.
MR. EPTING - Can y'all still hear him?
MR. RUTHERFORD - Bearly.
MR. EPTING - All right, just make sure your -- Dalmico, keep your voice up.
Q I believe you said you got a call from him three weeks later. Is that correct?
A Yes, sir.

Q And what was that call in regards to?
A We end up meeting.
Q Where'd y'all meet at?
MR. RUTHERFORD - I'm sorry. What'd he say, Your Honor?
THE COURT - He said in a meeting by me.
MR. EPTING - I think he said we ended up meeting.
THE COURT - Listen, sir, I'm sorry, but we all have to hear what you say.
MR. HEMPHILL - Okay.
THE COURT - So if you'll speak up a little bit; you have a soft voice. Just speak up, please, sir.
Q Where did y'all meet?
A Wing Bones.
Q Wing Bones?
A Yes.
Q Is that in Rock Hill?
A Yes, sir.
Q Did that used to go by another name as far as restaurant?
A Wing King.
Q Wing -- formerly Wing King, now Wing Bones. Is that correct?
A Yes, sir.
Q And who did you meet with at Wing Bones?

A Duane.
Q Duane?
A Yeah.
Q Also known as Chief?
A Yes, sir.
Q Did y'all talk?
A Yes, sir.
Q What'd y'all talk about?
A He just basically told me like what happened at the incident at the -- at the house.
Q And when you say the incident at the house, is that for what he was arrested for?
A Yes, sir.
Q What did he say about the incident?
A He was just down the street.
Q Did he say what he was doing down the street?
A Just down the street on standby or whatever, and when the police came ---

MR. RUTHERFORD - I'm sorry, Your Honor, it's kind of -- he's kind of murmuring and saying things and then I lose him. He said he was just down the street?

THE COURT - He said he was on standby, down the street on standby is what he said.

Now, sir, speak up just a little bit, please.

Q And Micos, (sic) what did you take on standby to mean?

A Looking out.
Q Looking out?
A Yes, sir.
Q And he told you he was on the street looking out. Right?
A Yes, sir.
Q And then what did he tell you happened?
A The police end up arriving at the house, and he just left.
Q Did you know whose house that was?
A Yes.
Q Whose house?
A Shureka.
Q Shureka. Do you know Shureka's last name?
A White.
Q And he said the police came to the house, if I understood your testimony correctly. Right?
A Yes. Yes, sir.
Q And what did he say happened after that?
A He just took off.
Q He took off?
A Yes, sir.
Q Did he say anything else?
A Just he got rid of his phones and that was -- that was ---

Q Did he say what kind of -- make sure that when you talk, you keep your voice -- you are a quiet talker.
A Yes, sir.
Q Did he say what kind of car he was in?
A No, just a rental car.
Q A rental car?
A Yes, sir.
Q And did -- was he caught that day ---
A Yes.
Q --- so far as he told you?
A Yes, sir.
Q And what did he tell you about that?
A He just -- when he -- when they caught him, he was just like uh ---
Q Just make sure you speak up.
A He was like, uh, Mr. Brown was like asking him questions and like, he asked him if he could find Chief he'll help him out, and he just basically ---

MR. RUTHERFORD - Your Honor, I'm sorry, what'd he say.

THE COURT - Just repeat that. Speak up just a little bit, please, sir. I'm ---

A Mr. Brown asked him could he find Chief and if he can find Chief he'll help him out.

Q Okay. Did -- and by Mr. Brown, do you mean Commander Marvin Brown?
A Yes, sir.
Q Did he say anything else?
A He was just like say his name was John Doe.
Q Chief -- now who said his name was John Doe, Marvin or Chief?
A Chief.
Q Chief told you that he told Marvin his name was John Doe.
A Yes, sir.
Q Did he tell you anything -- about anything else that happened that day?
A No, sir.
MR. EPTING - Beg the Court's indulgence.
Q Did he ask you about the other package that JRock called about that day -- the day of the arrest?
A No, sir.
Q Did you -- why did you think he was setting up that meeting at Wing Bones?
A I guess just to touch bases with me or whatever.
MR. EPTING - All right. That's all the questions I have. Ms. Moody and Mr. Rutherford are going to ask you some questions. Please answer any questions they may have for you.

CROSS EXAMINATION

BY MS. MOODY -

Q Hey Dalmicos. Question, when you met with Mr. Harrison, he told you all this information about the arrest?

A Yes, sir. I mean, yes, ma'am.

Q Okay. And just a few minutes ago you said that he told you about him driving in the rental car and he got caught that day.

A Yes.

Q And you indicated that Mr. Brown asked him a question, could he find Chief. So I just want to be clear on this. You're saying Mr. Harrison told you that Mr. Brown asked him if he could find Chief.

A Yeah.

Q He was only talking about himself?

A Right. Basically the whole time Mr. Brown already know who he was.

Q Okay. Is there -- was there anything else that Mr. Harrison told you?

A Not nothing else beside what he -- what he ---

Q Okay. I'm just asking you, because you gave a statement on May -- excuse me ---

MR. SHELTON - Judge, can I make a -- just a point of clarification. We've provided the defense with a copy

of interview notes from Alan Sosebee with the FBI and Marvin Brown. There is no sworn statement for Mr. Hemphill at all. They have already been provided a copy of the debriefing interview summary written by Agent Sosebee of the FBI. So that's what she's referencing to here when she said a statement. It's not like a sworn statement. It's a summary as Sosebee understands it of a conversation that he had with Dalmicos in a debriefing.

Q Dalmicos, did you write any kind of statement out for Sosebee, Agent Sosebee, or Marvin Brown?

A (No response)

Q Did you hand write out any statement?

A No.

Q Okay. So when we talk about this debriefing that you had with Mr. Sosebee, Marvin Brown, and your attorney was present there too, you didn't write down any other note, so if we were -- there's not any other statement other than what you've made here on the record here today.

THE COURT - You've got to make that clear.

MS. MOODY - I'm sorry.

THE COURT - Are you talking about written statement or any oral statement or what -- what are you talking about? Ask ---

MS. MOODY - Written statement.

Q There's no other written statement that you provided to the State. I guess what I'm saying, you testified about what your conversation was with Mr. Harrison.
A (Indicating yes)
COURT REPORTER - He needs to answer verbally.
Q Go ahead.
A Yes, ma'am.
Q Okay. And you recall having the conversation with Agent Brown and Sosebee and your attorney.
A Yes, ma'am.
Q Okay. Did you meet with them to give any other information regarding your conversation with Mr. Harrison?
MR. EPTING - Your Honor, are we getting a little far a-field of test -- whether his testimony -- the testimony he gave is admissible at trial?
MS. MOODY - I'm just trying to make sure there's nothing else.
MR. EPTING - Then that sounds like we're fishing for discovery.
MS. MOODY - No.
THE COURT - Well, I think she's trying to find out if there's going to be another shoe dropped if he testifies or somebody else is going to say he gave them a statement, I think is what she's trying to find out, if he's going to testify, if there's something additional to

what he's testifying. I think she has a right to ask him that.

MR. SHELTON - Your Honor, the State will concede that the only other -- the only documentation we have given the defense is the only documentation we have, the interview notes with Allen Sosebee and Marvin Brown.

THE COURT - She can ask him -- she can ask him if he gave a written statement to him or if she (sic) told him anything -- he told her (sic) anything else than what he's testified to. I think she can ask him that?

MR. SHELTON - Okay.

THE COURT - Go ahead.

Q Okay. Have you given any other written statements?

A No. No, ma'am.

Q Have you told them any other information regarding Mr. Harrison's conversation with you?

A That -- that particular day?

Q Yes.

A No, ma'am.

Q Okay. Did you give them any other statements regarding Mr. Underwood?

A Far as that day?

Q Yes.

A No, ma'am.

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MR. SHELTON - Your Honor, I think -- I know what Ms. Moody is getting at here. The remainder of the interview summary, the State's position is that that would not be relevant in the case in chief. We don't intend to proffer that at this time. If the defense opens the door to anything else included in the interview summary, we would need to have a second proffer from Mr. Hemphill to determine the scope of what we could go in and rebuttal. So the only thing that the State intends to go into in our case in chief with this witness is the conversation between Mr. -- him and Mr. Harrison out at Wing King now known as Wing Bones.

MS. MOODY - And my motion, Your Honor, was to limit any testimony or reference to my client, because he did not have a conversation with my client on that day, and the State says that they could not agree to that or they couldn't stipulate to that. I didn't know what he was going to testify since this was a summary of interviews.

MR. SHELTON - Well, Your Honor, I believe Mr. Hemphill has said that they were -- that his understanding that Harrison and Underwood were together at the house. That was his understanding of what Mr. Harrison was telling him what happened. As far as anything else, I'm not aware of any other connection that referencing other than what's

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in his interview summary, and we're not going to go into anything outside of the scope of this.

MS. MOODY - I guess that presents a problem for me, Your Honor, because I cannot cross exam Mr. Harrison unless he decides to testify, so initially I thought that they were going to bring Mr. Hemphill in as rebuttal that they tried to deny knowing each other, but as far as what Mr. Harrison told him, I think that creates a hearsay problem for me, because I can't question Mr. Harrison about what he testified -- what he told Mr. Hemphill that day, not knowing whether he's going to testify. I know he's on the witness list, but that doesn't necessarily mean he's going to testify.

MR. EPTING - Your Honor, I believe in order to run afoul of the Confrontation Clause in Crawford, it has to be testimony and hearsay, and this is a conversation between two civilians about the matter. So in no way I would argue is that testimonial. The prosecution hasn't even gotten involved with Dalmicos Hemphill in any way at that point.

THE COURT - Yeah, I don't disagree with you except that -- how about the hearsay issue?

MR. EPTING - It wouldn't be hearsay as to Todd Rutherford's client since ---

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THE COURT - You're right, it wouldn't be. How about insofar as Ms. Moody's client?

MR. EPTING - I think we could give a limited instruction to the jury that they're not to consider any statements that he makes about this against her client.

MS. MOODY - Well, why couldn't we just limit represent my client. That's why I filed a motion in limine and he says in the interview statement -- and I didn't know what he was going to testify, because I understood it to just be a summary. He just -- he mentions or they specifically spell out Mr. Harrison and Mr. Underwood as being involved and getting arrested on that day and how things went on, so that's why I asked a little more, it was like, what else did you tell him, because these notes indicate there was more told.

(WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS NOT REPORTED.)

MS. MOODY - It is hearsay; that is correct. It's hearsay as to my client.

MR. EPTING - Your Honor, I think we could instruct our witness to limit his testimony as it relates to Mr. Underwood not to mention ---

(WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL WHICH WAS NOT REPORTED.)

MR. SHELTON - Right. What we're trying to say is, Judge, this is a conversation between Mr. Hemphill and Mr. Harrison. He -- Mr. Hemphill could be instructed that he's not to talk about anything having to do with Mr. Underwood.

THE COURT - Or any statement by ---

MR. SHELTON - Yeah, or no statement by Harrison implicating Underwood.

THE COURT - Underwood.

MR. SHELTON - Yes, sir.

THE COURT - Nothing that Mr. Harrison said about Mr. Underwood.

MR. SHELTON - Yes, sir.

THE COURT - Yeah, I think we'll be all right there.

MS. MOODY - Yes, sir.

THE COURT - Yes, sir.

MR. RUTHERFORD - Thank you, Your Honor.

CROSS EXAMINATION

BY MR. RUTHERFORD -

Q Mr. Hemphill, you stated that Duane Harrison called you and said let's meet at Wing Drop, Wing Zone? What's the name of it?

A Wing Bones.

Q Wing Bones. He called you and said let's meet at Wing Bones. Is that correct?
A. Yes, sir.
Q And you met him there. Is that correct?
A Yes, sir.
Q How'd you get there?
A Drove.
Q You have a car?
A No.
Q You had a car then?
A No.
Q How'd you get there?
A Drove my mom's car.
Q You drove your mom's car.
A (No response)
Q You have a driver's license?
A Yes, sir.

MR. EPTING - Your Honor, what's the relevance of that question to this?

THE COURT - Where are you going with that?

MR. RUTHERFORD - Your Honor, ---

THE COURT - How he got there's not really relevant, unless you're going to make it relevant.

MR. RUTHERFORD - Right. I'm going to get there, Your Honor.

Q This conversation happened, according to you, three weeks after the arrest. Is that correct?
A Yes, sir.
Q Okay. So that would be in November still. Correct?
A Yes, sir.
Q You had a conversation with the FBI in May and told them about what you recall about this conversation in November?
A May of what year?
Q You tell me.
A I had a conversation in May of 2014.
Q In May of 2014 you had a conversation about what happened ---
A Yeah.
Q --- when -- did you meet at Wing Drop, Wing Zone?
A In 2012.
Q You had a conversation in May of 2014 about a conversation that you had in May of -- in October -- I'm sorry, November of 2012. Is that right?
A Yes, sir.
Q Okay. And so in May of 2014, almost two years later, you recall that you met Duane Harrison at Wing Zone and he was talking about an arrest that happened three weeks prior to. Is that correct?
A Yes, sir.

Q And when he was referencing what happened, did he say they say that, or did he say, I was?

A I was.

Q So you remember now about a conversation then in November of 2012 that he didn't precede his comments by saying what the police say he did. He claimed ownership. Is that right, according to you?

A Yes, sir.

Q Okay.

MR. EPTING - Your Honor, I object to this line of questioning. I don't understand how this is -- he's impeaching him pretrial as though he would in front of the jury. I just don't see any point to this for the purposes of pretrial.

MR. RUTHERFORD - Your Honor, this is a motion in limine. I'm trying to get at what exactly he's going to testify to. I'm going to come back to his initial testimony that I didn't object to because we're trying to get the narrative of what exactly they're trying to elicit from him, but this call from a JRock as well. What is it exactly that this person, Mr. Hemphill, told the FBI and why, and that's what I think we ought to get at in a motion in limine. This is exactly what we ought to talk about before the jury comes in to see whether it is going to be

overly prejudicial or not. That is why we address it pretrial.

MR. EPTING - Your Honor, the purpose of this hearing, my understanding, was whether our proffered testimony was proper for jury. Whether or not he brings out anything in cross examination or not is his business, but I don't think that's before the Court quite yet.

MR. RUTHERFORD - Your Honor, whether he's ---

THE COURT - If he ---

MR. RUTHERFORD - I'm sorry.

THE COURT - If he knows -- if he wants to find out exactly what his testimony is going to be if you're making a proffer on it. I know - I understand you making a proffer, but for it to be a complete proffer, they need to be able to clarify what his testimony is going to be, whether they going to continue to object to it or not in a motion in limine, so I will -- will -- go ahead.

MR. RUTHERFORD - Thank you, Your Honor. And, again, addressing the ruling that Your Honor just made, and not to quibble with Your Honor, but again just to further satisfy and not to take up too much of the Court's time, but we do feel like it's necessary to address how this conversation happened. Any time a witness is going to purport to tell a jury, essentially that my client's confessed, getting to a conversation that happened two

years -- two -- I'm sorry -- a conversation we're having now two years later how this - how this came about, so I just don't want a -- I'm anticipating another objection as I ask him, tell me what you all talked about, because I think that's relevant. So, ---

THE COURT - Well, go ahead. They can object and I can rule.

MR. RUTHERFORD - Yes, sir.

Q Mr. Hemphill, ---

THE COURT - Go ahead.

Q --- tell me how this conversation came about.

A He was wanting to talk to me, so I met him at the Wing Bones and -- to talk to him.

Q And at that point had you been arrested?

A No.

Q Okay. And so when you met him, the conversation started off, well, he just wanted to tell you what happened that day.

A Yes, sir, basically.

Q So he met you in order to confess to you what had happened when he was arrested.

A Yes, sir.

Q And that's all y'all talked about.

A I mean, we uh -- yes.

Q How long were you there?

A Like a hour.
Q An hour.
A (No response)
Q And so in that hour he basically confessed to you as to what he had done on October 30th, three weeks before, and that was it.
A Yes, sir.
Q Okay. When did you get arrested?
A A whole -- whole year later.
Q A whole year later. And what were you arrested for?
A Indictments on drug trafficking.
Q What was your -- what activity did you do?
A (No response)
Q You were arrested for indictments. An indictment is --

THE COURT - Hold it. Mr. Hinson's here, but I don't know if he's been tried on those charges, been disposed of or not. You're asking ---

MR. EPTING - He has not been ---

THE COURT - --- what did you do. You can ask him what he was charged with.

MR. SHELTON - They're pending charges, Your Honor.

THE COURT - Okay. You can't ask him what he did. You can ask him what ---

Q What were you charged with?
A Trafficking crack.
Q Trafficking crack. How much?
A It's different charges, different indict -- differ papers, different charges.
Q Okay, I'm ready. What are they?
A I mean I ---
Q You don't remember?
A Like the grams ---
Q I'm asking you what you're charged with?
A Just trafficking crack. I -- like over a hundred -- over a hundred grams.
Q So you only have one charge?
A Huh?
Q You only have one charge?
A No, I have like a total of 12 charges.
Q And you can't remember.
A Six traffickings and six distributions.
Q But you can't remember what all the traffickings are?
A Not far as the weight.
Q But you can remember a conversation ---
A Yes, sir.
Q --- that you had two years ago.
A Yes.

Q Okay. And so when you were arrested, how is it that you came to tell the FBI about a conversation that you had had two years prior with Mr. Harrison?

A Because basically through cell phones.

Q I'm sorry?

A My cell phone and Mr. Harrison's cell phone. They, I guess, saw a connection between us.

Q So they called you and wanted you to sit down and talk. Is that correct?

A Yes, sir.

Q And so did you sign a proffer?

A Did I sign anything?

Q With the -- with the FBI did you sign a proffer where they agreed that the information that you gave them they would not use it against you?

MR. SHELTON - Judge, I'm going to object here. We've covered this. There is no such thing as an FBI proffer in this case.

MR. RUTHERFORD - That's for -- that's for him to answer, not you.

MR. SHELTON - I think Mr. -- I think Mr. Rutherford is trying to confuse the witness here. This is -- there's no federal investigation. This is a State investigation involving Mr. Hemphill, as well. There's an FBI agent that was involved with the interview. They have

the interview notes. That's the extent of any discoverable statements, proffers, whatever they want to call it, in regards to the conversation that Mr. Hemphill had with the FBI Agent, Alan Sosebee and Mr. Brown.

THE COURT - Well, I -- I think you can ask him -- Mr. Rutherford, you can ask him if he -- if any deals were made with regard to his charges or if he was promised anything in order to give any testimony and that sort of -- you can ask him ---

MR. RUTHERFORD - And that's what I'm getting at, and that's what a proffer does, Your Honor. That's ---

THE COURT - Well, I know; he doesn't understand that.

MR. RUTHERFORD - Well, that's what ---

THE COURT - But he says there's no federal investigation, no federal charges, it wouldn't be a proffer, because we don't -- it's not what they call it in the State Court. You - I think you can ask him -- that's what they're saying, there is not, and that he was just tend to be confused by that.

MR. RUTHERFORD - But I don't know that he's saying that.

THE COURT - Well, you can ask him if there's any -- if he's ---

Q Did you sign a proffer where the government agreed not to use the information that you gave them against you?
A No, sir.
COURT REPORTER - He needs to speak up.
A No, sir.
Q Okay. So when you sat down with the FBI agent, it was just you.
A My attorney.
Q You and your attorney.
A Yes, sir.
Q Just the three of y'all.
A Mr. Brown.
Q Okay. So four people in the room, and that was in May of 2014?
A Yes, sir.
Q So in May of 2014 you sat down with three other people to talk about what Duane Harrison had told you in November, 2012. Is that right?
A Yes, sir.
Q And you did that at their behest, at their request. The FBI requested you to come in to them.
A Yes, sir.
Q Okay. And so what you talked about during that meeting -- you were there for how long?
A Maybe 30 minutes.

Q You were just there for 30 minutes.
A Yeah, around 30 minutes.
Q Okay. And so the information you gave them was strictly about your conversation with Mr. Harrison. Is that right?
A Basically, they wanted to know the relationship, because, you know, they seen a connection.
Q Did they talk about you and your activity?
A At that day?
Q (Indicating yes)
A No, sir.
Q Okay. Did they tell you whether your case was going federal since you were talking to an FBI agent?
A No, sir.
Q Did they tell you about any decisions about regarding penalties in your case if you cooperated against Mr. Harrison?
A No, sir.
Q Tell me what your understanding is of what's going to happen to you for you testifying against Mr. Harrison?
A We not really discussed it.
Q You never discussed what would happen to you ---
A If what ---
Q --- for your testimony?
A For my testimony here?

Q Yes, sir.
A I really don't under -- like ---
Q What were you told you would be given for testifying today, ---
A I'm ---
Q --- testifying against Mr. Harrison?
A Nothing.
Q You were told that you would not be given nothing, or you were never told anything about your testimony?
A Yeah, I wasn't never told nothing about no -- what I will be given.
Q Okay. Let me make -- did they tell you we're not going to tell you what we're going to give you, or did you not ask and you didn't receive any answers?
A I didn't ask.
Q So you have no clue whether you're going to be given anything for your testimony here today.
A No, sir.
Q So no one has ever told you that there are no deals on the table, we just want you to testify. That conversation never happened?
A No, sir.
Q So they just called you and told you to come up here and testify.
A Yes, sir.

Q Now, in your conversation with Agent Sosebee and Marvin Brown, which was in May of 2014, you stated that Mr. Harrison told you he was acting as a lookout. Today you said he was down the street on standby.

A Yes, sir.

Q Which did he tell you?

A It's the same thing.

Q No, that's not what I asked you. I said which did he tell you, that he was acting as a lookout or that he was down the street on standby?

A He was looking out.

Q So he said, I was acting as a lookout.

A Yes, sir.

Q That's what he told you.

A Yes, sir.

Q So earlier when you said that he was down the street on standby, that was wrong.

A It's basically the same thing.

Q No, sir, I'm not asking you basically ---

THE COURT - Wait a minute.

Q --- the same thing. I need to know what you said.

THE COURT - Wait a minute. Don't beat up on the witness, counsel.

MR. RUTHERFORD - Yes, sir.

THE COURT - He might be easy to beat up on, but don't beat up on him.

MR. RUTHERFORD - Yes, sir.

THE COURT - You ask him a question and let him answer.

MR. RUTHERFORD - Yes, sir.

THE COURT - Don't start asking the next one before he can answer -- finish answering that one. All right?

MR. RUTHERFORD - All right.

Q So, Mr. Hemphill, what exactly did Mr. Harrison say -- not a summary -- what exactly did he say?

A He was on lookout.

Q So when you just said that he told you that he was on standby, that was not true or you were using your own words to put into his mouth?

A I was -- basically I was looking at as the same thing, lookout, standby, ---

Q So ---

A --- watching out.

Q I'm sorry. Go ahead.

A I'm finished.

Q So how much of this conversation are you recalling from what you said he said, and how much are you recalling from what he actually said?

A (No response)

Q Because if he told you he was on -- he was acting as a lookout and those are his words, or he told you he was down the street on standby and you're confusing those two in a matter of five minutes, how much could you have not gotten right in the two years from the time you had the conversation to the time you talked to the agent.

MR. SHELTON - Judge, we want to object. This is going way past the extent of the proffer. This is going into the weight of the evidence, not the admissibility. These are all things for a jury to consider. That's not the purpose of having this hearing today.

THE COURT - Well, I'm going to sustain the objection. I think that, first of all, he's answered the question twice, and you're still trying to make an issue out it. He is saying that he -- it means the same thing. Said he told him he was -- that what he was told by Mr. Harrison was he was a lookout. Today he said he told him he was a standby or standing by, and he says to him that means the same thing, and he -- that's what he said twice. But he said that he was a lookout. Now, I -- you know, so that's twice he's answered the questioned. I don't know why you need -- I don't know that you need to keep on that issue. It's something I guess you could argue to the jury that he didn't remember the same ---

MR. RUTHERFORD - Your Honor, more importantly, it's whether he is giving -- giving this Court, whether he would give the jury, whether he gave the FBI agent and Agent Brown either his paraphrasing of a conversation or whether he has given them what my client's words are.

MR. EPTING - And, Your Honor, that's a question for the jury.

MR. RUTHERFORD - And I am still talking. And the -- there is a distinct difference between him paraphrasing a conversation and him using my client's words.

THE COURT - Well, I mean -- again, that's an issue for the jury. He answered that. You've asked him twice; he's answered the same way twice.

MR. RUTHERFORD - Your Honor, I ---

THE COURT - He said that he told him he was a lookout. You've asked him that. He said that's what Mr. Harrison told him. And he said, well, -- first you testified you said he was a standby, which is it, did you get it wrong. Well, maybe he did get it wrong, but he said -- he's answered it twice and said those terms to be -- mean the same thing. Well, if he doesn't remember it correctly, I think that is an argument you can make to the jury about his memory and how he remembers it, what he actually said, but -- but he's already answered it twice,

so I don't know what else you're going to get out of him if you keep on asking the same question.

MR. RUTHERFORD - Well, and that is -- that is obviously -- my point is not just to get that to the jury but to Your Honor as well, that him paraphrasing a conversation where he is saying that my client confessed to him are -- is totally different than him saying this is what Mr. Harrison said, him using Mr. Harrison's words and putting that in a ---

THE COURT - I think you've made that clear that there's an inconsistency in the two terms, but he has said they mean basically the same thing to him and maybe you didn't - you know, he didn't remember exactly the first time he still says and when he was testifying, he did remember it afterwards, and so -- you know, again, that's a credibility issue I guess and whether he really remembers what was said or not, but I think we're through with that issue. Move on.

MR. RUTHERFORD - Yes, sir.

Q So Mr. Hemphill, how many meetings have you had since with either the FBI or Marvin Brown?

A Concerning this?

Q Yes, sir.

A One other meeting.

Q One other meeting.

A (Indicating yes)
Q What was discussed in that meeting?
A The same thing.
Q So y'all went back over what you said in May?
A Yes.
Q You were told then that you would be called to testify?
A Yeah, I got like a subpoena or whatever, yeah.
Q So you got the subpoena during the meeting.
A Yes.
Q Okay. And during that meeting did you go back over what you had already said had happened in November of 2012?
A Basically. They asked me the same thing.
Q Well, did they write down anything or record anything or you don't know?
A They was writing it down.
Q They were writing it down.
A (No response)
Q I see. Did they write it down in May of 2014 the first time you met with them?
A Yes, sir.
Q They did?
A (Indicating yes)
Q Okay. And these were handwritten notes or they typed it up?

A Handwritten.
Q Who was writing?
A I don't know the officer's name.
Q So there was another officer present.
A Yes, sir.
Q And he was writing stuff down as you were talking.
A Yes, sir.
Q Was he asking you questions as well?
A Which particular time?
Q This -- this time that the other officer was present and he was writing stuff down.
A The same officer was there both times.
Q Okay. I'm sorry. I thought that it was just you, your lawyer and Agent Brown and the FBI agent.
A It was me -- I ---
Q There was another agent there?
A No, that's it.
Q Okay. So Agent -- the FBI agent was the one that was writing stuff down ---
A Yeah.
Q --- and asking you questions.
A Yes.
Q Okay. And he did that on both occasions.
A Yes.
Q Okay. And that second meeting lasted for how long?

A Around the same amount of time the first one.
Q Okay. And, again, at that meeting no one promised you anything for your testimony; no one told you ---
A No, sir.
Q --- that you were going to get anything. And when was that meeting?
A Um -- maybe early July, maybe.
Q Early July, 2014?
A Yes.
Q So about two months after the first time you met with them?
A Yes.
Q Were you ever at any point ever told that your charges would not go federal?
A Was I told that?
Q Were you at any point ever told that the 12 or so charges that you have would not go federal?
A I mean I kind of like got a understanding that (sic) when I first got -- when I first turned myself in.
Q When you first turned yourself in, you had an understanding that your charges would not go federal?
A At first they had they (sic) hands in it, but I heard the State just was going to have my case.
Q So when you first turned yourself in, did you agree at that point to help the government out?

A No, sir.
Q So when you said you heard when you first turned yourself in that your charges would not go federal, who did you hear that from?
A I was talking to my attorney.
Q Okay. So -- and that was when you first turned yourself in.
A Yes.
Q You were charged under a secret indictment?
A Yes.
Q So your attorney would've had time to negotiate with the FBI, with Marvin Brown, with the solicitor's office before you ever turned yourself in?
A No.
Q So then how ---
A It was after I turned myself in when I found out that the uh State was just going to handle my case, not before then, after I turned myself in.
Q You mean like the same day?
A No, weeks later.
Q So weeks later is when you found out.
A Yes.
Q And that was not because you told them that you were going to testify. Is that correct?
A No, sir. No.

Q And that was not because you told them you would cooperate. Is that correct?
A No.
Q Okay. Have you met with anyone from the solicitor's office about this case?
A Yes.
Q Did they tell you anything about a deal or anything that you would receive?
A No, sir.
Q Did they tell you that there are no deals regarding this, you simply testify and tell the truth and that's it?
A Yes, sir.
Q That's what they told you.
A Yeah.
Q Okay. Who told you that?
A The solicitor I talked to you.
Q You don't remember who it was.
A First of all -- is you talking about with my situation or this case right here?
Q I'm talking ---
A I been talking to two different solicitors, so which -- which case are you talking about?
Q You tell me. I'm trying to ask whether someone has told you anything ---
A Nobody haven't ---

Q --- about your testimony.
A No -- no solicitors have promised me anything.
Q So not either of the solicitors told you anything ---
A No, sir.
Q --- about your testifying.
A No, sir.
MR. RUTHERFORD - Beg the Court's indulgence.
Q And one last question. You're positive that you got to Wing King that day by driving your mother's car?
A Yes, sir.
MR. RUTHERFORD - No further questions at this time, Your Honor.
MR. EPTING - Nothing further from the State.
THE COURT - Wish to be heard on any motions? I think we've agreed that insofar as Mr. Underwood is concerned, statements allegedly made by Mr. Harrison would be hearsay, and so that part would not come in, however, statements made by him, Mr. Harrison, to this witness obviously don't -- fall outside the hearsay rule -- allowed to bring them in, so that -- that's admissible. And -- anything wish to be heard?
MR. RUTHERFORD - Yes, Your Honor, just briefly. On the statement that the -- that Mr. Hemphill made about JRock calling him, we would ask that that part of his testimony be stricken.

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THE COURT - What -- what was the purpose of introducing that about JRock?

MR. EPTING - About JRock calling him and the additional -- the additional package?

THE COURT - Yes, sir.

MR. EPTING - I would -- the State would argue it's part -- again part of the conspiracy that day.

THE COURT - Wouldn't that be hearsay?

MR. EPTING - The State would instruct that witness to leave that particular ---

THE COURT - Just leave -- yeah, just leave it out, unless you're going to call JRock. If you're going to call him and then it wouldn't be -- he can testify.

MR. EPTING - Certainly, Your Honor.

THE COURT - Or if he testifies, then it may come in as not being hearsay. All right, anything else?

MR. RUTHERFORD - Nothing, Your Honor.

THE COURT - Thank you, sir. You may stand down, Mr. Hemphill.

MR. EPTING - Beg the Court's indulgence.

MR. SHELTON - Judge, I think -- there's only a couple other real minor clean-up matters. The State has a records custodian on our witness list from Sprint. I've made arrangements to have this witness broadcast in through Skype rather than going -- incurring the expense of having

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a witness fly in from Kansas to Rock Hill, South Carolina or to York, South Carolina for a five minute testimony, direct and cross. All she's doing is authenticating some records, a billing statement in Jacquese Underwood's name for one of the phones that was recovered. So I would just call that to the Court's attention. If the defense attorneys have any objections to that, I think there's clear case law on that that satisfies the Confrontation Clause, as long as they're able to cross examine the witness, you know, the Court's have allowed video deposition in ---

THE COURT - I think as long as they're allowed to cross examine the witness I think that's okay.

MR. RUTHERFORD - Yes, sir.

MR. SHELTON - And so we would -- we would take the appropriate steps to make sure that everything is set up, ready, probably do that in kind of a time certain thing after a scheduled break or something like that, so we can plan all that for next week. Also, I don't know if either one of these individuals intends to testify, obviously the Court doesn't either, but I just want to go ahead and while we're thinking about, in case it slips our minds, both individuals do have prior criminal convictions that could be used to impeach them, if they were to testify, but for only that purpose under Rule 609, Duane Harrison in 1995

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was kidnapped -- was convicted of kidnapping in Richland County; he received an 18 year sentence. I have -- Merry Collins from our office has checked with the Department of Probation, Pardon and Parole and determined he was not released until October of 2004, so that would fall within the ten-year time-frame given the length of the sentence and when he was released under the statute, ---

THE COURT - Which -- which defendant is that?

MR. SHELTON - That's on Duane Harrison, Your Honor.

THE COURT - All right.

MR. SHELTON - And I have a certified copy of that conviction I will make a part of the Court's record, and then as to -- and that's also -- for the record that is consistent -- that conviction is consistent with what shows on his NCIC report. I've given a copy of the NCIC report along with the certified conviction and also, I believe, a -- a kind of schematic run-down, if you will, from the SC Offender Database, I think it is, through the State, I've given that to defense, Mr. Rutherford, as part of discovery in this case. As to Jacquese Underwood, again, for the limited purposes of impeachment under Rule 609 if he elected to testify, he was convicted of trafficking in cocaine in 2000 -- charged in 2006 and convicted in 2007 I believe. Regardless, it was within the ten-year time-

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frame. I have certified copies of -- was also convicted of possession of a stolen pistol and possession of a weapon during the commission of a violent crime, all three of those being felonies. As for all of these convictions I think we'd be limited the way we categorize them for the impeachment value. Certainly couldn't say that he was convicted of trafficking in cocaine; that would be way too prejudicial even within the guise of the rules, but I do have certified copies of his prior convictions, indictments and sentencing sheets as relates to those three convictions on Underwood. I've made Ms. Moody a copy of those or given her a copy, as well as it reflects on NCIC and that was provided under normal rules of discovery. So I would just ask that these -- these be marked as Court's Exhibits. I'll staple the Underwood's certified copies together.

Your Honor, I think as far ---

THE COURT - Counsel have any question about those ---

MS. MOODY - For ---

THE COURT - 6-0 ---

MS. MOODY - 609.

THE COURT - 609.

MS. MOODY - Yes. You asked me if I have any questions about them?

THE COURT - Yeah.

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MS. MOODY - Well, Your Honor, looking at them I realize that they were all pro se charges that he pled to before Judge Hayes with E.B. Springs. Beg the Court's indulgence. (Pause)

I think the State has already stated that they would be prejudicial based on the nature -- well, at least the trafficking cocaine and the other charge ---

THE COURT - What I propose to do is allow him to ask him, if he testifies, if he's been convicted of a felony and he would have to leave it at that. Obviously, they'd like to get into that he's convicted of trafficking but he -- they certainly can ask -- a fourth circuit policy -- allow him to ask -- these particular charge. How about the other two? Possession -- is that impeachable? Possession of a weapon?

MR. SHELTON - Your Honor, all of the charges I've listed are -- they're all felonies, so the possession of a weapon is a five-year felony possession. The possession -- the possession of a stolen pistol is a five-year felony.

THE COURT - Oh, you didn't say stolen. Okay, it's a five-year.

MR. SHELTON - Yes, sir.

THE COURT - I was looking at one year, possession of a pistol. Well, you can ask him about all -- you can ask him if he'd been convicted of a three-year felony then.

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MR. SHELTON - Yes, sir. I believe they were all from the same incident.

THE COURT - Actually, I mean -- you might even be able to be ask him possession of a weapon -- no, -- during the commission of a violent crime puts him -- brings in the other -- so I would just say felonies on all three of them. You could ask him if he's convicted of three separate felonies.

MR. SHELTON - That's my intention, Your Honor. I certainly don't intend to go any further.

MR. RUTHERFORD - No objection. That's fine.

THE COURT - You disagree with that?

MS. MOODY - No, no. I'm thinking of follow-up --

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THE COURT -. I will let them ask him about the actual offenses if you ---

MS. MOODY - No.

(WHEREUPON, LAUGHING)

MS. MOODY - I was just -- follow ---

THE COURT - Mr. Rutherford?

MR. RUTHERFORD - No objection as to my client, Your Honor.

THE COURT - Okay. Of course, his would come in, and it's not -- I would find -- I'll go ahead and do an analysis as we're required to do under 403. They're

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reserve -- required to do that on impeachable offenses. There are five things we have to consider. Looking at all five of them without enumerating at this time -- I tell you that I've looked at them and I find they'd be far more probative than prejudicial to allow it in. Obviously, it's an impeachable offense. It does not -- not similar to the charge today in any way, that he's being accused of in this case, what we're going to trial for, so I don't -- I think it'd be more probative than prejudicial doing the five part analysis, and he would be able to -- the State would be able to impeach him with that actual offense.

MR. SHELTON - So just to be clear, referring to as a kidnapping conviction?

THE COURT - Oh, year, sir.

MR. SHELTON - Okay.

THE COURT - It's not -- it's not like a -- it's not trafficking drugs or anything to do with drugs.

MR. RURTHERFORD - And, Your Honor, just briefly Mr. Hemphill made the statement that there were notes from a second interview that have not been turned over ---

THE COURT - I don't know if they're included in there or not.

MR. SHELTON - Your Honor, I was not aware of other -- other notes that may have surfaced from Sosebee and Brown. I will -- I've already asked Commander Brown to

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check on that. As to the other interview he's talking about, that involved me, so I'll look back at my notes. If there's anything discoverable that's not work product -- certainly if there's anything that's Rule 5 material, I will make that -- make the defense attorneys aware of that. Nothing -- I'll just tell the Court, he hasn't told me anything inconsistent with what he testified up there today. There certainly are more things outside of the scope of that that we don't intend to get into in the case in chief, but they -- they're all consistent with what's already been provided to the defense. If we were to get into a situation where he were to be called as a rebuttal witness, we would certainly need to do a second proffer to determine the ---

THE COURT - You going to check and see if there are any more notes -- he basically said the conversation went the same, took about the same amount of time.

MR. SHELTON - Right.

THE COURT - So I don't know if they -- even if they jotted down something during their conversation if they were the same as before, I don't know if they would help them or not, but they may have. And what they're entitled to if he did, you know, if he made some notes and they were -- any -- you know, one way or the other, I think if they made any notes and kept them, they are to be given.

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MR. SHELTON - Yes, sir, absolutely. I will look on that in the interim. Judge, the State does not have anything else at this point. I don't know if the defense does or not. Again, I'm very glad we pushed the jury back to next week.

THE COURT - Yeah, I kind of figured this was going to happen. That's the reason I was planning to work all day Thursday, but we might not still gotten it in, you know, by Friday evening especially ---

MS. MOODY - Well, the only other thing that we mentioned, and I can wait on this, was the quash the indictment. Tried to preserve that for the record, because I wasn't sure when we needed to take that up.

THE COURT - I didn't get that motion to quash the indictment.

MS. MOODY - When -- right before -- remember when I asked whether or not we needed to move forward on that when the jury was here, because we were trying to determine whether you were going to swear the jury in. I mean I ---

THE COURT - Well, they haven't -- they haven't been sworn yet, so obviously -- I mean you're supposed to make a motion to quash I think and probably have it ruled on before we swear the jury, but of course, if I said -- if I'd said, you know, I'm going to do that after we get the jury sworn in that'll be fine, but they haven't been sworn,

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so I think you -- still the motion to quash is -- so I'll hear you on that motion.

MS. MOODY - Well, I know you're probably going to deny it, but after we've heard all this information, and we were talking about this this morning, I -- my basis for quashing the indictment is that there was no probable cause to make the arrest in the first place. Just because the client picks up the package that is delivered to the door, it does not necessarily mean that he knows what's in the package, and I -- and I guess it all depends on how you rule on those cell phone records, but they didn't have that information at the time. Their search warrant was for Shureka White and Gregory Parker, those individuals, and I guess it was also off of the package it had Shureka White's address on the package from a Alex Vega. The other person who was living at the home of the time is Gregory Parker, and that's who they are seeking to execute the search warrant and wanted to arrest that person. What we didn't get into -- well, what we don't know -- I know the Court heard the events leading up to that time that he walked out the door and picked up the package and I understand that there was, you know, counter surveillance or lookout or whatever you want to call it in terms of as to Mr. Harris (sic), but there was no testimony regarding whether Mr. Underwood was looking out the window or doing anything

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waiting for this package. Also with this indictment -- excuse me -- with this search warrant, it talks about the delivery of the package would've been at 10:30 a.m. This package was delivered somewhere in the hours of 1:00 o'clock to 2:00 o'clock. When they go into the house, and maybe that testimony that came from Mr. Brown is going to be somewhat different, according to the incident report, he asked Mr. Underwood a couple of questions as to whose house it was, whose cell phone; he asked where the package was and there were a couple other questions but nothing where my client indicated that he knew what was in the package, that he didn't open the package, and I understand that people are told not to open the package, but he got the package, put the package in the car and he was backing out. We don't know what he knew. We don't know what he knew because he didn't go anywhere; it was in the trunk; he gave law enforcement the information, but yet he was immediately arrested for what law enforcement knew was in the package. And so based on that, Your Honor, my position is that there was no probable cause for the arrest and that my client's indictment should be quashed.

THE COURT - Wish to be heard?

MR. SHELTON - Your Honor, you've heard the summary of the investigation from Commander Brown; you have the gist of the basic fact pattern, the counter

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surveillance that was going on, things that law enforcement had, the information they had and when the original charge was made on October 30th, 2012. Commander Brown testified and Harrelson will testified, Leland Harrelson, that he was -- he was the first officer from the drug unit watching the house; he saw what appeared to be no activity in the house and then somebody looking outside the blinds in the upstairs window; it has to have been Underwood; he's the only person in the house. Underwood goes in, picks up the package, puts it in the car, drives the car out of the garage, leaving the -- leaving the car running, goes in through the garage, comes back out through the house, and as Commander Brown moves in to effect an arrest on Harrison, he runs, goes back past the house, blowing that -- blowing the horn of his vehicle at the house with Underwood outside, and what does Underwood do? He runs in the house and locks himself in the house. And then we also have them linked through -- with the text messages -- I know you're still determining the ruling on that -- but regardless their -- their actions alone, he's in possession of a package. Also what you haven't heard yet -- we'll get into in the case in chief, -- is Shureka White was interviewed; she's going to testify, and she told the police that she did not give either one of these men permission to be in her house; she knew nothing about the

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drugs. So I mean again, we can parade all of our witnesses in to try this case pretrial, but I think what's -- what's -- the question at hand is, is there enough on the face of the indictment of what you've heard to go forward and certainly with these two men's action alone, their actions alone show that they were acting in concert. Everything else is, I guess, adding more layers to the State's proof, corroboration and the like. Let's take Shureka aside. Let's say Shureka White knew what was going on. That doesn't mean that these guys were any less culpable. Mr. Underwood is driving a -- the package that was addressed to Shureka White and that address away from the house. If it really is Shureka White's package, why not leave it at the house? He really was waiting for her to come get it there. Why is he going to drive it away from the house? It simply makes no sense. And just on the face of the bear bones of the investigation -- and there's a lot more that will come out at trial substantiating the State's case.

MS. MOODY - Your Honor, and I did forget to mention Shureka White, but I would go back to the activity of my client. There's only one thing that they say that my client did that might've been considered counter surveillance. The door bell is rang; he looks out the window; he come down -- he comes downstairs; he opens the door. There is no one there; he picks up the package.

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There's nothing wrong -- there is nothing against the law for him to pick up the package. That's all the information they have as it relates to him. They don't even know that it's him. As far as driving the package away, he did not drive the package away. Ms. Shureka White in your report -- and I think that will come out in testimony and I guess it kind of goes against my point that I'm asking you to dismiss the -- quash the indictment -- but as I understand it, Ms. Shureka White had been with my client and there was no burglary, but she told us that -- well, she told the State that, maybe, a couple weeks away, but in the initial report it's incon -- it's an inconsistent statement on her part as to whether or not he was doing something that she asked him to do. So she doesn't tell the State that she's gone to breakfast with my client, that he was in her house, they dated. She -- he -- she doesn't tell the State that. I'm sorry, I do misspeak. She does tell the State that they dated, but she doesn't give the information that on that particular day that she met up with my client and that he was in her house. And so my point to that is, if, in fact, he was trying to do something that was dealing with Mr. Harrison, I don't think it's there for them to make that arrest. All they have is someone driving up the road at that point in time. They have the knowledge what's in the package, which is the drugs; they set up that sting.

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So that's knowledge that they have, but they don't have -- they're not looking for my guy. They're looking for Gregory Parker who also in their search warrant who is known to have several drug convictions. Something -- yes, it does give them a reason to be there with that search warrant because of that package and then individuals that live in that house, but it's certainly not because of my guy, and it's not because my guy did -- so -- all this activity that they allege at the house. He gives them information. He -- they ask him questions, and he gives them information. And the point that I was making with Mr. Brown's testimony that after he mentioned that Chief -- he describes Mr. Harrison as Chief being outside, he indicates that he stopped talking. I think that he cannot comment as to my client's Fifth Amendment right to remain silent. Excuse me, self incrimination.

THE COURT - He can't -- he -- he can say -- I think he cay say he told him that we got Chief outside and at that point he stopped talking. Now, he can't comment on -- no, he can't make any comment about him not talking to him and -- and -- in protection of his own rights not to cooperate with them or to talk with him. He has that right. Now, they can't comment on that, but he can tell him -- he can tell the jury what happened. He can't comment on it.

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MS. MOODY - No, I understand that ---

THE COURT - But he can say, we got Chief outside and then from that point on he didn't answer any more questions. I think he can say that. That's not a comment on his refusal to cooperate or give them a statement or talk to them.

MS. MOODY - I guess what I'm saying in terms of - - in my argument towards him giving them information, he gave them information in that I don't want it to be inferred that he stopped talking because this gentlemen was outside. The only point I'm trying to make is that he gave them the information, the package was there, he did not know what was in the package, he didn't open the package. So at that point I'm just saying that there was no probable cause to make the arrest of Mr. Underwood.

MR. SHELTON - Your Honor, may I be heard in response to that? First off, the burglary was dismissed, not because we don't believe a burglary occurred. It was a strategic move on the State's part. The burglary was presented to the grand jury. Nothing has come to the State's attention negating the elements of the burglary. We simply decided to streamline this case and make it simply about trafficking cocaine to take out the collateral issues. I mean that's the meat and potatoes of the case anyway. So we're just going to make -- just simplify it

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for the jury and they only have one set of elements to consider has the State proven in its case. It has nothing to do with what Shureka -- like some fictitious conversation Shureka White's had with us since then. Shureka White -- like -- you haven't heard anything from her. She also told the police that Jacquese Underwood was calling her the day before and the morning of to make sure she was not going to be home, to make sure she was going to be at work, to make sure her kids were going to be at school. Why is that? Because he wanted to make sure she wasn't at the house when that package got delivered. And as far as the breakfast at Bojangles, what Ms. White has told me that was not originally in her statement, but she called me on her own to say, hey, I forgot about this one thing. So she -- she says, the morning of he bought me breakfast at Bojangles, and she said I didn't even go in with him; he bought me breakfast; I went to work. So to categorize that as them having breakfast together is a bit of a stretch. He bought her breakfast at Bojangles. Again, why? To make sure she wasn't home, because there's a package with cocaine in it coming to the house. So all these -- the facts and circumstances -- and that's why I say, there's a lot more that the Court hasn't heard; we're not having a pretrial trail. I think -- you'll have a -- you'll know exactly what the State's case is at the

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directed verdict phase, and if you feel that it's appropriate to direct a verdict on either one of these individuals at that time you can, but as far as quashing the indictment, I simply think it's way premature for the Court to gauge. We haven't had an opportunity to bring all of our witnesses in, and on the face of it, what's alleged just in law enforcement's assessment is more than enough to substantiate the charge.

THE COURT - Well, of course, a motion to quash the indictment that's before the Court is whether there was probable cause upon which the grand jury could have properly indicted him. We don't try the case til now. We get down -- we got to prove it beyond a reasonable doubt and you got to prove substantial evidence and not just probable cause. At that stage when it's presented to the grand jury, of course, the defense doesn't even get to present anything to it. It's just the State's case being presented in that. I find there's substantial evidence at this point, certainly sufficient evidence, for the grand jury to have found probable cause in this case, presented it by the State to them. I certainly find there's probable cause, any (sic) question about that, and that's all I'm required to find at this time. I'm not going to say any more than that, but there is, obviously, more evidence against the -- so far that I've heard -- I've not heard it

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all obviously, but there's more evidence it appears to me in this case against Mr. Underwood than there is against Mr. Harrison at this point, and so he's the one that was in -- took possession of these drugs and took possession of this package not addressed to him, and he had no reason to take them and put them in his car, no reason to throw his cell phone away and run away if he didn't know there were drugs -- at least -- and trying to get away from them. And they said they got him coming out of the back door. I -- you know, that's what they said ---

MS. MOODY - No, Your Honor, I think you might be confusing the two. He wasn't running away from them, and he didn't throw anything in the woods. That would've been Mr. Harrison.

THE COURT - Not in the woods but he threw his cell phones which they got ---

MS. MOODY - He didn't throw his cell phone.

MR. SHELTON - He actually -- he didn't throw a phone, but he locked himself in the house.

THE COURT - All right.

MR. SHELTON - They recovered phones from the car and the upstairs bedroom that ---

THE COURT - Okay. Well, his -- his phone was there and the drugs were in the car, no reason for them to be in the car, no reason for him to take them if they

belong to somebody else, and he locked himself in the house. I understood they said -- got him coming out the back door, did they not? He was trying to -- he was trying to run away, did he not?

MR. SHELTON - He attempted to but they had -- an officer had gone around.

THE COURT - You know, so -- you know, -- then along with all of the other evidence of only one person in the house and somebody's peeking out the blinds upstairs looking and they had another guy going back and forth surveying the scene and presumably in contact with each other in some form or fashion. That's their evidence. Now, you know, that's what they got to use -- but, you know, I would submit to you there isn't any question of whether there was probable cause from which the jury could have indicted him on this case if -- on the elements of the offense in this case, so I think there is certainly ample evidence from -- to establish probable cause for the grand jury, and I would deny your motion to quash the indictment in this case against Mr. Underwood.

Anything else?

MR. RUTHERFORD - Your Honor, we would join in the motion, just point out to Your Honor that given the fact --

-

THE COURT - You don't join in the motion; your client's indicted separately.

MR. RUTHERFORD - Yes, sir, but we join in the motion to quash the indictment even though it's a different indictment, but, again, not to belabor the point but just to point out again what Your Honor did say as it relates to Mr. Harrison, I think the problem that the State realized is that Mr. Harrison, if he was, in fact, the lookout, which we would submit he was not, could've been a lookout for a burglary that was going on. If he was, in fact a lookout for a burglary that was going on, he was not engaged in a conspiracy to traffic in drugs.

THE COURT - Well, you know, when the evidence goes before the grand jury, they don't have to rule out every other possibility, they just find they got enough to establish a probable cause, ---

MR. RUTHERFORD - Yes, sir.

THE COURT - --- and with what the State's evidence was, there is -- there is evidence from which to establish probable cause -- after all, you know, probable cause is a lot less than what you get to in directed verdict stage or as far as the State's burden of proof in -- it comes to in a trial, so I find even against your client, although I don't think that it's as strong as it is against Mr. Underwood, there is -- I find there is,

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nevertheless, significant evidence from which the jury could infer that probable cause has been established -- so again, I would deny your motion to quash the indictment.

Anything else?

MR. RUTHERFORD - Thank you, Your Honor.

THE COURT - Enjoy the ballgame. I'll see y'all on Tuesday. I'm going to take this other motion under advisement so I can take time to hear it and take a look at it and I'll rule it on that Tuesday ---

MS. MOODY - The cell phone.

THE COURT - --- with regard to the admissibility of these phones.

MS. MOODY - Okay.

THE COURT - Okay.

MS. MOODY - Okay, thank you.

MR. RUTHERFORD - Thank you, Your Honor.

(END OF TRANSCRIPT OF PRETRIAL)

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 258 pages is a true, accurate and complete Transcript of Record of the pretrial proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Jacquese Underwood and State of South Carolina vs. Duane Harrison, as taken by me in the Court of General Sessions for the Sixteenth Judicial Circuit August 25th and 26th, 2014 and provided by me this the 14th day of July, 2016.

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

Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

State of South Carolina,)
)
)
)
)
County of York.)

In the General Sessions
Court of York

Case No.: 2013-GS-46-02073

State of South Carolina,)
)
Plaintiff,)
)
-vs-)
)
Jacquese Underwood,)
)
Defendant.)
)

Transcript of Record

September 2, 2014
York, South Carolina

B E F O R E:

The Honorable Lee S. Alford, Judge, and a jury.

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

Mr. Matthew Shelton
Assistant Solicitor
Sixteenth Circuit Solicitor's Office
York, South Carolina 29746
For the Plaintiff

Mr. Todd Rutherford
P.O. Box 1452
Columbia, South Carolina 29202-1452
For Defendant Duane Harrison

Ms. Leah Moody
P. O. Box 1015
Rock Hill, South Carolina 29730
For Defendant Jacquese Underwood

ORIGINAL

Wanda Nelson, CVR-M
Official Court Reporter
To the Honorable John C. Hayes, III

I-N-D-E-X

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

WITNESS	BY:	PAGE NO.

No witnesses were called.

I-N-D-E-X - CON'T

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

NO.	DESCRIPTION	ID.	EVD.

No Exhibits were received into the record.

Court Reporter's Certificate Page P.31

(COURT IN SESSION AND ON THE RECORD AT 10:55 A.M..)

THE COURT: Thank you. Please be seated.

SOLICITOR SHELTON: Your Honor, I believe Ms. Moody and Mr. Rutherford are still speaking with their clients.

THE COURT: Okay.

SOLICITOR SHELTON: While we can give them another minute or two.

THE COURT: All right. We can do that.

(PAUSE.)

SOLICITOR SHELTON: Judge, may we approach?

THE COURT: Yes, sir.

(BENCH CONFERENCE OFF THE RECORD AT 11:00 A.M..)

THE COURT: It'll take a few minutes to sign their clients up.

(COURT AT EASE AT 11:02 A.M..)

(COURT BACK IN SESSION AT 12:14 P.M..)

(BENCH CONFERENCE OFF THE RECORD AT 12:27 P.M..)

MADAM CLERK: Can I get each of you to raise your right hand?

(WHEREUPON, JACQUESE TRAVEON UNDERWOOD AND DUANE ARNESS HARRISON, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

MADAM CLERK: Thank you.

SOLICITOR SHELTON: May it please the Court, Your Honor.

THE COURT: Solicitor.

SOLICITOR SHELTON: Your Honor, standing before you is Duane Arness Harrison repressed by Todd Rutherford of the Richland County Bar. And Jacquese Traveon Underwood represented by Leah Moody of the York County Bar.

Both men as you know were scheduled to resume their jury trial this morning. We had one outstanding pretrial issue that was to be ruled on by Your Honor this morning but in the interim we've been able to negotiate a plea agreement whereby both men are entering No Contest Pleas for a negotiated twelve and a half years.

Their charges as indicted carry the mandatory minimum of twenty-five up to thirty years. This represents exactly half of what they would be exposed to as a mandatory minimum sentence if they were to continue at trial and so their pleading to a lower weight.

Harrison's pleading to trafficking cocaine. I believe it's ten to one hundred grams, first offense. And Underwood is pleading to the same, trafficking cocaine ten to one hundred grams but this one is a second offense based on a prior conviction.

THE COURT: Twenty-eight to one hundred grams. You said --

SOLICITOR SHELTON: Yes, sir. I'm sorry. Twenty-eight to a hundred yes, sir.

THE COURT: Sir, you're Duane Arness Harrison; is that correct?

MR. HARRISON: Yes, sir.

THE COURT: Mr. Harrison, how old are you?

MR. HARRISON: Forty.

THE COURT: How far did you go in school?

MR. HARRISON: I graduated from high school and a year of college.

THE COURT: What do you do for a job or occupation?

MR. HARRISON: I have my own business BBR Investment. And I also work at ABK Racing.

THE COURT: Are you married, sir?

MR. HARRISON: No, sir.

THE COURT: Do you have children?

MR. HARRISON: Yes, sir.

THE COURT: What are their ages?

MR. HARRISON: A nine month old and a six year old.

THE COURT: Did you serve any time in jail on this charge when you were arrested or anytime since you were arrested?

MR. HARRISON: I think one day.

THE COURT: Sir, you are Jacques Trave on Underwood; is that correct?

MR. UNDERWOOD: Yes, sir.

THE COURT: How old are you, Mr. Underwood?

MR. UNDERWOOD: Twenty-nine.

THE COURT: How far did you go in school?

MR. UNDERWOOD: Twelfth grade.

THE COURT: What do you do for a job or occupation?

MR. UNDERWOOD: Stewart Plumbing.

THE COURT: Are you married, sir?

MR. UNDERWOOD: No, sir.

THE COURT: Do you have children?

MR. UNDERWOOD: Yes, sir.

THE COURT: What are their ages?

MR. UNDERWOOD: Ten and - Both of 'em are ten.

THE COURT: Did you serve any time in jail on this charge when you were arrested?

MR. UNDERWOOD: Yes, sir.

THE COURT: How much time?

MR. UNDERWOOD: I think a day and a half, two days.

THE COURT: Mr. Harrison, you are charged today with conspiring to traffic in cocaine in an amount between twenty-eight grams and one hundred grams, first offense, which carries as classified as a felony; carries a maximum sentence of twenty-five years and fifty thousand dollar fine and carries a minimum sentence of seven years, the minimum sentence cannot be suspended and no probation granted.

This offense is also classified as a serious offense.

The importance of that classification is should you get three serious offenses on your record or a combination of three serious and most serious offenses on your record, upon receiving a third such offense you could get a sentence of life without parole, so called the three strikes rule. This offense is classified as one of those three strikes.

Do you understand that?

MR. HARRISON: Yes, sir.

THE COURT: It's also classified as a violent offense which could affect your ability to participate in certain programs down at the South Carolina Department of Corrections. It is a no parole offense which means you would be expected to serve the sentence you actually receive. You would have to serve at least eighty-five percent of your sentence before you would be eligible for parole. Do you understand that?

MR. HARRISON: Yes, sir.

THE COURT: Understanding the charge and the maximum minimum sentences you could receive on this charge, my understanding is you wish to enter a plea of No Contest to this charge. Is that correct, sir?

MR. HARRISON: Yes, sir.

THE COURT: Mr. Underwood, you are charged today with conspiracy to trafficking in cocaine in an amount of

twenty-eight grams to one hundred grams, second offense, which carries a minimum sentence of seven years. A minimum sentence cannot be suspended nor probation granted. It carries a maximum sentence of thirty years and a Fifty Thousand Dollar fine.

It's also classified as a felony. It is classified as a serious offense. As I explained if you get three serious offenses on your record or a combination of three serious and most serious offenses on your record upon receiving a third such offense you could get a sentence of life without parole, so called three strikes rule. This would classify as one of those three strikes in your case. Do you understand that?

MR. UNDERWOOD: Yes, sir.

THE COURT: It's also classified as a violent offense and it's classified as a no parole offense. Again you'd be expected to serve the sentence you actually receive but you would not be eligible for parole until you've served eighty-five percent of your sentence. Do you understand that?

MR. UNDERWOOD: Yes, sir.

THE COURT: Understanding all of that, my understanding is that you wish to enter a plea of NO Contest to this charge. Is that correct, sir?

MR. UNDERWOOD: Yes, sir.

THE COURT: All right. Mr. Harrison, Mr. Underwood, you understand that entering these pleas you give up your right to remain silent. You understand that, Mr. Harrison?

MR. HARRISON: Yes, sir.

THE COURT: Mr. Underwood?

MR. UNDERWOOD: Yes, sir.

THE COURT: And if you give - plead guilty - Excuse me.

By entering your plea of No Contest you also give up your right to a trial by jury.

Mr. Harrison, you understand that?

MR. HARRISON: Yes, sir.

THE COURT: Mr. Underwood.

MR. UNDERWOOD: Yes, sir.

THE COURT: And if you give up your right to a trial by jury you also give up your right to assert any legal defenses you might have in a jury trial.

Mr. Harrison?

THE COURT: And, Mr. Underwood?

MR. UNDERWOOD: Yes, sir.

THE COURT: I know you're attorney's have gone over that right with you, I'm gonna do so as well. If you request a trial by a jury - Of course we were already in trial posture in this case - the state would give you a trial, at trial you would have the right to confront and

cross examine all witnesses' against you. You would have the right to present any witnesses' and or evidence in your own defense. You would have the right to testify in your own defense if you wished to do so, but no one could make you testify in your own trial. If you decide to go to trial and not testify the judge would tell the jury they could not hold your failure to testify against you. In fact the jury couldn't even consider your failure to testify in their deliberations on your guilt or innocence.

You would be presumed innocent throughout your trial, the State would have to prove you guilty beyond a reasonable doubt to a jury of twelve people, all twelve people would have to unanimously agree that you were guilty in order for you to be convicted. And even if you were convicted you would still have the right to appeal that conviction.

Do you understand your rights with regard to a trial by a jury, Mr. Harrison?

MR. HARRISON: Yes, sir.

THE COURT: Mr. Underwood?

MR. UNDERWOOD: Yes, sir.

THE COURT: Now the State had --

Mr. Harrison, the State has recommended in your case they've agreed to reduce this down to a first offense and reduce the amount to twenty-eight to one hundred grams and

for a plea of twelve point five years.

Is that your understanding of the agreement you have with the Solicitor's office in order to enter your plea today?

MR. HARRISON: Yes, sir.

THE COURT: Did anybody promise you anything other than that in order to get you to enter your plea?

MR. HARRISON: No, sir.

THE COURT: Mr. Underwood, the State has agreed to reduce the amount of cocaine involved in this trafficking case and is recommending or has agreed to a sentence of twelve point five years in your case. Is that your understanding of the agreement you have with the solicitor's office in order to enter your plea today?

MR. UNDERWOOD: Yes, sir.

THE COURT: Did anybody promise you anything other than that in order to get you to enter your plea today?

MR. UNDERWOOD: No, sir.

THE COURT: Are you satisfied with the manner in which your attorney has advised and represented you in this case, Mr. Harrison?

MR. HARRISON: Yes, sir.

THE COURT: Mr. Underwood?

MR. UNDERWOOD: Yes, sir.

THE COURT: Are you today under the influence of any

mind altering substance such as alcohol, drugs, or prescription medications which interfere with your judgment or ability to understand what you're doing in court today, Mr. Harrison?

MR. HARRISON: No, sir.

THE COURT: Mr. Underwood?

MR. UNDERWOOD: No, sir.

THE COURT: Do you have any mental, emotional or nervous condition that interferes with your judgment or ability to understand what you're doing in court today, Mr. Harrison?

MR. HARRISON: No, sir.

THE COURT: Mr. Underwood?

MR. UNDERWOOD: No, sir.

THE COURT: Are you entering your plea today of your own free will, Mr. Harrison?

MR. HARRISON: Yes, sir.

THE COURT: Mr. Underwood?

MR. UNDERWOOD: Yes, sir.

THE COURT: Please give me the facts.

SOLICITOR SHELTON: Thank you, Your Honor. May it please the Court.

On October 30th, 2012 an officer from the Drug Enforcement Agency Task Force named Frank Finch was called to the UPS facility on Mount Gallant Road in Rock Hill,

York County, South Carolina in reference to a suspicious package. Agent Finch brought with him a K9 who is trained, along with Agent Finch and package drug detection packages. The K9 conducted a package lineup on five packages as you heard about in pretrial, alerted on the package. There were also indicators on the package suggesting that there was some sort of illegal contraband inside.

A search warrant was obtained and executed at the UPS facility where what was gauged or estimated as one kilogram of cocaine was inside of a package. The package was addressed to a residence at Shenandoah Circle in Rock Hill, South Carolina addressed to a woman named Sharika White who law enforcement were able to confirm that she was in fact a resident at that house.

Before I loose my chain of thought, Judge, as you have heard us mention Ms. White was interviewed by the Drug Unit and during their interview they did not suspect she was involved in this activity. It became clear to them that she had been notified by Mr. Underwood the day before and morning of as she characterized it him checking to see if she was home. She would testify consistent with that. I have no reason - had no reason to doubt anything she said to the police or in subsequent interviews, and she was at fact at home with her children at school.

Her front door was unlocked. Mr. Underwood had some

time after that morning after he contacted her this morning actually bought her breakfast at Bojangles, had gone into her house through the unlocked doors. She indicated she did not give him permission to be there and didn't give either one of these men permission to send anything to her house.

The package was opened and inside was the kilogram of cocaine. It was taken to the Drug Unit at the Rock Hill Police Department. The kilogram of cocaine was extracted and put in - and submitted as evidence. A imitation of kilogram was put in the box sealed up for what's known as a controlled delivery. An agent out of Lexington County dressed in full UPS uniform went into a white paneled van and went undercover to affect control of the delivery.

Officer Harrelson from the Drug Unit was already in the neighborhood before the package was delivered. He observed Mr. Harrison riding up and down the street in a Yukon in what would have been characterized or described as counter surveillance. Things that Commander Brown is trained on has trained all of his agents to look out for.

Mr. Harrison was watching the house, was watching traffic in and out of the neighborhood, was watching for the delivery van. In fact he tailed the delivery van out of the neighborhood - in and out of the neighborhood. Only when he doubled back after the controlled delivery had been

affected he slowed by the house and then Mr. Underwood came outside and retrieved the package. He then put it in the trunk of a vehicle that was parked in the garage of the residence, backed the car out and went back inside. Officers from the drug Unit moved in to effect an arrest. Harrison fled from the police in reverse as fast as he could go and then did a one eighty turn and continued to flee through the neighborhood with Commander Brown and other agents chasing him.

Harrison got out on foot continued running and threw a couple of cell phones into the woods that were recovered. Underwood was outside of the house when Harrison came by. Harrison was blowing the horn at him. Harrison ran back in the house, locked himself in the house, tried to go out the back door where he was met my Agent Lubin and he then secured himself inside the residence, eventually opening up the residence for officers. They had a anticipatory search warrant for the residence.

The package was in the trunk of the car. There was a cell phone in the front seat of the car that Underwood admitted was his. Inside that cell phone was a message to a store contact indicating his new number. That's relevant because that's the number that Harrison had stored in his phone as a contact of Jacq, the exact number that Underwood said was his new number. And between Harrison's phone and

that number who we know to be Jacq, Jacques Underwood, there were a series of text messages throughout the month of October dealing with what appears to be packaged delivery. That certainly would have been a question for the jury to determine. Also Your Honor was still to rule on the admissibility of those text messages. But regardless on the 17th of October Jacq sent Harrison the address, the Shenandoah Circle address, through a text message from his new number to Harrison's phone, one of the phones he threw in the woods. And then no more than two weeks later this package arrives.

The drugs were tested by our certified chemist Ms. Mitcham. It tested positive as cocaine and it weighed nine hundred and sixty-five grams so it's just shy of a kilogram by what appeared to be a kilo to law enforcement on the front end.

Those are the substantive facts, Your Honor. Obviously all those things together exhibited a conspiracy between these two men to traffic the drugs and that's the case the State would argue to the jury and were confident that we would have proven those facts beyond a reasonable doubt to a jury.

Mr. Harrison has a prior conviction out of Richland County. In 1995 he was convicted of kidnaping and received an eighteen year sentence. And he also subsequently a

couple of years ago got a possession of marijuana conviction in 2009 in York County.

Jacquese Underwood in 2007 received a five year sentence for trafficking in cocaine ten grams to twenty-eight grams. Possession of a stolen pistol and possession of a weapon during the commission of a violent crime.

I think Mr. Underwood also has a prior possession of marijuana conviction according to his NCIC. We've made copies of their substantive prior convictions already a part of the court's record when we were dealing with Rule 609 issues in pretrial. Also the text message we were referring to earlier in the month have also been made Court Exhibits for Your Honor's consideration on that motion that was outstanding.

THE COURT: I find the decision of the defendant Duane Arness Harrison and the defendant Jacquese Traveon Underwood to plead guilty to their - Excuse me - Plead no contest to their respective charges be made freely voluntarily and intelligently. They've had the representation of each of them of a competent attorney with whom each has said he is satisfied. I find the facts presented to the court by the Solicitor's office fully support the plea's in this case and I will accept the pleas as freely and voluntarily made.

Mr. Harrison, Mr. Underwood, if you disagree with the

proceeding in which you are currently involved you have ten days from today's date within which to file a Notice of Intent to Appeal. Do you understand your right to appeal today's proceeding, Mr. Harrison?

MR. HARRISON: Yes, sir.

THE COURT: And, Mr. Underwood?

MR. UNDERWOOD: Yes, sir.

THE COURT: Counsel, before I hear from you, let me just state on in so far as the motion is outstanding, there is a question of the admissibility of certain text messages, I believe phone messages, text messages from respective cell phones in this case. And the question of whether they were admissible not of the day of the - I believe of the occurrence - but previous phone messages or text between the two defendant's in this case and the Court took that question under advisement.

The Court however indicated to the counsel how I had planned to rule in this case and I will tell you for purposes of the record, and I think you can make those exhibits in this case, I find that they would be admissible. Those phone messages would be admissible in the case and I want to give some of the reasons for that and go ahead and put that on the record in the event the question comes up later at Appellate Court level.

It comes in for - And I researched this since we had

the motion and I took them under advisement - and there are two reasons, primary reasons that the evidence comes in in a case. First of all they are relevant as to the relationship with regard to any conspiracy between these two individuals so it's relevant. The approbative value to the State is very high; it is somewhat prejudicial to the defendant but the approbative value is somewhat high so by using that balancing test they would come in.

Secondly, the Court finds a conspiracy and actually there's more than one but there are several different ways that you can conspire under the trafficking statute and be guilty. One of them is of course this possession of over a certain amount of drugs, either actual or constructive. They don't have to be in your hands. Knowingly actual constructive possession. And certainly in this case Mr. Underwood I think, and I think the evidence shows, he believed he was in possession of about a kilo and in this case it turned out to be nine hundred and sixty-five grams which certainly exceeds the four hundred grams that's required for this maximum trafficking.

So he believed he was in possession of it. He picked it up, put it in the car so he was in possession of it, actual possession of it. Even sitting in the car that's constructive possession. So for that reason he could have been proven to be guilty of trafficking on that basis

alone.

But also in the statute it provides as follows that anyone who manufactures, cultivates, delivers, purchases, or brings into this state, or provides financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this state, or was knowingly in actual constructive possession as I previously stated.

Conspiring in any of those, bringing it into the state, to handle it in this state, do something with it in this state, all of those are guilty of trafficking. And so the state has to prove that there is a connection between these two defendants which would amount to a conspiracy, conspired together to do any of these things. They would have to prove that. But, it's pretty broad this conspiracy, their ability to prove it.

Now, I say it is relevant in the case because these two defendant's can simply take the position that they really don't even know each other that well and certainly were not working together with regard to these drugs simply delivered to them on the day in question. They can certainly say we don't know each other so the state has to prove a connection between them and their relationship and how they were involved.

That's one reason this evidence comes in, to show

through these previous text messages - and it's all within thirty days so their timing - but all of these is showing their connection between them, and similar type activity shows the relationship between them, and they would be able to bring that in to prove their case.

It also comes in the State is entitled to present the res gestae of the case according to the cases. That means a full res gestae, what was going on with the parties. So it comes in for that reason, to be able to prove their case that it was a conspiracy going on as part of the res gestae of the case.

Finally under - It comes in under Rule 404(b) evidence of other crimes, wrongs or acts is not admissible and reads as I'm reading it to you. Not admissible to prove character of a person in order to show action and conformity there. It may however be admissible to show motive, identity - Again these tend to show identity of the parties - involved the existence of a common scheme of plan. The text messages indicate the same type of conduct and communication between these two defendants as were going on the day the arrest was made and the drugs were delivered.

The existence of a common scheme of plan as I said the absence of mistake or action or intent of the parties. And so it comes in under Subsection B and also 404(b). Not to

show the character of the defendants but to show common scheme or plan, identity of the parties involved which the State has to prove the absence of mistake or absence - or the intent of the parties in this case.

I go on and cite some cases here. In *State versus Wallace* 384 SC 428 683 S.E. 2d 275, the Court found that when determining whether the evidence is admissible as a common scheme or plan the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. And I found it was all similar, the difference being that the day of the arrest in this case, the day of the occurrence, with the drugs and et cetera, or the delivery of fake drugs as it were. But delivery is except for the fact that there is no text messages that they had been able to retrieve, no pointing out that there are a couple of cell phones that they were not able to get into for whatever reason, but not considering that for or against it, but just to - that was the only dissimilarity. All of the other messages on there are the similar type behavior which is described by the police when they made the arrest on this day or what went on that day they are very similar messages parallel to those that went on in this case. And so it's very similar evidence that was going on.

When the similarities outweigh the dissimilarities, and they do in this case, the bad evidence is admissible under Rule 404(b). And that's cited in *State versus Classy*, C-l-a-s-b-y, 385 SC 148, 682 S.E. 2d 892. And the prior bad act evidence is admissible where the evidence is of a such close similarity to the charge of the offense that previous act enhances the approbative value of the evidence so as to outweigh the prejudicial effect. That's exactly the case in here.

When it's taken together it enhances the approbative value of the State's evidence to prove the conspiracy in this case. The degree of remoteness between the other crimes and the one charge is one factor to be considered in determining the connection between them. All these phone messages happened within thirty days so it's very close in time.

As the similarities become closer the more likely the evidence would be admissible. The acid test of admissibility is the logical relevancy of the other crime. And that they are very relevant. Logically they are very relevant to each other and point to the same type of conduct which the evidence is a conspiracy.

When the prior bad acts are very similar in nature these acts are admissible as a common scheme or plan, *State versus Martucci*, -a-r-t-u-c-c-I, found at 387 SC 232

669 S.E. 2d 598.

Generally in *State versus Edwards* 373 S.C. 230, 644 S.E. 2d 66 the court found such evidence is admissible when the intent to establish a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the other. That's exactly the case the court finds in this case as far as the State's evidence is concerned.

The foundation for admissibility transcends mere similarity for the admission of such evidence of it's common scheme or plan exception requires a connection between the extraneous crime and the crime charged so that proof of the former tends to prove the later. Succinctly stated the prior bad act evidence must be relevant to prove the alleged crime. The Court finds that it is in this case and this is *State versus Tuffour*, T-u-f-f-o-u-r, 364 S.C. 497, 1613 S.E. 2d 814.

Finally a close degree of similarity or connection between the prior bad act and the crime for which the defendant's are on trial is required to support admissibility under the common scheme or plan exception. The Court so finds that it is in this case. And that's *State versus Chesborough* 346, SC 526, 552 S.E. 2d 300.

Finally the trial judge must clearly perceive the connection between the other crimes and the crime charged.

Further other crimes which are not a subject of conviction must be proven by clear and convincing evidence. The Court finds that would be clear and convincing evidence in this case in their close connection and logically related between the same and the same type of conduct which would evidence a conspiracy.

So for all of those reasons the Court finds Number One, the primary reason is it's evidence of a conspiracy between these two same individuals through the same type of conduct which is trafficking number one and that's pretty broad.

And Number Two: It comes under 404(b) Lyle type evidence in this case. The court finds that it meets all the requirements to be admitted and it would be admitted.

All right, I put all of that on the record.

Now, counsel, I'll go to Mr. Rutherford first I guess as to Mr. Harrison. Anything you wish to say on his behalf?

MR. RUTHERFORD: Your Honor, just briefly. As he told you he's told you his background and we respectfully ask that you accept the negotiated sentence. Our understanding is what the court sees as well, that it is for a twelve and half year sentence which is twelve years and six months just for anybody that's listening and trying to figure out what twelve and a half is, which also I believe a hundred

and fifty months all together. That is our understanding of the negotiation and we would ask that Your Honor accept that.

My client did one year of college. There is no indication that he cannot read and write, in fact, he can read and write where at the plea sheet that he was given, those are his initials, not mine. He did indicate that he understood everything and has understood everything up until this point. And again, Your Honor, we'd ask that you accept the negotiated sentence.

THE COURT: Thank you.

Mr. Harrison, you're pleading no contest. You do not have to say anything. Do you want to say anything?

MR. HARRISON: No, sir.

THE COURT: Now counsel as to Mr. Underwood.

Ms. Moody.

MS. MOODY: Thank you, Your Honor, may it please the court.

I would reiterate what Mr. Rutherford has said in terms of the negotiated plea here that it is twelve and a half years. I can't break down all the numbers but my client did give me that information and did go over the plea affidavit with me and did initial and those are his initials on the sheet.

Your Honor, based on your ruling as far as the cell

phone messages, I explained to my client, he understood that was something that we were waiting on and I felt like it would weigh heavily in a trial in this situation and what the State could prove. Not what exactly happened for him but what the State could prove and what consequences of any kind of conviction would have on him in terms of his sentence and what the Court would have to sentence him to and what his sentencing exposure would be. And with that being said, Your Honor, we ask that you accept this negotiated plea.

THE COURT: Mr. Harrison, you're pleading no contest.

Excuse me. Mr. Underwood, you're pleading no contest. You do not have to say anything. Do you want to say anything?

MR. UNDERWOOD: No, sir.

THE COURT: I know these sentences are tough on families and tough on the defendant's; I understand that. I believe there is substantial evidence so based on pretrial information that came in and the evidence I believe there is substantial evidence in this case. The ultimate decision would be up to the jury but I think there is substantial evidence to take this case to the jury and it would be their decision.

Of course each defendant were convicted of more than four hundred grams if they are convicted of a jury of that

the Court would have had to impose a minimum of twenty-five years no parole. Possibly thirty years up to thirty years no parole. And in this case what you're pleading to is twelve point five years which mean you - on the twenty-five year sentence if you were to get to have to serve twenty-one point twenty-five years before you would be eligible for parole that's a long time.

On the twelve and a half year sentence you would have to serve ten point six-two five years before you would be eligible for parole. That's a big difference. Twice the time you would have to serve. You would be a lot older when you got out so I concur and understand why you're pleading in this case.

Again I accept the pleas as freely voluntarily made.

Now, Mr. Harrison, in your case you have plead no contest to the charge of conspiracy and trafficking cocaine in the amount of twenty-eight grams or less than one hundred grams first offense the sentence of the court is you be committed to the State Department of Corrections for a determinate term of twelve point five years. You're given credit for one day of jail time.

Mr. Underwood, you have plead no contest to a charge of trafficking cocaine in the amount between twenty-eight grams and one hundred grams second offense, the sentence of the court is you be committed to the State Department of

Corrections for a determinant term of twelve point five years. And you're given credit for two days jail time.

MS. MOODY: Your Honor, if I may ask. And I meant to ask this on behalf of my client, to ask if he could do a delayed report. He came here today thinking that it was just a trial.

THE COURT: I'm not gonna do that. With this kind of sentencing I just don't do that. Thank you.

MS. MOODY: Thank you, Your Honor.

- END OF TRANSCRIPT OF RECORD -

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for 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 York County, South Carolina, on the 2nd days of September, 2014.

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

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: June 8 / 2015

ARREST WARRANT

N-230855

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

THE STATE 201200036814

against

Traveon Underwood

Craven Hill Drive

Rock Hill, SC 29730-

SSN:

Race: B Height: 5 10 Weight: 180

DL #:

Agency ORI #: SC0460000

Agency: York County Sheriff

Officer: L. Harrelson - H1721

rugs / Trafficking in cocaine, 400 g or more

de: 0281

ance Sec: 44-53-0370(e)(2)

nt is CERTIFIED FOR SERVICE in the

y/ [ ] Municipality of

. The accused

e arrested and brought before me to be

according to the law.

(L.S.)

Signature of Judge

RETURN

f this arrest warrant was delivered to

Jacquece Traveon Underwood

10/30/2012

Signature of Constable/Law Enforcement Officer

VARRANT TO:

rk County General Sessions

75 York Hwy

rk, SC 29745

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

York

AFFIDAVIT

ORIGINAL

Approved by
Solicitor/Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant L. Harrelson who being duly sworn deposes and says that defendant Jacquese Traveon Underwood did within this county and state on or about 10/30/2012 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of York) in the following particulars:

DESCRIPTION OF OFFENSE Drugs / Trafficking in cocaine, 400 g or more

0281

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on October 30, 2012, in the county of York, one Jacquese Traveon Underwood did aid, abet scheme and conspire with another to traffic approximately 1000 grams of cocaine, while at Shenandoah Circle, Rock Hill, SC. Criminal history indicates the defendant has one prior drug conviction. Probable cause based on a police investigation, execution of a search warrant and the recovery of evidence. REPORT #201200036814

FILED-RECEIVED
2012 MAR 19 PM 4:42
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

York

Affiant's Address Moss Justice Center
York 29745-7428

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 10/30/2012 defendant Jacquese Traveon Underwood did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of York) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in cocaine, 400 g or more

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

FILED-RECEIVED
2012 NOV -5 PM 2:31
DAVID HAMILTON
C.C.C.P.&S.
YORK COUNTY, SC

Sworn to and subscribed before me on 10/30/2012

(L.S.)

Signature of Issuing Judge

Leon E. Yard

Judge Code: 5945

Judge's Address Moss Justice Center
York, SC 29745-7423

Judge's Telephone (803)628-3029

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

291

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292

IN THE COURT OF GENERAL SESSIONS

COUNTY OF York
STATE VS.
Jacquese Traveon Underwood
AKA:

INDICTMENT/CASE#: 2013GS4602073
A/W#: N230855
Date of Offense: 10/30/2012
S.C. Code § : 44-53-0370(e)(2)(e)
CDR Code #: 0281

CERTIFIED TRUE COPY
2015 MAR 09 PM 4:02
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Race: BLACK Sex: M Age: 29
DOB: SS#:
Address: Craven Hill Drive
City,State,Zip: Rock Hill, SC 29730
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

SENTENCE SHEET
ORIGINAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Drugs / Conspiracy to Traffick in cocaine, 28 g or more, but less than 100 grams — 2nd offense NO CONTEST

in violation of § 44-53-0370(e)(2)(b)2 of the S.C. Code of Laws, bearing CDR Code # 0388
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Shelton, Matthew W — SC Bar# 74785 — Jacquese Underwood — Defendant — Read B. Ward — Attorney for Defendant — SC Bar# 12141

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 125 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 2 Days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms:
☐ Set by SCDPPPS _____
Recipient:

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100 -
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25 -
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150 -
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5 -
3% to County (if paid in installments)		$
TOTAL		$ 280 -

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Wanda Nelson

Presiding Judge
Judge Code: 213
Sentence Date: 9-2-14

STATE OF SOUTH CAROLINA)
) INDICTMENT
COUNTY OF YORK)

CERTIFIED TRUE COPY
2015 MAR 19 PM 4:42
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions convened on May 29, 2014, the Grand Jurors of York County present upon their oath:

TRAFFICKING IN COCAINE

Between the dates of September 30, 2012 through October 30, 2012, the Defendant, Jacquese Traveon Underwood, did knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of four hundred (400) grams or more of cocaine or any mixtures containing cocaine, as provided in 44-53-210(b)(4). Said incident occurred in York County, South Carolina, all in violation of Section 44-53-370, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

WITNESSES

:U\Harrelson

h

ARREST WARRANT NUMBER

230855

ACTION OF GRAND JURY

/ Tammy Eakins

·13-2013 True Billed TRUE BILL

Preperson of Grand Jury

ate: 5/29/14

VERDICT

Preperson of Petit Jury

ate:

AMENDED

DOCKET NO. 2013-GS-46-02073

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

May 29, Term 2014

THE STATE

vs.

JACQUESE TRAVEON UNDERWOOD

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370(e)(2)(a)
CDR Code: 0281

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Jacquese T. Underwood hereby appear in my own proper person and plead guilty to the within indictment or to Conspiracy in Tranfficking in Cocaine 2nd

Defendant

Witness

C.G.C. R.S. AND G.S.

294

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PLEA WAIVER FORM

STATE OF SOUTH CAROLINA
COUNTY OF YORK COUNTY

IN THE COURT OF GENERAL SESSIONS

CERTIFIED TRUE COPY
2015 MAR 19 PM 4:42
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA

VS

[JH] = defendant's initials required

Jacquese Traveon Underwood

Total Time Served (days): Click here to enter text.

I want to plead guilty, no contest, or enter a plea under N.C. v. Alford to the charges listed below. I understand that the minimum and maximum penalties as well as some of the collateral consequences for the charges to which I am pleading are listed below:

Truebilled☐ Waiver☐
Indictment #: **2013GS4602073** CDR: **0388** Statute #: **44-53-370(e)(2)(b)**
Original Charge: **Trafficking cocaine 100 grams or more, ~~3rd or subsequent~~** 2d JH JH
Pleading To: **Conspiracy to traffick cocaine, 28 grams – 100 grams**
Misdemeanor ☐ Felony ☒
Penalty: **7-30 years and a $50K**
☐Non-Violent ☒Violent ☒Serious ☐Most Serious ☒No Parole ☐ Sex Offender Registry
☐Mandatory GPS ☒Increased Punishment for Future Offenses ☐Murder Day for Day

List **General Sessions** Charges Being Dismissed: ~~Click here to enter text.~~ Burglary
List Pending **General Sessions** Charges not being resolved: Click here to enter text.

YOA: ☐Eligible ☒Ineligible due to: ☐Age ☒Offense ☐Other: Click here to enter text.
List Prior Convictions: **2005/ possession marijuana 1st; 2007/possession stolen pistol, trafficking crack 10-28 2nd (5 years);** Pro Se plea
Currently on Probation? ☐Yes ☒No Is this plea a violation of the probation? ☐Yes ☒No

[JH] I have agreed to plead guilty, no contest, or enter a plea under N.C. v. Alford as part of a plea arrangement. The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea:

Type of Plea ☐Guilty ☐N.C. v. Alford ☒Nolo
Recommendation☐ Negotiated☒ Without Recommendation☐

[JH] State is recommending or the negotiation is: **12 years and 6 months** + Dismissal of Burg.

[JH] This plea is not the product of any other promises or any threats whatsoever, except as indicated below:

Hocker 10/23/2013

NK I understand that, upon entering a plea under N.C. vs. Alford, I will be treated as being guilty whether or not I admit that I am in fact guilty.

I understand that a no contest plea is treated by the Court the same as a plea of guilty.

NK The Solicitor is making a recommendation to the judge, as listed above. I understand the Judge is not required to accept the recommendation given by the Solicitor and the Judge may accept it, may go below the recommendation, or may go above the recommendation.

This plea is a negotiated plea and the negotiation is listed above. I understand the Judge may refuse to accept the negotiation and that if the Judge refuses, the plea will not go forward.

NK This plea is without negotiation and I understand I could receive from the minimum to the maximum sentence on each charge to which I am pleading guilty and that those sentences could also be run consecutive to other.

I am not currently under the influence of any intoxicants, drugs, or narcotics.

I currently DO take the following prescribed medications:

NA

I am entering my plea today freely, voluntarily, knowingly, and intelligently.

I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer, or the court will appoint a lawyer for me if I cannot afford one. I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself. Understanding this, I give up this right.

I understand that I have the right to plead not guilty and be tried by a jury, and that I am presumed innocent until such time as the jury is convinced of my guilty beyond a reasonable doubt. Understanding this, I give up that right.

I understand I have the right to have the Court issue subpoenas to bring my witnesses and evidence to a trial at no cost to me. Understanding this, I give up that right.

I understand I have the right to testify or remain silent at trial. Understanding this, I give up this right.

My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any defenses I may have and he or she has done everything I have asked him to do. I am satisfied with his or her services.

I understand that I have the right to remain silent, that is, the right against self-incrimination. Understanding this, I give up this right.

I understand that in a jury trial I have the right to see and hear all witnesses called to testify against me and to confront, cross-examine, and question them.

[ ] I give up, for each of the charges listed above, my right to a jury trial, my right to a bench trial (trial by Judge with no jury), my right to confront and cross examine witnesses, my right to remain silent and not incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf.

[ ] I understand that by my pleading to each charge, I am waiving all defenses, including, but not limited to the right to challenge any evidence the State may have used in its case against me and the voluntariness of any statements made to law enforcement.

[NA] I understand that upon my conviction I may be ordered to pay restitution to any persons directly and proximately injured as a result of my commission of these crimes and that a civil judgement in favor of each person may be docketed against me and will be a lien against any real estate I own now or may own in the future.

[NA] I understand that if I am not a citizen of the United States, my plea of guilty, no contest, or my plea under N.C. v. Alford may result in my deportation, exclusion from re-entry to the United States, and denial of naturalization and amnesty.

[ ] I understand that I have 10 days within which to appeal this guilty plea.

[ ] I understand that I am pleading guilty, no contest, or under N.C. v. Alford to the charges shown above.

[ ] I now personally plead ( )guilty; ( )under N.C. v. Alford; (X)no contest to the charges above.

Acknowledgement

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, the effects of any prior convictions and enhancements, have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Defendant's Signature: _____ Date: 9-02-14

Defense Counsel's Statement

I, the attorney for the defendant in the above entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges, all discovery provided by the State, and possible defenses with the defendant and the consequences of the plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his or her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Print Name: Leah B. Moody _____ Bar # 12141

Attorney Signature

Date: 9/2/2014 Circle One: PD (Retained) Appointed

I have reviewed this form as completed by the Defendant or by the Defendant with his Defense Attorney for completeness and accuracy.

Solicitors Signature: _____ Bar # 7478 5

Date: 9/2/14

Judge's Confirmation

Upon consideration of the record, evidence or factual presentation offered, answers of defendant, and statements of the lawyer for the defendant and the prosecutor and the contents of this plea and waiver form, the undersigned finds that:

1. There is a factual basis for the entry of the plea,
2. The defendant is satisfied with his/her lawyer's legal services,
3. The defendant is competent to stand trial, and
4. The plea is the informed choice of the defendant and is made freely, voluntarily, knowingly, and intelligently.

The defendant's plea is hereby accepted by the Court.

_____ Judge's Code: 7113 Date: 9/2/14

Judge's Signature

2015CP46-818

FORM 5

FILED - RECEIVED
2015 MAR 06 PM 3:27
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

JACQUESE T. UNDERWOOD #323[illegible])
Full name and prison number (if any) of Applicant.)

v.) **APPLICATION FOR**

State of South Carolina) **POST-CONVICTION RELIEF**

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210

2. Name and location of Court which imposed sentence York County Court of General Sessions, 2 Congress Street, P.O. Box 649, York, SC 29745

3. Name(s) of co-defendant(s) (if any) Duane Harrison

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2013-GS-46-02073 - Trafficking in Cocaine

   (b) _____

   (c)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) September 2, 2014 - 12 years six months

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere X

7. Did you appeal from the judgment of conviction or the imposition of sentence?
no

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel

(b) Involuntary guilty plea

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a)

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief?

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____

(d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

ii.

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i.

ii.

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? x

(b) your trial, if any?

(c) your sentencing? X

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Leah B. Moody, LLC, 235 East Main Street, Rock Hill, SC 29731

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Guilty plea, sentencing

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application:

New Trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Richland)

I, Jacquese Underwood, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jacquese Underwood

SWORN to and subscribed before me this 05 day of March, 2015.

J C Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Leah B. Moody, LLC, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jacqueline Underwood
Applicant

SWORN or affirmed to and subscribed before me this
05 day of March, 2015.

Notary Public

My Commission Expires: 12-16-2019

State of South Carolina — Court of Common Pleas

County of York — Sixteenth Judicial Circuit

Jacquese T. Underwood,
Applicant,
vs.
State of South Carolina,
Defendant.

Transcript of Record

2015-CP-46-0818

November 8, 2016

York, South Carolina

B E F O R E:

The Honorable Roger L. Couch, Judge

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

Tommy Arthur Thomas, Esquire
On behalf of the Applicant

Justin James Hunter, Esquire
On behalf of the State of South Carolina

Stacy S. Johnson
Circuit Court Reporter

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E X H I B T S

NO EXHIBITS WERE INTRODUCED

(Whereupon, the following proceedings were held on November 7, 2016, beginning at 10:03 AM.)

THE COURT: All right. We're on the record in the case of the Jacquese T. Underwood as the Applicant against the South Carolina. The State is present and represented by Mr. Hunter and I believe you're Mr. Thomas; is that right?

MR. THOMAS: That's correct, Your Honor.

THE COURT: And Mr. Thomas is representing Mr. Underwood.

I'll hear from the State to begin with.

MR. HUNTER: Yes, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. HUNTER: Your Honor, Mr. Underwood was indicted at the May 2014 term of the York County Grand Jury for trafficking in cocaine. I believe that was one -- over 100 grams. He was represented by Ms. Leah Moody at trial. And, Your Honor, he was tried with a co-defendant; however, there was an extensive pre-trial hearing that lasted over two days before Judge Alford, and that was August 25th and 26th, 2014. After that hearing they appeared again September 2, 2014, before Judge Alford and entered a negotiated guilty plea or negotiated a no contest plea to conspiracy to traffic cocaine, 28 to 100 grams. Your

Honor, that was for a twelve and a half year sentence, second offense. He did not filed a notice of appeal. He filed this current action --

THE COURT: According to the sentencing sheet I'm looking at, if I'm looking at the correct one, that was a negotiated sentence?

MR. HUNTER: Yes, Your Honor, it was negotiated, and I believe your package should have a plea waiver form that has been negotiated.

THE COURT: I have seen that, but I didn't read it in detail.

MR. HUNTER: Okay. Yes, Your Honor.

So it was a negotiated no contest plea. He received twelve and a half years. He did not file a notice of appeal. He filed this current action March 16, 2015. He's present today represented by Mr. Tommy Thomas.

THE COURT: All right, Mr. Thomas. I'll hear from you.

MR. THOMAS: Your Honor, if it please the Court, we were gonna call Ms. Moody as part of our case, but she is seeing another client. I do have --

THE COURT: No, she's right there. She just walked in.

MR. THOMAS: Okay. All right. Well, we'll call her first then, Your Honor.

THE COURT: All right. Step up, ma'am, and be sworn, please.

(Whereupon, Leah Moody was duly sworn by the Clerk of Court.)

THE COURT: Please have a seat on the witness stand and once you're seated, state your name, please.

THE WITNESS: Leah Moody.

THE COURT: Thank you.

Mr. Thomas, it's your witness.

MR. THOMAS: Your Honor, may it please the Court?

THE COURT: Yes, sir.

LEAH MOODY,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Ms. Moody, have you had an opportunity to represent Jacquese Underwood?

A. I did.

Q. Okay. And at what stage of the trial were you -- you were retained to represent him?

A. I represented him from the beginning.

Q. From the beginning. Okay.

All right. And how long did it take this case from the arrest to trial? Do you remember what period of time that was?

A. No. The period of time where -- I want to believe -- I want to say that he asked me to like hold -- get it held off and so it went through a lot of things as far as like getting records from the State, getting the telephone logs from the cell phone carriers. There were several telephones involved in it. There was a co-defendant on this case. His lawyer was Todd Rutherford, who was in the Legislature, so it would be --

Q. So you had a -- so you had a sufficient amount of time to put the case together?

A. Yes.

Q. Okay. And it was your intention to try this case; is that correct?

A. Yes. We actually went to -- we were called to trial.

Q. Okay.

A. So we were called to trial in, I believe it was, August or September. We had a number of pre-trial motions. That took maybe two or three days. We practically tried the case in the pre-trial motions. He had been given an offer several times. He had been asked to testify for the State. He decided --

Q. Let me ask you about the offers. What type of plea offers was he -- was he given?

A. If I recall, I think he was initially charged with maybe a third. I'd have to look at the sheet, but he was

charged with a third and the State was gonna reduce the charge down so that he would be in the realm of receiving seven years. He had that offer on the table. They asked him to testify for the State, he did not want to do that. All the way up until we started the pre-trial motions there was an offer that he would receive under ten years. I believe the first offer was ten years and then he would have been in the range of seven years if he testified for the State.

Q. Right. And all of these were conveyed to Mr. Underwood?

A. Yes.

Q. Okay. And now he was -- he was released on bond?

A. He was out on bond, I think, the entire time.

Q. All right. And what did you do to put this case together?

A. What do you mean?

Q. Did you hire an investigator? Was that necessary?

A. That wasn't necessary because this was a -- what would I call it? It was a mail-type situation, so there was a package sent from California.

Q. Yeah, that's what I was gonna ask you, to give the Court just a brief description of what the charges -- or how the charges came about.

A. It was a package that came from California. The

package went to an address that Mr. Underwood did not reside at.

Q. Right.

A. There was a young lady who resided at -- resided at this house.

Q. Was that Shaerica White?

A. Yes.

Q. Okay.

A. So that was her home. I believe it was a neighborhood. It was her home. He contacted her and he took her to breakfast, I believe. They had some kind of relationship --

Q. Right.

A. -- and so he was at her house, he drove his car into her garage, the UPS or whoever it was that was delivering the package came to the house, knocked on the door, he answered the door, took the package in, and then at some point law enforcement came in. When they came in, the package was in his trunk of his car in the garage. They came to the door. I can't remember whether it was they busted down the door or whether he opened the door. He took off running, ran through the backyard and the co-defendant was in the car doing kind of like a watch-out and that took off into a high speed chase. I'm not really sure whether the co-defendant ended up coming back to the

house and they had them there and they wanted to talk to Jacquese.

Q. Okay.

A. They did have a conversation -- or either he did give a couple of statements because I remember making a motion to limit -- or to suppress the statements. The package that was in the trunk of the car had already been identified as carrying illegal drugs. The purpose of the cell phones were -- was that there were three or four cell phones, it might have been six, I'll have to look back at the file, but they had a lot of back and forth between he and the co-defendant.

Q. Let me stop you there, if you don't mind. And those were the allegations of the State, that basically this was drugs that were mailed into the State?

A. Well, the phone logs gave that because I got all the phone logs and all the conversations, all the text messages, all the numbers that went through, I got all that information. I had a notebook and I read through all of those phone -- phone statements and tried to piece things up. I looked at all the photos that were involved in the case that were on the phone. They had some -- there were some rather incriminating photos there and then the pictures of the text messages.

Q. What were the photos of?

A. Him with money and guns, photos of women, photos, I mean, of his kids.
Q. Was that included in your discovery?
A. It was.
Q. Okay. Because I got a copy of your discovery. I didn't see those pictures. I saw pictures of text messages, but I didn't see --
A. I mean, the file on this case is about three boxes full and there are discs and there are logs. There are dog search -- dog -- K-9 records that I subpoenaed and received, I believe they were two years back, so it was very -- it was voluminous. It was not a small case file.
Q. All right. Now you met with Jacquese and went over this discovery with him?
A. Yeah, we talked a lot.
Q. Okay. And what was your theory of defense?
A. Well, I needed to get the phones -- the pictures of the phones taken -- or suppressed and if those were suppressed -- well, the State alleged there was a conspiracy between he and the co-defendant; that in this on-going conspiracy they would have packages delivered to random houses and they would meet up and that's how they would pick up the packages. So that was their theory and what I was trying to show was that was not the case, so I wanted the phone messages suppressed and he understood when

we went away on that weekend that if those phone records were not suppressed, then it wasn't gonna look good for him. His co-defendant -- he alleged that the co-defendant was the mastermind and he didn't know what was in the package. His co-defendant said something different.

Q. Okay. All right. Well, let's -- let's walk through this step by step. So the preparation for this case was always -- was ultimately always for a trial?

A. Yes. I mean, I made the offers to him because he didn't want to go to jail.

Q. Right.

A. So I gave him the offers, I negotiated with Matt Shelton, we talked about it, we went back and forth, back and forth, and I asked did he want to testify for the State, he did not want to testify for the State. Ultimately he wanted me to have his father call and help him get out of there and that wasn't gonna work, so it got tight. I wanted him to take the offer, but he didn't want to take it, so we were going to trial.

Q. Okay. He was telling you that he was guilty or not guilty of this crime?

A. I can't remember whether he told me he was not guilty. He did allege that he did not know what was in the package.

Q. All right.

A. But that didn't make sense.

Q. Okay.
A. Because the State's witness, Ms. White, was saying that he didn't have -- actually, I think she had to press charges against him, and I think he had a burglary first, because she didn't give him permission to be in the house. His story was that he was there with her, they had a romantic relationship, they went to Bojangles' for breakfast, and she left him in the house. She told him that there was a package coming and the package coming was children's books and so, okay, it was children's books, but when they opened the package it was not children's books.
Q. Okay. Wasn't it true that they did have a -- didn't they have a relationship?
A. Yeah, I don't have a problem with that. I just -- that was -- they had a relationship previously, he was in a relationship with someone, so it didn't make sense -- it just didn't make sense to me from a female standpoint.
Q. Okay. And -- and you were able to show that they had -- that they did -- that they had gone to breakfast that morning at Bojangles'?
A. I don't think that I had any receipts or anything such as that. I just took him at his word that they went to Bojangles' and he ended up being in her house and that he had permission to be in her house and for her to say that it was a burglary, that was simply not true.

Q. Well, they dismissed the burglary charges against him, correct?

A. Right.

Q. Okay. Now who was the package addressed to?

A. I can't recall who the package was addressed to.

Q. Okay. Was it Ms. White? Does that help?

A. It might. I mean, if you tell -- if you're looking at the discovery and you're telling me that, yes.

Q. Okay. All right. But it wasn't Mr. Underwood?

A. No, he never said that it was addressed to him.

Q. Okay. All right. And was Ms. White ever charged with anything?

A. I wanted her charged.

Q. Why?

A. Based on the theory that it was her package, I wanted her charged, and I think -- and you can ask Mr. Shelton about it, but I went through the whole thing of Ms. White was in this conspiracy, that he didn't have anything to do with it, that she knew the package was coming, and apparently she was at work. And so, again, that goes to her saying that it was a burglary first. It wasn't a burglary first.

Q. So that was part of your theory of defense --

A. I guess if that's what you want to say.

Q. -- that it was addressed to her to her house and that

-- that he didn't --
A. He didn't know that it was coming.
Q. He didn't know it was coming. Okay. And did she -- so in your investigation this package shows up at UPS; is that correct?
A. Yes.
Q. All right. And when this package shows up, was there some suspicion about it?
A. It was, and we went through that in pre-trial. We went through that. That was a long pre-trial. So we went through the process of the dog search. Apparently they suspected it was some kind of transaction.
Q. All right. Do you know who actually contacted law enforcement about that package? Was it -- obviously it had to be somebody from UPS. Do you know who made that contact?
A. I think we went through that. I can't remember exactly. I know we had some issue about who was an expert and who -- the process of doing the dog search, which, you know, they used a dog and that's why I had the K-9 records, had them printed out.
Q. Right. Do you remember the procedure for that?
A. They would put the package out -- I mean, it's in the transcript in the pre-trial. I mean, I can't tell you verbatim of it. Yes, we went through that. We questioned

the person about that, the process. We talked about all of that.

Q. All right. Then -- so the package was identified and somebody, I guess, from UPS had contacted law enforcement; is that correct?

A. Yes.

Q. All right.

A. And so they let the package go on through. They let the package be delivered as it was supposed to be delivered.

Q. All right. But didn't they then bring in two officers to inspect the package? Do you remember that?

A. Okay. So which part do you want to --

Q. Agents Finch and Rawl? Does that ring a --

A. Yes. So that was what we went through in pre-trial.

Q. Right.

A. So they -- they explained that. We went through extensive testimony on that and argued about that, having it suppressed.

Q. All right.

A. It was not.

Q. Well, I'm curious -- and I apologize. I'm curious about the mechanics of this because we're leading up to probable cause in regards to the search warrant and whether or not it could have been suppressed.

A. Well, that's why we were arguing about it.
Q. You did file a suppression motion --
A. Yes.
Q. -- that was heard at the --
A. In front of Judge Alford pre-trial. That's what took us two, three days.
Q. All right. Now there was -- there is a checklist in regards to a suspicious package; is that correct?
A. Uh-huh.
Q. All right. And do you remember that checklist?
A. Verbatim?
Q. Do you remember what any of what those items were on that list?
A. I'd have to look at it.
Q. Okay. All right. Now when was the package opened?
THE COURT: Now when you say there was a checklist, is this a checklist at UPS?
MR. THOMAS: There's one that the agent has, Your Honor. It's in the -- in the pre-trial transcript.
THE COURT: The law enforcement agent had a checklist?
MR. THOMAS: Yes, sir. Yes, sir.
THE COURT: Okay.
MR. THOMAS: There is one and there's a number of -- of items in which they go to establish probable cause to seek a search warrant.

THE COURT: All right. Go ahead.

MR. THOMAS: Yes, sir.

BY MR. THOMAS:

Q. Now a search warrant was obtained?

A. I can't remember whether there was a search warrant obtained. I remember that they brought -- well, a dog search, a dog sniff, is not a search, so they had the dog out there and that's why I had the K-9 records. I had like a box full of them --

Q. Right.

A. -- of all of the records, so I looked back to see what was the dog's -- how did the dog alert to suspicious package drugs and I think we went through all of that in the transcript, so all of that is a box full of items and they did go through that in the testimony, if I recall.

Q. Okay. Now so they -- so they did obtain a search warrant?

A. I want to think they did.

Q. Okay. And they obtained the search warrant prior to the -- bringing the dog out?

A. No.

Q. Okay.

A. I can't remember. I'd have to see the transcript and look at it specifically to answer your question, but whatever the record says that's what was presented in

court.
Q. Okay. Now what happened, if anything, when they brought the dog?
A. I guess the dog alerted.
Q. Okay. And then who opened the package? Do you remember who opened the package?
A. This has been -- what year was this case?
Q. Okay.
A. I can't tell you all of the specifics. I would have to look at the actual file to tell you that specific information, but whatever the record, again, says that's what it is.
Q. All right. And this case was in September of 2014, so that was two years ago.
Do you know whether or not a field test was conducted?
A. Well, first of all, let's go back. The drugs went on to the house.
Q. All right.
A. So they did not stop the -- I mean, they let the package go on as planned.
Q. Oh, and I apologize. Isn't it true that they took the real drugs out of the package?
A. They might have.
Q. Okay.
A. I just can't remember. I mean, I'm sorry. I had a

death in my family. I can't remember.

Q. Right.

A. I'd have to see the actual documents.

Q. All right. Do you know whether or not -- so you don't know whether or not imitation -- that the real drugs were taken out of the package and the imitation drugs were put in?

A. I don't recall. I don't recall.

Q. All right.

MR. THOMAS: Your Honor, can I beg the Court's indulgence for a second?

THE COURT: Yes, sir.

MR. THOMAS: Your Honor, may I approach?

THE COURT: You may.

(Discussion between counsel.)

MR. THOMAS: Your Honor, may I approach?

THE COURT: Yes, sir.

MR. THOMAS: Your Honor, for the Court's information, in the actual plea transcript there is a good summary of the facts of this case. It begins at Page 14 and runs through Page 17. I want to ask counsel if she would just, please, read those to herself.

THE COURT: Certainly.

MR. THOMAS: That might help to fresh her memory.

THE COURT: Let me know when you're ready, Ms. Moody.

THE WITNESS: Thank you.

MR. THOMAS: And thank you for the Court's indulgence, Your Honor.

THE WITNESS: You wanted me to stop at Page --

MR. THOMAS: I think there's -- Your Honor, may I approach?

THE COURT: You may.

MR. THOMAS: Yes, ma'am. You can stop there on the top of 17.

THE WITNESS: Uh-huh.

BY MR. THOMAS:

Q. Okay. Does that help?

A. Uh-huh. It does.

Q. Let me ask you again. Did they substitute the drugs in the package?

A. They did.

Q. Okay. So they put what they called an imitation drug in that package?

A. Yes.

Q. And they took that out at the U.S. -- at where, the UPS facility?

A. UPS.

Q. Okay. So what was actually delivered to the address?

A. It was a box with imitation substance in it. They resealed the package and delivered it as it was intended

to go.
Q. All right. So it was either baking soda or some --
A. Substance.
Q. -- non-illegal substance?
A. Uh-huh.
Q. Okay. And as far as that issue, what, if anything, did you do in regards to that issue? Were you able to make a motion to suppress any of that?
A. The imitation substance?
Q. Uh-huh.
A. No, my motion was to suppress the drugs.
Q. Okay. What -- what thought did you have about -- what was the crime? I mean, is it illegal to possess a box full of baking soda?
A. No.
Q. There was no allegation of any attempt to sell what was in the box, was there?
A. Well, my client was saying he didn't know what was in the box --
Q. Okay.
A. -- and that he was not involved. That was his whole thing, that he was not involved. And there were other things that came into play that I moved to suppress --
Q. All right.
A. -- and so we were going to trial.

Q. Well, what I was curious about is where's the crime? If they -- if they took the drugs out of the box and they went to the house and he picked them up, was he in possession of those drugs?

A. I think they were alleging conspiracy over the period of time, and that was the thing with Jacquese. I told him if those phone records come in, then we're gonna have a hard time. So --

Q. All right.

A. Let me finish.

Q. Yes, ma'am.

A. So once the judge came back over the weekend and ruled on that, he made the decision -- he and his co-defendant made the decision to accept the offer and the offer went up.

Q. So at that point in time prior to the cell phone messages, there was no crime because there were no drugs?

THE COURT: Didn't he plead to conspiracy?

MR. THOMAS: He did plead to conspiracy, Your Honor. But what we've got, Your Honor, is that this is -- basically it turned into a plea, so we have the burden of showing, you know, whether or not the plea was knowingly and intelligently and freely and voluntarily entered into and, Your Honor, some of this is based upon what advice he was given by counsel.

THE COURT: Okay. But I just -- you were speaking in terms of what crime was committed in terms of possession.

MR. THOMAS: Which would have been -- which would have been possession.

THE COURT: But he wasn't charged with possession.

MR. THOMAS: No, sir. Or even trafficking in the drugs, but there wasn't anything in the box.

THE COURT: Well, conspiracy is what he pled to. I'm letting you know what he pled to.

MR. THOMAS: Yes, sir.

THE COURT: And it was a no contest plea. He didn't admit to that.

MR. THOMAS: Yes, sir.

THE COURT: Go ahead.

MR. THOMAS: All right.

BY MR. THOMAS:

Q. So what, if anything, went through your mind in prepping this case with that issue for preparation for trial? How did you think that was gonna play in the trial?

A. Well, what my client told me was that he didn't know what was in the box, he was not guilty of it --

Q. Okay.

A. -- and he blamed it on Ms. White. So then his decision -- which I gave him the offers. That was his decision. So he wanted to go forward with a trial, we were

going forward with a trial, then on that weekend -- it was over the weekend, we had a break -- I think that was Labor Day weekend or something like that. We had a break, the judge came back and said all those phone logs, the records, everything, which I read through all the phone logs, there was some connection there on the phone logs.

Q. Okay. Let's go ahead -- yeah, go ahead.

A. Okay. So there was some connection there, and he wasn't denying knowing the co-defendant, and so I wanted him to testify for the State, he didn't want to do that, and that had been the whole time. So, you know, if the phone logs came in, all that information came in, I felt like that would have been damaging for him, so he had to make a decision. It depended on what the judge -- and I thought we had a fair chance that the judge was gonna eliminate -- was gonna suppress the phone logs. I didn't think they were gonna come in and I thought that that would change the game up in terms of what the State had.

Q. All right. So if they had suppressed -- if your suppression motion in regards to the text messages had been granted --

A. There would have been no conspiracy.

Q. -- there would have been no conspiracy. Okay. And you said that you filed a motion to suppress the actual -- the actual cocaine that came in the box?

A. I believe so, yes. I did all the motions.
Q. All right.
A. I think the co-defendant's attorney joined in on my motions and we had lengthy days of arguing those motions.
Q. All right. Now what would have happened had the Court suppressed the drugs?
A. I think that we would have -- he wouldn't be sitting here today in an orange jumpsuit.
Q. Okay. Now did you review chain of custody on those drugs?
A. I did.
Q. All right. And how did the imitation drugs play in the chain? How was that shown?
A. I don't think we got to that in the motions.
Q. Okay. But did you review that?
A. I reviewed all of the discovery.
Q. Okay. Now I was just curious --
A. Well, let me just say this much.
Q. Okay.
A. Like if my client is saying he doesn't know what it was and he wasn't involved in it and that it was his co-defendant, I'm not gonna act like he knows what's all going on. So my position was to suppress the drugs. There was another statement that came in that -- and I can't remember what they're called on the Federal government

level, with another person, so I had no dog in that fight. I moved that any kind of reference to my client be limited. All along he said he was not involved in it, he had nothing to do with it, that it was all his co-defendant.

Q. Right.

A. And his co-defendant never -- my question was why -- if you didn't have anything to do with it, why wouldn't your co-defendant say you had nothing to do with it? And this -- well, I mean, you can talk to the solicitor about Ms. White. I just felt like she was setting my client up. I believed what he said. His statement that it was supposed to be children's books made sense to me.

Q. Who was the -- who was the co-defendant?

A. Duane Harrison.

Q. Okay. And to the best of your knowledge, was he gonna testify at trial?

A. No, he was kind of quiet. Like they didn't have any motions filed or anything. I filed the motions, they came in. I never had -- really had any conversation with him until he decided he wanted to plead, which was that Monday morning, which was a lengthy time trying to figure out what they were gonna do.

Q. But -- so to the best of your knowledge, he was not gonna turn State's evidence and testify against --

A. I think the State asked him to, but he did not.

Q. He did not. Okay. And just before I forget about the chain of custody, you would not have been making any, I guess, implied admissions of any involvement in -- in challenging the chain in regards to the real drugs and the transfer of the fake drugs and those type of things?

A. Are you asking me if I would have been?

Q. Yes, ma'am.

A. I'm not sure.

Q. Okay. Do you remember if you challenged the chain?

A. I didn't challenge the chain.

Q. Okay. All right. Did you -- and one more question and I'll move on. I'm sorry, Your Honor.

Did you think it was odd the issue of the substitution of something else for the drugs that were delivered?

A. I think if you go back and look at the transcript, I think we were challenging their process because Marvin Brown was involved in it and so we were challenging -- we spent a good bit of time fussing about the drugs, if I'm not mistaken.

Q. Okay. All right. And there did eventually come back a lab report where the drugs that they seized in the original package was positive for cocaine?

A. Yes.

Q. Was there any weight discrepancy at all; do you remember?

A. I think there was. I can't remember. I think there was.
Q. Okay. All right. But really not enough to affect the case; is that your opinion?
A. I mean, my position was that it wasn't his drugs, he didn't know what it was, there were supposed to have been children's books there, and Ms. White was not in the courtroom.
Q. All right. Let's move on to the search warrants. In my recollection from reading through the transcript and looking at the discovery and everything, there were actually three separate search warrants; is that correct?
A. If you say there was.
Q. Okay. A search warrant for the drugs, a search warrant for the house where the drugs were supposed to go?
A. Okay. I know they came into the house and he was seated on the couch and that was all DEU in that.
Q. All right. And a search warrant for the phones?
A. The search warrant for the phones, yeah.
Q. And did you go through and look at each search warrant to make -- to see if everything was proper and if there was any challenges in regards to the warrants?
A. Well, we talked about the phones extensively because there were like either four or five phones and whose phones did they belong to and were they -- I remember having the

conversation with Mr. Shelton, we were fussing about the logs, and there was -- I think one was a burner phone, one was heavily encrypted, it took a long time to get that. I remember us talking about the phones.

Q. Were any of those phones found in the possession of Mr. Underwood?

A. Yes, in the car.

Q. But whose car was it?

A. I can't remember whose car it was, but it was the car that he was driving. There was one phone that was one of his son's phones that was -- I guess he told me that it was a phone that his son played with and then there were -- I think he had another phone and then there were other phones belonging to the co-defendant.

Q. Okay. All right. Wasn't -- the co-defendant, wasn't he stopped and the phones taken out of that car?

A. He had some phones. He threw phones when he was running from the police.

Q. Okay.

A. So there were a number of phones and identifying whose phones they were, identifying what they could get. They took pictures of messages off of some phones and then there was one that was like so encrypted they had to send it out and I want to say that they gave them consent to search the phones. Somebody gave consent to search the phones.

Q. Okay. Do you remember whether or not Mr. Underwood was named when the -- in the search warrant?
A. No, I don't.
Q. Okay. All right. And do you remember anything about the arrest of Mr. Underwood at the home?
A. They either took him back into the home or he ran from the home. Somebody -- I know that his co-defendant ran and I think he tried to run out the back.
Q. Okay.
A. So when they came to the door -- or it was law enforcement -- I guess it was law enforcement, somebody came to the door, he tried to run out the back, and I think somebody was in the back and so he ended up getting -- well, he was in the family room or the house seated and they asked him to give statements and he did not.
Q. All right. So he did not give -- he didn't give a statement admitting any responsibility or guilt?
A. I don't think so.
Q. All right.
A. I think he -- it was Marvin Brown that was in the house and some other DEU.
Q. Who is Marvin Brown?
A. The commander of the DEU.
Q. Of the Drug Enforcement Unit?
A. Uh-huh.

Q. Now he was read Miranda rights?
A. I think so.
Q. Okay.
A. At the time that he was in the house, I think Marvin was just talking to him and he gave him a card, I believe, but he knew -- somehow he knew Jacquese. He knew his family or something like that.
Q. All right. And is -- Mr. Underwood, is he related to someone in public office?
A. His father is the sheriff of Chester County.
Q. Okay. How did that play into this? Did it have a play at all?
A. What do you mean?
Q. I mean, did it affect anything one way or another as far as --
A. I mean, I don't know whether it did or not. I mean, I know that he wanted his father to call and help him, but as far as like at the time of the arrest did it play into whether he was arrested or not, I don't know.
Q. Okay. Do you remember an issue in regards to, I guess, a nickname for Mr. Underwood, which was J-A-C-Q?
A. Jacq.
Q. Yes. Do you remember that?
A. Yes, but there was another Jacq.
Q. Who was the other Jacq?

A. Another Jacq. I don't -- I mean, there was -- from the phone records, the pictures of the phone, there was another person named Jacq.

MR. THOMAS: May I approach, Your Honor?

THE COURT: Yes, sir.

MR. THOMAS: Your Honor, just for the Court's information, this is Page 107 of the pre-trial transcript, lines 5 through 11.

BY MR. THOMAS:

Q. Would you look at that, Ms. Moody, please.

A. Uh-huh.

Q. You made an objection --

A. Uh-huh.

Q. -- in regards to the nickname J-A-C-Q?

A. Yes.

Q. And do you remember why you made that?

A. I think it had something to do with the phones.

Q. Okay.

A. Something in the phone texts -- text messages, I couldn't figure out who was who, and I believe my client told me there was another person named Jacq.

Q. Is that the -- let me ask you this question. Was that the only way -- the only issue that they could try to run these phone text messages to Mr. Underwood was that J-A-C-Q?

A. I think so because under the phone log that I looked at --
Q. Right.
A. So there was like the phone log, which was just the pictures of the text messages, and then there was another set of records, and I can't remember whether I had those or whether the State had them, but I went through them and read them and had them bound so I could read them like a book to understand and there was a reference to Jacq.
Q. All right. Do you know whether or not they took Ms. White's or the other -- the other -- her friend, Gregory, do you know whether or not they took their phones?
A. I don't think so because when I got the discovery, there were -- I mean, it was a lot of discovery, there were phones, and if you go through the phones you could see whose phones there were and I tried to match up all phone numbers and so that's how I checked them and I don't recall seeing her phone in there. But, of course, again, at the beginning she alleged that he had broken into her house.
Q. Okay.
A. So all the different phone numbers I tried to match them up to whomever and I never had a phone number that matched up to hers.
Q. Okay.
A. And I didn't even -- I don't think I recall seeing

anything of -- that was the thing. I didn't see him giving her notice of him needing to use her house and that's why we were trying to get the phone text messages that they had, we were trying to get those suppressed.

Q. Did you investigate the issue of whether or not this case could have been exactly what it appeared to be or could appear to be was that the drugs were mailed to Ms. White and her boyfriend at the time who was Mr. Parker?

A. What do you mean did I investigate it?

Q. Did you look into that possibility, that it was as it was on the face, the package --

A. Well, that was the theory, that the package was mailed to her and that it was her package and she told him that it was children's books and, in fact, it wasn't children's books, but that's what my client was told.

Q. All right.

A. But then the question came why did he take the package and put it in the trunk of the car, it didn't make sense, and then back the car out of the garage. And then there was another cell phone up in the bedroom. So, I mean, we got into that. I know he and I talked about this. We talked about the whole theory of her being the person and not him.

Q. Okay.

THE COURT: Let me -- let me ask a question just to

be sure I understand.

MR. THOMAS: Yes, sir.

THE COURT: Apparently when the police approached the house, there was a getaway effort, a chase. Where did the chase come in?

MR. THOMAS: No, what happened, Your Honor, if I may summarize from what I see in the record, the police substituted the drugs, they had a delivery with a van. They made the delivery with the van, they left, they observed Mr. Underwood come out and get the package and then place it in his car.

THE COURT: In the trunk.

MR. THOMAS: In the trunk. There was some allegation, Your Honor, that Ms. White had called him to say I've got a package and would you bring it to me.

THE COURT: Well, again, I'm trying to figure out -- somebody said there was a high speed chase, I heard that mentioned, and I'm just trying to figure out when that happened.

MR. THOMAS: Well, what happened with the chase, Your Honor, is that the other -- the co-defendant supposedly was canvassing the neighborhood and they saw him go by the residence, there was some allegation that he honked the horn or whatever, they then -- after Mr. Underwood took the package, they then proceeded to

attempt to stop him and --

THE COURT: That's when the high speed chase --

MR. THOMAS: --therefore, the chase. Supposedly he got out of the car and ran and tossed several cell phones and that's where the cell phones come into play, Your Honor.

THE COURT: I understand. Okay. I was just trying to get an idea of who was chasing who and when that happened. I couldn't figure that one out.

MR. THOMAS: Yes, sir.

THE COURT: Okay. Go ahead.

MR. THOMAS: It's complicated, but --

THE COURT: It's a rather tangled web that was woven.

MR. THOMAS: It is, Your Honor.

BY MR. THOMAS:

Q. Okay. So I'm curious. Did you determine Mr. -- because at the home you have Shaerica White and her boyfriend at the time, Mr. Parker --

A. Well, he was living there.

Q. -- living there. Okay.

A. And so she did -- he did tell me -- my client did tell me that she wanted him to bring the package, so the whole thing was about the children's books in the package.

Q. Right.

A. So then as far as like trying to figure out where he

was coming in, my question for the State was for whether Ms. White was going to testify and she had to testify for me to get into all the statements because I think there was inconsistent statements given by her. They dropped the burg first because my whole thing was it wasn't a burglary first, he was there with her permission. And then there were cell phones found upstairs, his cell phone and then you have other cell phones. I can't remember the total number of cell phones, but there was a lot of cell phones in this case. So we went through all of that. I mean, there was -- bobbing and weaving is what this was gonna be because otherwise you're admitting to knowledge of the transaction. The phone records were a big deal. They were a big deal in my mind based on the conversations and I had to read them backwards and then there was a change of telephone numbers and there was information put in there that it could go either way.

THE COURT: You had to read them backwards? What's that mean?

THE WITNESS: Sir, I had to read -- I published them -- I had them printed up and I had them spirally bound and so once I figured out --

THE COURT: So they were the earliest ones first --

THE WITNESS: To the back, but then there was a change of phones but it's the same accounts. We went through a

lot of cell phone records.

THE COURT: I understand. Go ahead.

BY MR. THOMAS:

Q. All right. Now out of curiosity, did you pull rap sheets on Ms. White and Mr. Parker?

A. I asked for the rap sheet on Ms. White.

Q. Okay. Did -- were you able --

A. Mr. Parker was nowhere in the scene to testify.

Q. Okay. All right. Now at the time that you set this up for a plea, it started as a trial with pre-trial motions that lasted a couple of days?

A. (Nods head.)

Q. Okay.

A. And then we had a weekend in between.

Q. All right. And then it was set to continue with trial and at that point in time Mr. Underwood entered a no contest plea?

A. Yes.

Q. At the time in which he -- prior to the plea, had the judge made a ruling on the motions?

A. The biggest motion was being the cell phones he had not.

Q. He had not. Okay.

MR. THOMAS: And, as a matter of fact, in the transcript, and this is Page 19, Your Honor, just for the

Court's information, the judge does actually at that point in time make a ruling in regards to -- or makes a ruling in regards to the motion.

THE WITNESS: (Nods head.)

THE COURT: I think he said had he made a ruling he would have let them come in is the way I read it.

MR. THOMAS: Yes, sir. And then gives a pretty detailed explanation as to how or why he would have done that.

THE COURT: He did. So that information would have been a part of the trial against your client.

MR. THOMAS: Yes, sir.

BY MR. THOMAS:

Q. All right. So out of curiosity, did you recommend to Mr. Underwood that he take the plea?

A. I can't remember whether I recommended to him, but I did go through about the phones because if all those phones -- they backdated the phone messages so that in the phone records there were several transactions of similar deals. So like, you know, you're gonna be at this address and the package is gonna come, and they go back and forth, so that's all in there. So they wanted to backdate it, I believe. I think this happened at the end of October and they wanted to put it all the way -- take it all the way back to the end September, yeah, September, October, and

that would have been their conspiracy and that's what we were arguing against, that he was not involved in this conspiracy. Well, I was arguing that my client was not involved in the conspiracy and that that was not fair game to come in.

Q. Because the text messages had nothing to do with --

A. That particular transaction.

Q. -- the transaction at hand?

A. Right. So they had another address in there. I believe -- I can't remember whose grandmother's address it was. I want to say that it was my client's grandmother's address and so that had nothing to do with it. Then there were like maybe two or three others -- it might have been two others in there and so they would have shown a pattern and so I wanted it limited to -- limited to that one day.

Q. What I'm curious about is that in speaking with your client, did you make a recommendation that he accept the plea offer prior to knowing what the judge was gonna rule on the -- on the --

A. I can't remember. I mean, I just remember we had a long discussion because I came prepared to go on with the trial.

Q. Right.

A. The co-defendant and his attorney came in and they had already started working on a plea. And then it was

something that it would have backfired on us if his -- if the co-defendant pled, it would have backfired. We didn't know whether he was gonna testify or not, but that just sent everything into a tizzy. And then the co-defendant's counsel came to me and said that the co-defendant indicated my client knew and my client had been telling me the whole time that he didn't know about what was in the package and what was going on. So, I mean, it was up to him. The opportunity to testify against his co-defendant was gone --

Q. Right.

A. -- and which there were several times that the State and I discussed the offer, so all of that was gone. So then I think the solicitor -- the Solicitor, Kevin Brackett, came into play and then the offer was twelve years and he bumped it up to like twelve and a half, I guess, for purposes of us having to go through -- having the jury come back, having the jury out, all of that, so it was negotiated and he decided to take the plea. And I did share with him what his co-defendant was saying about him, that he knew that -- you know, because my position was he didn't know anything about the drugs.

Q. But you testified earlier that to the best of your knowledge the co-defendant was not gonna testify against him.

A. At the time that we were going in -- because he was

sitting down beside us. He was not gonna testify. He was not gonna be called as a witness.

Q. All right. Okay. Let me ask you something.

THE COURT: Did he end up pleading, the co-defendant?

THE WITNESS: They pled at the same time.

THE COURT: Oh, okay. Excuse me. Go ahead.

THE WITNESS: So, I mean, you know, as to what he was gonna do after that, I don't know.

BY MR. THOMAS:

Q. Right. Okay. Let me ask you just off the top -- I thought something that was -- caught my attention I thought was interesting. Now the State brought the case in front of, I guess, a judge in regards to an amendment to the indictment, I guess, to add the conspiracy charge; do you remember?

A. They did that at the beginning, so that's where it really got interesting.

Q. Yeah. Were you aware that two of these incidences, that incidence and the plea, were actually filmed and on YouTube?

A. What do you mean? The incidence of us being in court?

Q. Yes. Did you know that?

A. Yes, because my client made me aware of it.

Q. Okay. And was that odd?

A. Well, the news -- I think one of the cameras was in

here. I can't remember why. I think it was because it was Underwood.

Q. All right. And they -- and the Court allowed them to film?

A. Well, I didn't know that they were filming --

Q. Okay.

A. -- because it -- I think the -- what my client showed me was it was a picture of me from the back because I remember thinking to myself my shirttail was out.

Q. Okay. And I guess since this case did not go to trial, it doesn't really matter, but I was curious about any concern that you might have had about some sort of pre-trial publicity if that had been circulating on YouTube?

A. Well, I think he showed that to me like when we got back. I can't remember when I saw that, but it was in the paper -- all of this stuff had been in the paper before, if I'm not mistaken, because his last name was Underwood.

Q. Right.

A. So I think on that day there might have been something that occurred before we took up the case or what have you. The press didn't come in knowing that we were going to trial, I don't think so, but I think they were here for something else and they stayed in the courtroom. But considering his last name was Underwood and his dad is the

sheriff of Chester County, that somehow became newsworthy.

Q. Do you remember whether or not it was filmed with a camera or was it a cell phone video?

A. I don't know. He showed it to me. I don't know.

Q. Okay.

MR. THOMAS: Your Honor, if I could beg the Court's indulgence for just a second?

THE COURT: Yes, sir.

MR. THOMAS: No further questions. Thank you.

MR. HUNTER: Your Honor, if it please the Court?

THE COURT: All right. Well, before we start the cross-examination, we're gonna take a short break. I'll caution the witness not to discuss your testimony during the break. We'll be in recess about ten minutes.

(Recess taken.)

BAILIFF: All rise. Come to order.

THE COURT: Thank you very much. You can be seated.

Ms. Moody, resume your seat.

All right. You may cross-examine.

MR. HUNTER: Thank you, Your Honor. May it please the Court?

CROSS-EXAMINATION

BY MR. HUNTER:

Q. Good morning, Ms. Moody.

A. Good morning.

Q. You now you represented Mr. Underwood the entire time?
A. Yes.
Q. And, I guess, just starting from the beginning, can you go over the plea offers that were made?
A. There was the offer to testify for the State, initially there was a 10-year offer. We talked about him testifying for the State again, then at -- before the pre-trial, I'm not sure whether they renewed the 10-year offer again, and then there was the twelve years -- like twelve and a half years.
Q. That was the one that was, I guess, negotiated after the pre-trial hearing?
A. Yes.
Q. Okay. And can you go over, I guess, essentially when you found out how the judge would rule on the phone logs?
A. Well, I found out that he was gonna rule on the phone logs that Monday -- or it was that Tuesday. I think it was Labor Day and then we came back on that Tuesday and the judge told us in chambers on that Friday or Thursday eve that he was gonna rule on the record as to those, whether they come in or not.
Q. Okay. So, I guess, is it fair to say he kind of gave you a heads-up on how he would rule before the weekend? Is that what happened?
A. No, he said he was gonna go over our arguments, he was

gonna look at the case law and then he was gonna make his determination and we would find out before we proceeded further.

Q. Okay. So you found out how he was gonna rule before you negotiated this twelve and a half year deal?

A. Well, the co-defendant's attorney came in negotiating the twelve and a half deal with the State, so they had -- I mean, they had decided that they were gonna plea.

Q. So they decided that, I guess, essentially before your client decided that he wanted to plea?

A. I mean, he came -- they came in that morning talking about it, but as to whether -- when my client decided that he wanted to plea, I can't remember the exact moment, but I was informed that they were trying to negotiate a deal.

Q. Okay. And a plea waiver form was done in this case, correct?

A. I'm sorry?

Q. Was a plea waiver form done in this case?

A. Yes.

Q. Did you go over that with him?

A. Yes.

Q. Were you there when he initialled all the boxes?

A. Yes.

Q. Okay. And it reflected the deal that the State had agreed to?

A. Yes.
Q. Okay. Okay. Now just going back going over the defense theory of the evidence, I believe you said earlier that he said he did not know what was in the package, but you said that didn't make sense given the -- given the evidence?
A. Well, taking the phones into consideration. When I'm analyzing the case, I'm looking at the case from the standpoint of what are the possibilities and what the jury might say. Whether they would believe him or not would -- you know, I couldn't tell him what they would think about it, but if we got the phones out of the situation, all the text messages out of it, then you just isolate it on that one text message I think it's believable coupled with the fact that this lady was saying that -- Ms. White was saying that he wasn't supposed to be in her house, but she let him in, he said that there was supposed to be a package coming from her that was children's books.
Q. So is it fair to say that the phone records kind of destroyed the defense's theory?
A. Well, it made it a little bit tougher. I mean, he told me one of the addresses was his grandmother's address, so, you know, we were gonna have to put up information about that. As to whether the jury took that as being the case --

Q. So those phone records, I guess -- you said the address -- an address mentioned in a prior --
A. In a prior text. So they wanted to use from like September, October -- all the way through October, use all those phone messages, to show that this was not a situation where he was expecting books or what have you, just an innocent situation, they wanted to show that this was an on-going conspiracy. This is how they were getting drugs from California to the east coast in this scenario.
Q. Okay. And I believe you testified earlier you went over all of that with him, all of the phone records?
A. We talked about it, yes. He came to my office and we were talking about it and we talked about the pictures that were in the -- the logs, all the discovery. I showed him the stuff. I combed through it and I combed through the phone logs to see what they had. What they might have used, I did not know. He had a prior record. He could not get on the stand and testify. I mean, it just had a lot of moving parts in it and I was trying to make him aware of what they had. In terms of like the photos with the money and the guns, did they -- you know, I was trying not to get into that, I was hoping we weren't gonna have any of that come up, but he needed to be aware of what they had on him in the discovery and I tried to, you know, resolve the situation because he told me he did not want to go to jail,

so I made the offer, you know, available to him, what the State said they were willing to do, asking him to testify on behalf of the State, he would not do it, he didn't want to do it. And, of course, you know, different people have different reasons why they don't want to testify, but he didn't want to testify for the State.

Q. So he didn't want to testify. This was essentially a trial posture the entire time up until, I guess, that Tuesday when y'all came back?

A. Yeah, I think it got continued because the co-defendant's attorney was -- is a member of the House of Representatives and I think he had protection for a period of time, so they were gonna call it at one point in time and then I don't know whether he got notice of it or whether there was some kind of conflict for him, then they said they were gonna call another date, changed their mind on that, and that's when we went in September.

Q. Okay. During the Defendant's plea hearing, did you have any doubts that Mr. Underwood knew what he was doing, didn't know what he was doing?

A. I mean, I thought he understood what he was pleading to because we went over the plea affidavit sheet, we talked about if he had questions. I mean, I didn't have a terrible relationship with Mr. Underwood. He could ask me whatever he wanted to ask. He had my cell phone number,

he called. He could talk to me and ask me whatever he wanted to ask me. At the time we were going forward with the plea, that's what he wanted to do. I kind of didn't want him to, like, accept the twelve years, I wanted him to testify on behalf of the State and get under ten years.

Q. And that was something that was offered to him?

A. Before the trial.

Q. And he rejected that?

A. Yes. We went back and forth over that.

MR. HUNTER: I beg the Court's indulgence one second.

BY MR. HUNTER:

Q. And this was a no contest plea, correct?

A. Yes.

Q. Did you explain all of that to him?

A. Yes, it's in the plea affidavit form.

Q. Okay.

A. I mean, I'm not saying look in the plea affidavit form. I'm saying that's something that you have to explain through the plea affidavit form of what a no contest plea is.

Q. Correct. And essentially throughout the whole plea hearing there were no issues and no questions about, you know, that he didn't know what he was getting into?

A. No, I don't recall there being any.

Q. Okay. And, again, just to go back to the defense

theory, this was always a case of him saying I didn't do this, I didn't know that there was gonna be drugs in there?

A. Yes.

Q. And that's why the phone records were so important because that was the conspiracy part?

A. Yes.

Q. And did you explain to him, I guess, your opinion on the strength of the case given those phone records?

A. I'm sorry?

Q. Did you express to him your thoughts on the strength of the State's case given those phone records?

A. Yes.

Q. Okay. And at the end of the day it was his decision to plea?

A. Absolutely it was his decision, which he exercised his decision throughout the entire time.

Q. Okay. And there were no other promises or anything else to coerce him to plead?

A. No.

Q. Did you ever give him -- aside from this negotiation prior to that, did you ever give him any guarantee on how much time he would get?

A. No, I just knew that the State was willing to reduce his charges down to something where he would have been able to get under ten years. And, I mean, you know, I guess

this is not uncommon, but he didn't want to go to jail.

Q. So that's why he rejected those initial offers?

A. I assume so.

Q. Okay.

MR. HUNTER: I beg the Court's indulgence one second, Your Honor.

THE COURT: Yes, sir.

MR. HUNTER: That's all I have for this witness.

THE COURT: You may redirect.

MR. THOMAS: Your Honor, just two questions if I might, please?

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. You said that Mr. Underwood didn't -- didn't want to testify?

A. He did not want to testify against Mr. --

Q. Against his co-defendant?

A. Right, uh-huh.

Q. And to the best of your knowledge, he -- the co-defendant didn't want to testify against Mr. Underwood; is that correct?

A. I was just told he wasn't going to testify. Now why he wasn't going to testify, I did not know. I think there was a considerable age difference between the two of them. I talked to his attorney and asked him what he was doing

and it could flip either way as to who knew about the drugs or what have you, but I don't know what he said -- could have said against him other than that he knew and it was his phone and then that's him admitting himself. But I don't think the State offered him what he offered -- what they offered Mr. Underwood.

Q. Is it fair to say that given that scenario that the conspiracy hinged on -- on the text messages?

A. Well, I mean, yes, because it was all the way from September, October all the way through and there were several transactions in there --

Q. Right.

A. -- similar to the one that we were trying to isolate it to.

Q. But not the one that you were dealing with at trial?

A. No, similar to the one that we were trying to deal with at trial and they had addresses that linked to him. He said it wasn't him, but the addresses were linked to him. I knew that.

MR. THOMAS: I have no further questions, Your Honor.

THE COURT: Anything further?

MR. HUNTER: Nothing else.

THE COURT: You may step down. Thank you very much.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: The Applicant may call his next witness.

MR. THOMAS: Your Honor, we'd call Mr. Underwood to the stand.

THE COURT: All right. Come forward, sir, and be sworn.

(Whereupon, Jacquese Underwood was duly sworn by the Clerk of Court.)

THE COURT: Sir, have a seat on the witness stand. State your name, please.

THE WITNESS: Jacquese Underwood.

THE COURT: Thank you. Counsel, your witness.

MR. THOMAS: May it please the court?

THE COURT: Yes, sir.

JACQUESE UNDERWOOD,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Mr. Underwood, let me ask you this question before I forget it. You received your discovery from -- from your attorney?

A. Yes, sir.

Q. You've got your discovery?

A. Yes, sir.

Q. Okay. You've had an opportunity to review it?

A. Yes, sir.

Q. Okay. You heard her testimony about photos of money and guns. Have you ever seen any photos of money and guns?
A. No, sir.
Q. Okay. Were there photos?
A. There were photos in my phone, but none with any guns or anything illegal.
Q. All right. Mr. Underwood, you're serving time for conspiracy to traffic cocaine?
A. Yes, sir.
Q. Okay. And you were sentenced to twelve and a half years?
A. Yes, sir.
Q. All right. And you've served how much time?
A. Twenty-six months.
Q. Okay. And you're 85 percent no parole?
A. Yes, sir.
Q. Okay. And you filed a post-conviction relief action?
A. Yes, sir.
Q. You understand what that is?
A. Yes, sir.
Q. Do you understand that the only relief that you can ask for is a new trial?
A. Yes, sir.
Q. Do you understand that have you exposure? You and I have talked about that?

A. Yes, sir.
Q. If you get a new trial, if the Court was to grant that, you could be tried and given more time?
A. Yes, sir.
Q. You're willing to accept that --
A. Yes, sir.
Q. -- that chance?
A. Yes, sir.
Q. Okay. And you're ready to proceed today?
A. Yes, sir.
Q. All right. Mr. Underwood, you were arrested in 2012; is that correct?
A. Yes, sir.
Q. And where were you arrested?
A. At Shenandoah Circle, Rock Hill, South Carolina.
Q. Where's that?
A. It's off of Highway 901.
Q. All right. Whose home is that?
A. Shaerica White.
Q. And who is she?
A. She was an old friend, someone I used to date a while ago.
Q. Okay. And in what manner were you arrested?
A. That morning there was a knock at the door, a package was on the porch and I took it into the house. And

Shaerica had told me that morning that a package was coming and it will be books or something like that and drop it off by her job when it get there. And that morning after it happened, I took it into the house, I put it into the car -- my car was parked in her garage and I put it in the trunk and I was gonna take it to her at her job and -- but when I was leaving to go back out the door, the officers, they were knocking at the door. So I didn't know what was going on, so I didn't open the door and I looked out the window, I seen the officers and I opened the door and that's when they came in and they put -- placed me under arrest.

Q. Okay. Who was the package addressed to?

A. Shaerica White.

Q. Okay. And was there someone living with Shaerica White?

A. Yes, sir. Gregory Parker.

Q. And who is he?

A. Her boyfriend.

Q. Okay. But you knew Shaerica?

A. Yes, I knew Shaerica.

Q. Okay. And you had seen her that morning?

A. Yes, sir. We had -- that morning I had went by and then she drove her truck to Bojangles', we went to Bojangles' that morning, and we went back to her house

and she said that she was going on to work and I could say. I told I was gonna chill and stay for a little while and she told me she was expecting some books to come and if they come to drop them off to her before I go back home.

Q. Okay. Now Mr. Parker, did you know him?

A. No, sir.

Q. Okay. Did you know whether or not he had a criminal record?

A. Yes, sir. My paperwork -- the paperwork shows that he has numerous drugs convictions residing at the address.

Q. And what paperwork was that?

A. In my -- in the -- in my motion to discovery. It would be in the affidavit for a search warrant because Mr. Parker was residing at that address and it states that South Carolina Department of Motor Vehicles says that that's his address, he lived there, and criminal records indicate Parker has been convicted with numerous drug violations in the past, and this is the affi -- this is the search warrant.

Q. Okay. All right. Just -- if you'll set that aside for me for a second.

A. All right.

Q. Now did -- did you ever get an opportunity to speak with your attorney about Mr. Parker?

A. Yes, sir.

Q. And did you -- did you have any concern about either -- maybe Mr. Parker was involved in this?
A. Yes, sir, I did.
Q. And what, if anything, did your attorney do about that?
A. She didn't do anything about it.
Q. Okay. All right. And what did you do for preparation for trial? I mean, because you were out on bond; is that right?
A. Yes, sir.
Q. So you had an opportunity if needed, if necessary, to spend some time with her?
A. Yes, sir.
Q. Okay. And how much time did you spend with her?
A. I went by her office I want to say three times.
Q. How many? I'm sorry.
A. Three.
Q. Three?
A. Yes, sir.
Q. And did you talk about how she was gonna represent you? What she was gonna do?
A. Yes, sir. She was telling me that I don't have anything to worry about, we're gonna go to trial and we're gonna win, and she knows that I'm innocent and things of that nature.

Q. Did you tell her whether or not you wanted to take the case to trial?
A. Yes, I did.
Q. And what did you tell her?
A. That I -- I wasn't guilty of -- of this and I wanted to go to trial.
Q. Okay. All right. And how did you -- did you and she sit down and prepare this case for trial?
A. Not -- no, sir. We just -- she did -- she did show me some pictures and I showed her -- she was looking at pictures of Shaerica in my phone and we went through that and she was trying to match up the number and that was about it before -- before the trial.
Q. Okay. Let me ask you -- this is probably a good time to ask you this question. You heard her talking about cell phones?
A. Yes, sir.
Q. And those cell phones were found where?
A. It was one phone at the back of the car, which was my son's like toy phone. It was my phone on the console of the car, which was a white Galaxy.
Q. A Samsung?
A. Yes, sir.
Q. Okay.
A. And the other phones, they were found in the woods

with the co-defendant, supposed co-defendant.
Q. Do you know how they got -- how did those phones get in the woods?
A. To my understanding, he -- he threw the phones.
Q. When he was running from the police?
A. Yes, sir.
Q. Okay. And in those phones -- you've seen the discovery?
A. Uh-huh.
Q. Was there any direct link with the phones that were found in the woods with Mr. Underwood {sic} to you?
A. No, sir.
Q. Okay. You heard counsel testifying that some phone numbers matched. Did any phone numbers match?
A. Not -- no, sir. It was a number in the phone that was saying J-O-C, and that was the phone that the co-defendant had, and they had the number -- they had my phone number, which was an 803 phone number with the Samsung Galaxy. There was no link with those numbers to be communicated with the co-defendant in any kind of way.
Q. All right. And did they find any of those phones in your possession?
A. No, sir.
Q. Okay. Do you know where those phones were purchased?
A. My attorney had said back -- that the phones was

purchased in California.
Q. Okay. Had you been to California?
A. No, sir.
Q. Okay. Now what did Shaerica White say, if anything, when -- when the police first came?
A. Oh, when she heard about it, she -- she went and told the cops that I broke in her house and I had a package delivered, I had no permission to be in her home in no kind of way, she hasn't seen me since the early summer, and she was flat-out telling -- she wasn't telling the truth at all.
Q. Okay. And you were charged with burglary?
A. Yes, sir. I was charged with burglary second.
Q. All right. And were those charges ultimately dismissed?
A. Yes, sir. They was dismissed in pre-trial because Ms. White went to the solicitor, Matthew Shelton, and told him that I did not break in the house and she didn't want to -- she didn't want -- I guess she'd just go tell the truth that I didn't break in the house, but she told him as well that I have -- didn't have any -- she didn't have anything to do with any drugs.
Q. Okay.
A. And that's in the pre-trial transcript as well.
Q. Okay. And they -- and they never investigated

Ms. White or Mr. Parker?
A. Never. When they came in the house, they seen it was me and they was like we didn't know anything about you and I'm like what's going on and then they were saying what was going on and they was like you're -- you're Alex Underwood's son and I was like yeah and then that's when they placed me in handcuffs.
Q. Okay. And did they read you your Miranda rights at that time?
A. I want to say they read them to me at the jail.
Q. Okay. But you didn't give a statement, did you?
A. No, sir.
Q. Okay. Now to the best of your knowledge, was Shaerica White gonna testify against you?
A. I'm not sure.
Q. Okay. But what could she have said?
A. She could have said nothing because in the beginning she was lying from the -- from the get-go and my attorney knew that and I guess she went to the solicitor and told him that I did not break in her home.
Q. All right. Now you've -- I know you have spent a lot of time looking at this case and you know it better than I because you're involved in it.
A. Yes, sir.
Q. And you've looked at all of the discovery and all of

the evidence. There was a package that showed up at UPS?
A. Yes, sir.
Q. All right. And that package met certain criteria to be suspicious?
A. Yes, sir.
Q. Okay. And there was testimony from your attorney about a search warrant. Was a search warrant obtained?
A. For the package?
Q. For the package.
A. Yeah, the search warrant was obtained after the fact I'm thinking. I'm not sure though.
Q. There's a lengthy discussion about that in the transcript for pre-trial?
A. Uh-huh.
Q. Okay. And it was -- the police version was that a search warrant was obtained and then the package was opened?
A. Right.
Q. Okay. And you feel like there was some discrepancies in regards to who opened the package and when?
A. Right.
Q. Okay.
A. But --
Q. And you were concerned -- had some concern that the package might have been opened prior to the issuance of the

search warrant?
A. Yes, sir.
Q. Okay. Now did you talk to your attorney about probable cause? I know those are legal issues in the search warrants, but did you discuss those issues with her?
A. No, sir.
Q. Okay. Did she tell you that in defending you that there was some possibility that these things could be kept out?
A. No, sir.
Q. What -- what was she -- she told you that she thought it was a good case to win?
A. Right. And she didn't tell me any discrepancies in any kind of way at that time about the search warrant or the imitation drugs being placed in the package. She never said anything about that.
Q. And the agents, I think, that were involved in this were agents Finch and Rawl; is that correct?
A. Yes, sir.
Q. And that's in the transcript as well?
A. Yes, sir.
Q. Do you know whether or not the drugs were ever field -- the alleged drugs, were they ever field-tested?
A. No, sir, they wasn't. They was -- they said when -- from -- from -- the report states that -- it states that

Agent Finch took custody of the shipping box for further investigation purposes. Agent Rawl was able to obtain a search warrant through York County magistrate's office. Agent Finch opened the box and located a large amount of cocaine. But it don't -- it doesn't say as how he know it's cocaine or any kind of drugs or whatever.

Q. Okay. But at a later date it was tested?

A. Yes, sir. It was tested two months, ten days later after the -- after the incident.

Q. And it came back as cocaine?

A. Yes, sir.

Q. All right. Did you talk with trial counsel about this substitution of -- and they call it imitation drugs, but substitution of some other substance in the package?

A. No, sir.

Q. All right. And did you know that it had been substituted?

A. No, I didn't.

Q. All right.

A. At the -- at the end I did, but not in the beginning when I was talking with --

Q. Okay. Now you said at the end? What does that mean? At what end?

A. When I watched the -- the YouTube video and she was -- and she was telling me that they put in the imitation --

she did say they put in the imitation substance. That was during trial though.

Q. So you knew that prior to accepting the plea, that there was imitation -- that there was drugs in the package?

A. Yeah, I knew there were drugs. I didn't know it was imitation that was in the package.

Q. Okay. All right. And so you didn't have any discussion with her about any suppression issues?

A. Only with -- about the text messages.

Q. Okay. How about suppression of the drugs or whatever was in that box or --

A. No, sir, not with her.

Q. Okay. Did she ever show you any kind of chain of custody?

A. No, sir. No, she didn't.

Q. Okay. And I guess a lot of this you've learned after the fact?

A. Yeah, I learned after the fact, after studying and realized what I was dealing with.

Q. Okay. Did she ever deal with that chain at all as far as any potential problems with how the drugs were taken out, where they were placed, how they were secured or any of that?

A. There was no chain of custody whatsoever in the case.

Q. All right. You never -- you never got a document?

A. Never got a document.
Q. And the only document that you received was the drug analysis worksheet?
A. Yes, sir.
Q. Okay. And have you got a copy of that, Mr. Underwood?
A. Yes, sir.
Q. Okay. Would you set that aside with that other document that you had.
A. Yes, sir.
Q. Okay. Now they came to the house -- I mean, the police came to the house when you were there?
A. Yes, sir.
Q. And they had a search warrant for the house?
A. Yes, sir.
Q. Did they show that to you?
A. No, sir, because it wasn't my house.
Q. Okay. Was your name on the search warrant?
A. No, sir.
Q. So they had -- they didn't have no clue about you until they showed up and you were there?
A. Yes, sir.
Q. All right. Did you know the, I guess -- I think they call him the commander for the drug enforcement?
A. No, sir. I -- I knew of him. I didn't know him though.

Q. Okay. Did you -- you didn't know him personally?
A. Not personally, no, sir.
Q. All right. Now there was some issue in regards to the name J-A-C-Q?
A. Yes, sir.
Q. Okay. And was that important?
A. Yes, it was because my attorney she knew that dealing with the co-defendant's phone he was texting another person with the name Jacq in the phone.
Q. Okay. But that wasn't you?
A. No, sir.
Q. Okay. And I think you pointed out to me that they -- they -- they made the statement that they recovered cocaine at the scene out of the trunk of your car?
A. Yes, sir. It's in the York County Sheriff's evidence inventory sheet. Item Number 1, it says box with tracking number containing cocaine and miscellaneous items in the trunk of Underwood's vehicle.
Q. Is that possible?
A. No, sir, it is not possible.
Q. Because it wasn't drugs?
A. It wasn't drugs.

MR. THOMAS: And, Your Honor, just for the Court's information, that's also in the transcript at Page 129 at Line 10.

BY MR. THOMAS:

Q. Now, Mr. Underwood, let me ask you about the text messages. There were allegations that there were, I guess -- I think in the transcript three cell phones?

A. Yes, sir.

Q. Okay. Now one cell phone was, in fact, yours?

A. Right.

Q. The Samsung?

A. Right.

Q. Okay. And did you talk to Ms. Moody about these phones, about how they were going to trace those to you or how they were going to basically make this connection with the conspiracy?

A. Yes, sir.

Q. And what did she say?

A. She was saying that by -- by the co-defendant having the phone and it had the name J-O-C saved in it even though that they didn't have a phone from me with any text messages corresponding with this person, she was saying that they could find me guilty by that, and I was telling her there's no way that was my phone, she needed to do the research, and she did tell me that the phone was bought in California and I had never been to California.

Q. So was her testimony correct about all these multiple phones and the phone found in the bedroom and all that? Is

that -- is that correct?
A. Yeah, I had the evidence sheet. It says that a black Samsung Boost Mobile was found upstairs at the house, the white Samsung was found in the vehicle and the green Samsung Cricket was found in the back seat of the vehicle and a black AT&T cell phone in the center console in Harrison's vehicle.
Q. Okay. But still were any of those numbers able to be traced to you?
A. Only the white Samsung, which was my phone.
Q. It was your phone?
A. Right, and was no way they could trace another phone that I was corresponding with anyone else about a crime.
Q. All right. Now in regards to this pre-trial motion about the cell phones, about these text messages, did you know how the judge was going to rule on that motion prior to your plea?
A. Yeah, he was saying that -- the judge was saying that there had to be proof of a prior crime and there never was a prior crime.
Q. Okay. But -- but you didn't find out the judge's ruling until you did the plea?
A. Yes, sir, the -- that morning.
Q. That's when you found out how he was gonna rule?
A. Yes, sir.

Q. Okay. And why did you agree to take this plea if you were saying that you weren't guilty of this crime?
A. Because of my attorney.
Q. Okay.
A. And --
Q. And you made this plea -- decided to take this plea based upon her advice to you?
A. Yes, sir. She kept telling me that I -- I had to take the plea.
Q. Okay. And you and I have talked about this. You understand that a plea has to be freely and voluntarily entered into?
A. Yes, sir.
Q. Do you feel that your plea was freely and voluntarily entered into?
A. No, sir, it wasn't.
Q. Okay. Why?
A. Because I -- I knew I didn't -- I didn't commit a crime, I knew I didn't do anything and I knew I was innocent, and I didn't want to take a plea in no kind of way.
Q. All right. Now also it has to be knowingly and intelligently entered into. Do you believe that your plea was knowingly and intelligently entered into?
A. No, sir, it wasn't.

Q. Why not?
A. Because I didn't understand the elements of the case and my counselor she had -- she kept advising me that I -- I needed to take a plea.
Q. Did they have a case against you?
A. No, sir.
Q. Now, I mean, your co-defendant pled guilty to trafficking, didn't he, in cocaine?
A. Yes, sir.
Q. All right. But you did not?
A. I pled no contest.
Q. To conspiracy to traffic?
A. Right.
Q. Okay. And so what you're telling the Court is that you had in your possession a box of some sort of powder?
A. Yes, sir. It was an imitation substance, we don't know what the substance was, and what I did was they knocked, the -- the box was placed on the porch, I took it into the house, I called Ms. White and she say yeah, just drop it off by my job. So the car was in the garage, I put the -- I put it in the car and I backed out the car and I went back in to close the garage and lock the house up to drop it off not knowing anything about any kind of drugs or a crime.
Q. Let me ask you one or two more questions,

THE COURT: Well, just because he wants it brought up doesn't make it relevant, so.

MR. THOMAS: I know.

THE COURT: If you'll tell me somehow it's relevant, I'll consider it.

MR. THOMAS: Your Honor, in all candor, I think that since it did not go to trial it is probably not relevant.

THE COURT: That would be my thought. Thank you.

MR. THOMAS: Yes, sir.

BY MR. THOMAS:

Q. Mr. Underwood, I believe that I have covered everything. This is your day in court. This is something that you have spent a lot of time thinking about and waiting for. Is there anything else that you would like to bring to the Court's attention or anything that you feel I have left out?

A. Yes, I would like to bring to the Court's attention that a lot of what Ms. Moody was saying was not true. I was never offered a plea of anything except one plea of twelve years and that was to testify and I kept asking her how can I testify if I don't know anything about a crime and she was saying yeah, you're right, and I was only notified of one plea and that was to take a 12-year plea. And Ms. Moody kept saying that I blamed it on Ms. White first and now she's saying that I was blaming it on the

Mr. Underwood. What was going on with this YouTube video?
A. They was saying that the sheriff's son was on trial for cocaine trafficking and this is -- that his attorney was Leah Moody and things of that nature.
Q. Okay. Now your case did not go -- it only started the trial and it didn't finish. Had you spoken or brought that to the attention of Ms. Moody?
A. Yes, sir.
Q. Okay. Did she do anything about it?
A. No, sir, she didn't.
MR. THOMAS: Your Honor, I don't know if the Court wishes to see it, but I certainly do have the address for that on YouTube if you would like to view it.
THE COURT: Well, I'm not sure what it has to do with anything.
MR. THOMAS: Well, I think it's just another element, Your Honor, but since he entered to a plea I don't -- I think it could have gone to maybe some sort of venue issue, but it didn't play at trial, but my client wanted me to bring that to the Court's attention.
THE COURT: I don't know the relevance of it, so I'm trying to figure out what that is.
MR. THOMAS: Well -- and, again, Your Honor, he wanted me to bring it to the Court's attention. It was just something that he --

Q. Do you remember telling the judge that you were satisfied with Ms. Moody's representation?
A. Yes, sir.
Q. Why didn't you bring up any of these issues about not seeing the discovery?
A. Because that -- Ms. Moody, she kept -- she was telling me just say yeah, just say yeah, and that's the way -- that's the way it went. I was depending on my attorney to make all the right decisions and she didn't do that.
Q. Did you ever tell the judge that she was telling you what to say?
A. No, sir.
Q. Okay. And do you remember telling the judge that nobody promised you anything to get you to plea that day?
A. Yes, sir.
Q. Okay. And do you remember telling the judge that you were pleading on your own free will?
A. Yes, sir.
Q. Okay. And this was a no contest plea, correct?
A. Yes, sir.
Q. So you didn't have to admit guilt, correct?
A. I -- I ain't even know what it mean to be honest with you.
Q. So you never went over what that means?
A. No, sir.

co-defendant. That's not true as well. And that's -- I think that's about it, sir.

Q. Do you believe that Ms. Moody was prepared to try your case?

A. I don't believe she was prepared in no kind of way to try my -- for trial, to try my case.

Q. Do you think that influenced her recommendation for you to plead in this case?

A. Yes, sir.

MR. THOMAS: Your Honor, may I beg the Court's indulgence -- or may I approach for just a second?

THE COURT: Yes, sir.

MR. THOMAS: Let me check my notes. And I believe that's the Applicant's case. I have one other witness, Your Honor.

THE COURT: Do you wish to cross-examine?

MR. HUNTER: Yes, Your Honor.

THE COURT: You may do so.

CROSS-EXAMINATION

BY MR. HUNTER:

Q. Good morning, Mr. Underwood.

A. Good morning, sir.

Q. Now do you remember the plea hearing with Judge Alford? I believe it was on that Tuesday.

A. Yes, sir.

Q. Do you remember initialling the plea waiver form?
A. Yeah, I remember waiving -- initialling, but I -- everything was coming so quick and I -- I did not want to enter a plea. I just wanted to go on through with the trial.
Q. You now say you didn't want to plea?
A. No, I did not want to plea. I wanted to go on with the trial.
Q. Why didn't you do that?
A. Because of my attorney.
Q. So you say it's her fault, yet you told the judge that you were pleading under your own free will; is that correct?
A. Yes, sir.
Q. So you still aren't admitting guilt and -- were you aware of how much time you were facing?
A. She -- she was telling me that I had to take the plea because if not I was gonna get thirty and she know that I'm innocent and I'm like what do you mean, I'm not taking the plea, and we went over this an hour and she was telling me to take the plea.
Q. And the thirty refers to the maximum sentence you were facing, correct?
A. I'm not sure. I just remember what she was saying.
Q. Well, the judge told you that, too, didn't he?

A. I'm not sure, sir.
Q. Okay. And as part of this plea it was reduced to a second offense, correct?
A. No, it was reduced to a second offense because of E.B. Springs had -- she -- my attorney say he had did some crooked things in the -- my last case and they had enhanced a simple possession of marijuana charge to a second offense, so that's the reason why it was dropped down.
Q. And who told you all this?
A. My attorney.
Q. But, regardless, part of the deal was I believe they dropped the weight and they dropped it to a second offense; is that fair to say?
A. Yes, sir.
Q. The plea deal?
A. Yes, sir.
Q. Okay. And it was twelve and a half years; is that correct?
A. Yes, sir.
Q. Okay. Now you said that, I guess, you believed that Ms. Moody wasn't prepared for this. Were you aware that she subpoenaed the K-9 records, went over the phone records, filed these motions pre-trial? Were you aware of all that?

A. No, sir.
Q. During the whole pre-trial hearing, I believe it was two days, do you remember that hearing?
A. Yeah, I remember the hearing.
Q. Okay. So you remember her filing those motions that was the whole point of those hearings?
A. From my understanding, it was going over with the officers. That's all I remember, what the officers were saying that they did, and Marvin Brown was saying that he was an expert in parcel interdiction.
Q. Okay. Do you remember your attorney objecting to that?
A. No, sir.
Q. Okay. But, regardless, do you remember her making a motion to suppress the -- I believe the drugs and the search warrant? Wasn't that the whole point of the pre-trial hearing?
A. I remember her suppressing the -- the drugs.
Q. Okay. Based on probable cause, right? Or I guess lack of probable cause. Wasn't that her argument?
A. I'm not sure. I don't -- I didn't really -- at that time I didn't really know too much about the law.
Q. Right. But you were there during that hearing, correct?
A. Yeah, I was there.

Q. Okay. Now the drugs, those were -- I believe they said those were sent to SLED to be weighed, correct?
A. Yeah. I have a -- no, it never was sent to SLED. It was sent to York County sheriff's office and it weighed at 965 grams and it was tested two months, ten days after the -- the incident.
Q. Okay. They were tested by a chemist, correct?
A. Analyst, C. Mitchum.
Q. Okay. And as far as the package goes, doesn't the dog alert -- the drug dog alert on the package?
A. I have no idea about the package.
Q. You don't remember them discussing that?
A. I remember they saying it was a drug dog there, but I don't know how the -- the whole situation went about, the alert or the search warrant or anything of that nature.
Q. Okay. But, regardless, didn't you review all -- all of this with your attorney prior to trial? Didn't you say you met her, I guess, three times while you were out on bond and y'all went over discovery?
A. A couple of times we just talked about payment.
Q. Okay. Did you ever talk about discovery? Did you ever see a disk with all the -- I guess the photos?
A. I seen the pictures. Yeah, I saw the photos from my phone and I was showing her photos of Shaerica White in my phone and she was saying that's -- I knew that from the

beginning. There's no way that you could have broke into her house.

Q. Okay. Now as far as these phones are concerned, didn't you get a new phone? Didn't you tell your attorney that you had -- you had just gotten a new phone?

A. A new phone?

Q. Or I guess what I'm trying to say is was that -- that phone that, I guess, was -- was, did you say, a white Samsung?

A. Yeah.

Q. Was that the only phone you had this entire time?

A. Yeah, that was my phone.

Q. Okay. And the other one -- the other one that was found I think you said it was your son's; is that correct?

A. Yeah. The phone, it didn't even work.

Q. Okay.

A. It was a little play phone of his.

Q. But these, I guess, text messages that the State was going to use, you went over all that with Ms. Moody, correct?

A. Yeah, I did. Yes, sir.

Q. Okay. And that was the whole point of the pre-trial hearing, correct?

A. No.

Q. Wasn't that a large part of it?

A. Yeah, it was a large part of it, but the judge said that he was gonna, I guess, make a rule on it to see whether they into trial, but Ms. Moody knew the whole time that those were not my phone.

Q. Well, that was your defense, correct?

A. That's the truth. She knew that it was no way that this could be my phone if you have my white Samsung Galaxy and no text messages are in that phone whatsoever.

Q. Well, so isn't that why she argued for almost a full day during that suppression hearing to say that they weren't attributable to you?

A. I'm not sure, sir.

Q. Okay. But either way at the end the judge decided he was gonna let them in if it had gone to trial?

A. From -- from what she tells me, yes.

Q. Okay. And just to make sure, you went over, I guess, your version of the facts with Ms. Moody prior to the pre-trial hearing, correct?

A. (No verbal response.)

Q. Did you ever tell her what your side of the story was?

A. Yes, sir.

Q. Okay. And you told her -- I guess gave her alibis or witnesses to contact?

A. Yeah, I even gave her -- I told her to get the -- the Bojangles' film. That morning I told her to go speak with

those people, get the film, and she'll see that Shaerica had took me to Bojangles' that morning. And I gave her a credit card where it was in Ms. White's name that she had gave me to go shopping with and all and this and that.

Q. Okay.

A. And she never -- she never brought any of that up.

Q. Well, regardless of what happened for breakfast, I mean, you were still found at the house with that package, correct?

A. Yeah, the package was in the trunk, yes.

Q. You placed it in the trunk?

A. I was there at the house.

Q. Okay.

MR. HUNTER: I beg the Court's indulgence for one second.

THE COURT: Yes, sir.

BY MR. HUNTER:

Q. And just to go over this credit card from Bojangles', the receipt, that all had to do with the burglary charge, right, and that's how Ms. Moody was able to get the burglary charge dropped, correct?

A. Ms. Moody didn't get the burglary charge dropped. She didn't know that it was getting dropped until Mr. Shelton said it in pre-trial that morning.

Q. But didn't she show those -- that evidence to the

State, that you had been at Bojangles' with her that morning?

A. No, she didn't show that.

Q. Okay. What about the credit card? Did she show that to the State?

A. She might have -- yeah, I think she gave them the credit card.

Q. Okay. Because that was the whole basis of dropping the burglary charge?

A. But what -- the whole thing was that if Shaerica White lied -- she lied about the whole thing. She said that I broke in the house and had a package delivered. My attorney, she -- she didn't do her job in no kind of way in proving my innocence.

Q. Even though she argued for two whole days pre-trial?

A. Yes, sir. And then advising me -- telling me I have to take a plea, I got to take a plea, and -- during the trial and as soon as I take the plea, she takes me in the back and tells me to file for a PCR, and I'm like what is a PCR, and she was like that's called a post-conviction relief and it will go against me, and I'm like wouldn't that affect you and she was like I don't care, you the one who have to do the time.

Q. Right. So you're the one who has to do the time, but you're sitting here saying that she forced you to do all

that stuff and take the plea?

A. Yeah, she did.

Q. Even though you told the judge that she didn't?

A. Because she was telling me just say yeah, just say yeah, you've got to do this. Thirty years, twelve and a half.

Q. That's what you negotiated to? That's when you signed the plea affidavit and initialled all that --

A. I didn't know --

Q. -- to plead no contest, twelve and a half?

A. I didn't even know what no contest means at the time.

Q. Okay.

MR. HUNTER: I have no further questions.

THE COURT: Yes, sir.

MR. THOMAS: Nothing further, Your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: The Applicant may call its next witness.

MR. THOMAS: Your Honor, if it please the Court, we have one short witness left.

THE COURT: That's okay.

MR. THOMAS: Okay. We call his mom to the stand.

THE COURT: Come up, please, ma'am, to the clerk and be sworn.

Thank you.

THE CLERK: Please raise your right hand and place your left hand on the Bible.

(Whereupon, Vanessa Simpson was duly sworn by the Clerk of Court.)

THE COURT: Please have a seat on the witness stand and once you're seated, ma'am, state your name.

THE WITNESS: My name is Vanessa Simpson.

THE COURT: Thank you.

Counsel, your witness.

MR. THOMAS: Your Honor, may it please the Court?

THE COURT: Yes, sir.

VANESSA SIMPSON,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. THOMAS:

Q. Ms. Simpson, how are you related to Mr. Underwood?

A. He's my son.

Q. All right. And you understand that -- that you're here to tell truth today?

A. I do.

Q. Okay. You're not here to reward anybody or try to help him out?

A. No, not at all.

Q. And you intend to tell the truth?

A. The whole truth.

Q. Okay. Ms. Simpson, you were involved with your son's situation when he was going through this prior to his plea?
A. Yes, I was.
Q. Okay. And you knew the -- the facts and circumstances of what was going on?
A. Right.
Q. Okay. And did you have an opinion as to whether he was guilty or not guilty of this crime?
A. I had an opinion that he was not guilty.
Q. Okay.
A. I didn't make the office visits to Ms. Moody, but Jacquese did.
Q. All right.
A. But going over the facts, you know, being the package was not in his name and he's been knowing Ms. White for a long time and he was very involved with her children when they were dating, so I felt like, you know, with the burglary charge, when I heard that first, I'm like what, that can't be true, you've been knowing her for years, and then all the other facts about the drugs and the package -- because he'd just been doing -- you know, being on the right track, was being good, being -- being at home with the family, so everything was on -- he was on the right track of doing a -- you know, just being a good son.
Q. All right. And she had small children then?

A. Yes, and he was very involved with those children when they were involved, when he was involved with Ms. White.
Q. Okay. So the fact that there were possibly children's toys or children's books or something in the package would not have been unusual?
A. Not unusual at all because even when he was involved with Ms. White, the children, her children, would come over to the house with Jacquese. They would be at my house. He would bring them over.
Q. Okay. Do you know of your own knowledge as to whether or not he wanted to plead guilty to this charge?
A. When I arrived at court, this was September 2014, I was late. I had planned to be in trial, so I informed my employer that I needed to take off the entire week, but that -- that morning of the trial I had to finish up a few things, so when I arrived here at court everything was over, the sentence and everything was already over, and I was like what happened? I was talking to my nephew because he was here and he said they already sentenced him. But they did allow me to talk to Jacquese before he was taken away. He said mom, I needed you here. I mean, I took a plea, I did not want to take this plea, and those -- those were his words. I did not want to take this plea. He said Leah said I had to take this plea or either I get thirty years.

Q. Okay. And it was your understanding that he'd been consistent all along about wanting to take this case to trial?

A. Yes.

Q. Because he was saying he was not guilty?

A. Not guilty.

MR. THOMAS: Your Honor, I have no further questions.

THE COURT: Your witness, Counsel.

MR. HUNTER: Just very briefly, Your Honor.

CROSS-EXAMINATION

BY MR. HUNTER:

Q. How many times did you visit Ms. Moody did you say?

A. No, I didn't make any visits to her. I would go by when Jacquese would come home after his visits and he'd give me an update.

Q. Okay. Okay. Did you ever talk to her prior to the plea?

A. I didn't talk to her prior to the plea. It was only after Jacquese was sentenced.

Q. So it was your son, I guess, who was keeping you up to date on everything?

A. Yes.

Q. Okay. So were you -- I guess what you said about the evidence against him, that was just based on what he was relaying to you?

A. Right. It was -- everything was relaying to me and when he was -- the first thing he was just telling me what happened and he said that Ms. White wanted him to go by and pick up some things for the kids and that wasn't unusual for me because -- just because when they were dating, they were involved, and he was involved with the children, so that was nothing new to me.

Q. Okay. And from what -- I guess from what you understood on this case, he wanted to go to trial this whole time?

A. He -- he didn't say he wanted to go to trial. He just thought Ms. Leah Moody had a good case because he wanted to -- he said he just wanted to tell the truth of what happened and he said well, just be prepared for a jury case. That's what he was informing me. Just be prepared.

Q. Okay.

MR. HUNTER: That's all I have for this witness.

THE COURT: Anything further, Counsel.

MR. THOMAS: Just one, Your Honor.

THE COURT: Yes, sir.

REDIRECT EXAMINATION

BY MR. THOMAS:

Q. Ma'am, do you ever remember meeting with Ms. Moody in court to discuss the case at all?

A. We didn't discuss the case until after it was over.
Q. Okay.
A. It was so quick. When I got here, everything was over, and I didn't -- I just talked to her briefly after the court. And then I talked to her again at my job. I called her trying to get advice of what to do. I mean, my son is saying he's innocent and that's when she said that -- to make sure Jacquese files a PCR and that's when she explained to me about PCR because I didn't -- I didn't know anything about it either.
Q. Yes, ma'am.

MR. THOMAS: All right. No further questions, Your Honor.

THE COURT: Anything further, Counsel, for the State?

MR. HUNTER: Nothing further.

(Witness excused.)

THE COURT: Any other witnesses for the Applicant?

MR. THOMAS: Your Honor, if it please the Court, that's the Applicant's case.

THE COURT: All right. Does the State wish to call any witnesses?

MR. HUNTER: Yes, Your Honor. The State would call Mr. Matthew Shelton.

THE COURT: Come forward, sir, and be sworn.

(Whereupon, Matthew Woodrow Shelton was duly sworn by

the Clerk of Court.)

THE COURT: Have a seat and once seated state your name, please, sir.

THE WITNESS: Your Honor, my name is Matthew Woodrow Shelton. I work with the solicitor's office for the Sixteenth Circuit in York under Solicitor Kevin Brackett.

THE COURT: Thank you. Your witness, Counsel.

MATTHEW WOODROW SHELTON,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUNTER:

Q. Good afternoon, Mr. Shelton. How are you doing?

A. I'm doing fine. How are you?

Q. Good. You prosecuted this case against Mr. Underwood and Mr. Harrison, correct?

A. I did.

Q. Was it, I guess, your case the entire time?

A. It was.

Q. And first I just want to get it out of the way, when were the initial plea offers made?

A. Okay. This case was kind of a complicated case. It took quite a long time for me to investigate before I was prepared to develop a plea offer. I spoke with Ms. White on more than one occasion. I -- there was a number of cell phones that we were getting subpoenas for. One was highly

encrypted. It took a long time. We tried to get the FBI to look at it. We could -- actually the Secret Service, I mean. We never could get into one of the phones, that's one of Mr. Harrison's phone, so it took several months before I was in a position to be prepared to develop and convey a plea offer. I think Ms. Moody didn't -- didn't get involved in the case for some time from the beginning. We had to have preliminary hearings, et cetera, et cetera. So eventually I conveyed one plea offer to Mr. Underwood and that plea offer was twelve years contingent on him agreeing to testify against Mr. Harrison -- testify for the State against his co-defendant. Ms. Moody and I talked a lot about that question, whether Mr. Underwood would testify or not. She was telling me his position, it wasn't adding up based on my investigation. She was asking me if I would go down as low as seven years. I make it a point not to commit on a number that I deviate from in exchange for -- for testimony. In this particular case, twelve years conditioned on testimony was a substantial sentence. I felt like the jury would -- would understand that that wasn't under -- that wasn't undercutting the value of his testimony, he would still admit -- he would still have to admit his guilt and cooperate in exchange for that number, but I was never in a position to agree to lower than twelve years, especially not on the front end.

Was it a possibility had he testified against Harrison? Possibly. But we never got to that point.

Q. Okay. And so to switch gears a little bit, did you provide all of the evidence you had over to both parties?

A. I did. There were lots -- there was lots of data from the cell phone dumps. I went over that with Ms. Moody on more than one occasion. In fact, at one point she noted -- she pointed out to me that she didn't have all of the information in one of the cell phone dumps and I was able to go back to my DVD and verify that it hadn't been uploaded properly from the -- from the law enforcement's file. We went over the substance of the text messages personally. I provided a complete chain of evidence. We discussed the search warrants. I mean, everything that I had on my case except for my work product, of course, was turned over to the defense.

Q. Okay. And, I guess, concerning the cell phones, these were the ones that were recovered, I guess, at the -- at the scene?

A. Correct.

Q. And how many of them were there again?

A. There were multiple phones. I want to say six, but it's been a while. I know there were only a handful -- a select number of the ones recovered that were actually relevant. One of them that was the most relevant was --

for Mr. Underwood was that white Samsung he was talking about earlier that was in the car that he said was his. There was another phone in Mr. Harrison's possession with the stored contact of Joc. And I believe it was J-O-C that we were interested in. There may have been a different J-O-C-Q, but I remember J-O-C and there was a phone number associated with it. In Mr. Underwood's phone, he's sending a text message to someone. I think it's a stored contact in his phone by the name of Doey, D-O-E-Y, I think, and he's saying look, man, you know, I leave this phone sitting around, this is my new number, and that number that he gives is the number that's J-O-C in Harrison's phone. So in order for us to be able to stand in front of the judge in pre-trial and say these are text messages, they're statements in further -- furtherance of a conspiracy between these two individuals, I have to be able to authenticate that they're coming from that individual, and that's how I'm able to connect the dots. We didn't have that phone -- that other phone, we had Jacquese's phone when he said this is my number, my other number, and that other number is a stored contact in Harrison's phone with all of these conspiracy text messages, one of them being the Shenandoah address where the package was delivered. I believe it was about two weeks prior Mr. Underwood sent Mr. Harrison the exact address where this package was

delivered. There were also a series of text messages indicating similar patterns of behavior -- conspiracy. The way that this worked Mr. Harrison would run point, if you will, he was the watchdog, and Mr. Underwood would -- in this particular case was inside the house waiting for the package. Mr. Harrison sees the package delivered, rolls by the house, blows the horn, Mr. Underwood comes out and gets it. There were similar text messages with that same kind of MO. You see it, you see it, the guy's coming, here's the package, you get it, you got it, okay, let's go, and those were all introduced as part of the record. That's why it was very relevant showing under a -- I believe it would be a 404(b) analysis, but really our position was that they're statements made in further -- furtherance of a conspiracy showing this wasn't some mistake as the defense was suggesting.

Q. And just to make sure to clarify, these texts that you say were sent back and forth, I guess, furthering the conspiracy, those were attributable to Mr. Underwood, correct?

A. Yes. Absolutely. We -- it was all made a part of the record. We were able to connect the dots. That Underwood's saying this is my other number and that other number is the stored contact, J-O-C, with all of these communications between Underwood and Harrison. And that's

ultimately one of the reasons Judge Alford would let it come in. First, he has to believe it's authentic and, second, he has to believe it doesn't violate due process that it's in furtherance of a conspiracy.

Q. Okay.

A. And -- and I just want to be clear Judge Alford had indicated to us that Tuesday morning he was going to let the phones in. That's what re-sparked plea negotiations. Mr. Rutherford approached me to get Mr. Harrison to testify against Mr. Underwood. I didn't want to see that happen. I didn't want -- I didn't want to go to trial and see Mr. Underwood facing twenty-five to thirty years with Harrison testifying against him. The whole time we knew Harrison was the -- was the mastermind of this and Underwood was a secondary player. That's why I approached him first, but when -- you know, when he wouldn't reciprocate and agree to testify, plea negotiations fall apart, we're trying them together. But Mr. Rutherford said hey, Harrison wants to testify against Underwood. I don't know if Leah conveyed that to Mr. Underwood or not, but I know that that was presented to me. That's when I went to Solicitor Brackett and with Commander Brown, who's the number one in the drug unit for York County, and we all put our heads together and said, you know, this is what -- this is what would be fair for both parties. They both

pled to the exact same thing, conspiracy to traffic cocaine, for twelve and a half years. To get there, we reduced the weight. I mean, this was four hundred plus variety. Even if it wasn't a second offense, they're looking at a mandatory twenty-five years.

Q. Okay. So essentially Mr. Rutherford coming to you and telling you that Mr. Harrison wanted to plea, that's kind of what started up the final plea offer?

A. Well, right. What started it was Judge Alford saying we're gonna -- I'm letting these text messages come in. That's -- that's when we knew -- everybody knew the State's case is as good as we had been arguing it was and that the likelihood of twelve jurors that were already selected that were coming back later that morning, the likelihood of them finding these two men guilty of this conspiracy went up exponentially when those text messages come through. There was -- also their behavior was consistent with this as well. It wasn't just somebody sitting in the house. There were narcotics officers watching this house. They knew it was coming. They'd intercepted the package, they did the whole dog sniff and the search warrant, they get the real drugs out and secure them in evidence, so there's no chain of custody issue there. They supplement a dummy kilo is what we call it. I'm not sure what kind of substance it is, but it's the approximate same weight. They reseal the

package. A Federal agent actually takes control of it and goes disguised as a UPS delivery driver and does a controlled delivery.

So before he goes in the neighborhood, the -- there are narcotics officers stationed around the neighborhood and there's a tail on the delivery driver. They see Harrison following this car into the neighborhood and out of the neighborhood. After the delivery is made, he comes back and blows his horn in front of the Shenandoah house where Underwood was, Underwood looks out the window and then comes down and gets -- and gets the drugs and goes back inside. He then pulls the car out of the garage, the drugs were ultimately in the trunk, goes back in through the garage to close it from the inside and then comes back outside and he locked himself in the house before the police were able to get him. Harrison ran from them. Actually ran in reverse and then spins around and he's throwing his phones out left and right, so this wasn't just some like innocent, innocuous looking thing. I mean, there was very clear evidence of flight and attempt to deceive and their actions suggested they were a part of this as well.

Q. Okay. And to switch gears again a little bit, Ms. White and the house, can you explain any investigation y'all had concerning Ms. White and her involvement in this?

A. Yes. Ms. White was not present during the actual incident. I believe she was at work that day. One of the officers called and spoke with her, got a written statement from her and they ended up charging him with burglary. Him being Mr. Underwood. I, of course, spoke with Ms. White. She was a victim in the burglary case. I have an obligation to speak with her. I spoke with her at least twice, if not three times. One of those being shortly before trial I had a sit-down with her. She never wavered in her statement to me. She never said I made this up. She never said this was me. She never said this was Mr. Parker. I would have had an obligation to convey that to the defense attorneys and she never made any kind of statements like that to me. The reason I didn't prosecute the burglary charge was purely a strategy issue. I didn't want to further complicate this case by throwing another wrench or another element in for this -- for a jury to have to quibble over. I knew there was a familia -- familiar relationship between Mr. Underwood and Ms. White. I knew that the nature of that relationship could cause more complications as to that charge and then try to decide was it really burglary. I mean, this carried a mandatory minimum twenty-five years for the trafficking, so I thought it was a little redundant going forward with a ten-year non-violent offense when the twenty-five-year 85 percent

no parole offense was on -- on the line.

Q. Okay. At least concerning this prosecution, did you pursue any possibility that she was just as much a co-defendant?

A. I mean, I talked with her about it. I asked the law -- I asked law enforcement early on why she wasn't charged. They didn't believe she had anything to do with it. They conveyed to me that her initial reaction was one of shock, not one of being deceptive. These guys have been working in narcotics for years. I mean, not that they're perfect by any means, but they have a pretty good idea -- a pretty good idea of how to flush things out. The woman maintained that she didn't know what was going on. Every time I talked with her she gave me no indications to believe otherwise.

Q. Okay. And then, lastly, I guess you filled out -- or you presented a plea waiver form; is that correct?

A. Yes.

Q. Is that a common practice?

A. It is.

Q. Okay. And that was done the morning of the plea?

A. Correct. Once -- once I was informed that Mr. Underwood was accepting his plea offer, I prepared the plea waiver. I think I was asked if I was okay with a no contest plea. It didn't make any difference to me.

I mean, it's the same force and effect, so I had no objections to it.

Q. Okay. And that -- this final offer, how was that relayed to Ms. Moody and Mr. Underwood?

A. I told Ms. Moody this is what we could agree on after we -- Commander Brown and I talked with Solicitor Brackett and we presented to Ms. Moody individually, we presented the same offer to Mr. Harrison's attorney, Mr. Rutherford, individually, and they conferred with their clients and they both came out and said they'd take the deal.

Q. Okay.

MR. HUNTER: That's all I have. Thank you.

THE COURT: You may cross-examine.

MR. THOMAS: Your Honor, if it please the Court, may I beg the Court's indulgence?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Good morning, Mr. Shelton.

A. Hello. How are you?

Q. Good. Good. I need to ask you about did you know about the -- we're talking about Ms. White. You knew there was a relationship between Ms. White and Mr. Underwood?

A. Based on what Ms. Moody told me.

Q. Okay.

A. I didn't -- I had no independent knowledge of that.
Q. Did you know -- you said the Samsung phone. Were there pictures of Ms. White in the phone?
A. I don't recall. It's been a long time ago. I don't recall.
Q. All right. And did you know about the Bojangles'? That they had breakfast that morning and --
A. Again, Leah had told me that. She discussed that with me. She did show me the credit card. We took a photocopy of it. I thought about it, talked -- talked with the case agent about it. Honestly, we didn't really find any big relevance to it in this case. I mean, so if they had breakfast together that doesn't mean he didn't then go back over to her house and receive the package.
Q. Right.
A. You know, could it have been used in the burglary case? Certainly. Could it have been used to impeach Ms. White if she were to testify? Yeah, it could have. I didn't really see the value in it. Like I -- speaking with Ms. Leah, I understood where Mr. Underwood was coming from with that, but it didn't really make any difference in my mind. He was in the house where the package was delivered and, like I said, all the facts and circumstances and then especially when we got all the data from the cell phones, I mean, I was very strongly convinced that this was exactly

what it appeared to be.

Q. But did it give you any suspicion or any thought that maybe Ms. White was involved in this?

A. Initially, yes. But, again, like I've been doing this a while. I've been here ten years. I -- I don't go jump to conclusions with a case until I fully investigate it. When I started seeing this same thing coming up -- we actually had a cooperating witness who was not a co-defendant who, I believe, testified in pre-trial and was gonna be a witness in trial testifying that he had knowledge of the way this conspiracy worked through dealing with Mr. Harrison; that people would -- that people would relay to Mr. Harrison addresses to send these packages, people that they know, houses they could use basically to where they could post up or set up outside, wait for the package to be delivered, go in and get it and then leave and the person would be none the wiser.

Q. Is that a jailhouse snitch, the guy that was in jail?

A. I can't remember. He might have been in jail at the time, yes. His name is Micos.

Q. Yeah, Hemphill.

A. Yeah.

Q. Okay. And he had charges pending against him; do you remember?

A. I think at the time he did, yes.

Q. Okay. All right. How about Mr. Parker? Did y'all look at Mr. Parker?
A. I don't know Mr. Parker. I'm sure Commander Brown would have looked into that. I mean, if he knows him, he would have looked into him. I can't -- there may have been something in the search warrants with Mr. Parker's name mentioned.
Q. Yeah, I think it was because he was the one -- somehow or another --
A. He was connected with the address.
Q. -- he was -- they had found him in the residence or I think he was named in the search warrant.
A. But as far as him being anywhere around when the package was delivered, you know, from what the police were relaying to me and testified he was nowhere to be found when the package was delivered.
Q. Were y'all able to -- and I guess you weren't able, but you are -- you didn't determine that Mr. Parker had a prior drug record?
A. I don't know. I mean, I was -- any -- any information I looked into on that was based on what the police said in the affidavit. I didn't see Mr. Parker as being relevant, just like I didn't really find the breakfast with Ms. White being relevant. These two men were waiting for this package to be delivered and acting in concert and when it

was delivered they took possession of it and were -- had taken off.

Q. Let me ask you this. If you take the conspiracy out of the picture in this case, the fact that Mr. Underwood was in possession of a box of some sort of substance other than an illegal substance, had he committed a crime at that time?

A. Well, sir, you can't take the conspiracy out of this case. That is the case.

Q. The conspiracy is the case?

A. The conspiracy to traffic cocaine is the case and the trafficking statute references conspiracy in the actual body, so whether we name it in the title of what he pleads to or if it's off of that indictment, it's part of the statute. So the fact that this package was being delivered from California to this house with these two men waiting for it to receive it and take it wherever they're gonna take it, that's the crime.

Q. Right. So without the ability -- like in this case, I guess, being the cell phone messages, without that ability to make that link there was no case?

A. There still was a case. There was probable cause. We had preliminary hearings on that fact. I know Mr. Harrison definitely had a prelim. I can't remember if we had one for Underwood. The grand jury ultimately

true billed it. There was definitely probable cause without the cell phone data. The cell phone data strengthened the case. So let's -- let's take the dummy key out.

Q. Right.

A. The package goes through to the house. They take it and they go on their merry way. Has a crime been committed? Yes, it has. They're trafficking cocaine.

Q. But if you've got the dummy drugs in there --

A. Right, but they don't know the dummy drugs are in there.

Q. -- and he goes on his way, then how's that a crime?

A. Because they don't know the dummy drugs are in there. They're receiving a kilo of cocaine as far as they know.

Q. But you've still got -- but the only thing you can prove, what you have to prove is a conspiracy.

A. Correct. And we did. Well, we would have had he not entered a no contest plea saying that we would have proven that to the jury.

Q. And the only thing to have proven that would have been through the actions of the two co-defendants?

A. The actions and the -- and the cell phone data coupled together, everything in totality would have convinced the jury. I was confident in that and apparently so was Mr. Underwood and Mr. Harrison.

Q. Just the fact that a box comes to your house and you pick it up and it doesn't -- you can't be charged with possession of it because it's not -- there are no drugs in there.

A. You know, the jury could have determined that, whether they thought he was merely present or didn't have the knowledge. But, again, with all the facts and circumstances and the fact that he entered a no contest plea, I believe he believed we had a case to win.

Q. Okay. And I read a couple of times the pre-trial arguments and it is lengthy --

A. Uh-huh.

Q. -- and, I apologize, I'm a little bit confused. The -- it appears to me that the connection really in this case would have had to have been through the -- you said J-O-C. I was thinking it was J-O-C-Q. Is that -- is that the connection?

A. Do you want to see the connection? I brought -- I brought my notes from the pre-trial that I discussed with Ms. Moody. Would you like me to spell it out?

Q. Well, no. I'm just asking --

THE COURT: I would like for you to spell it out.

THE WITNESS: Do you want me to answer the question?

THE COURT: Yes, sir. I want to hear it.

THE WITNESS: From Item Number 4, this was Harrison's

LG Boost Mobile cell phone, we had all of this data in the cell phone that was provided to both defense attorneys. There was a stored contact J-O-C and the number was Area Code 678-517- . From Item Number 6, that was Underwood's white Samsung, the phone that was in the car that he said was his phone, there was an SMS message to and from a stored contact of Doey at number 843-305- . This was on September 4th of 2012, so approximately a month and a half or so, I think this was at the end of the October that the incident occurred, where Doey asks hey, man -- basically says been calling you for two hours and no answer, disrespectful. From the white Samsung believed to be Underwood saying man, you know, I be leaving this phone in the car. My new number is 678-517- the same number stored in the phone as Joc. So this is the phone that Underwood says is his today and it was also in his possession in the car that day when he was trying to leave with the package in the trunk. He was the only person in the car, so it's very easy to believe that was his phone.

The most important significant text outside of the broader conspiracy I felt was from Item Number 4. And, again, that's Harrison's LG Boost Mobile cell phone, a text message was sent from Joc, Jacquese Underwood, to Mr. Harrison forwarding the address of Shenandoah Circle. That was the address where the -- where the --

where Ms. White lived and that was the address where the package was to be delivered -- was delivered under the controlled delivery. That's where the kilo of cocaine was going some two weeks later. And during that same timeframe there were a number of text messages between these two contacts, between Joc and to this phone of Mr. Harrison, we were also seeking to introduce. That's where we got into the statements in furtherance of conspiracy and why I broadened the indictment when I sent it back to the grand jury to amend it. So I sent the indictment to the grand jury twice; the second one being to broaden the indictment when I learned of all of these conversations. That all -- all was suggesting the same type scheme during this same timeframe.

And then we also have phone calls happening -- it looks like probably the day before. We don't have times, but we have -- the day before we have phone calls from Joc, J-O-C, at that number to Harrison's phone, which was Item Number 4. So we had a very solid foundation to establish that this was Jacquese communicating with Mr. Underwood {sic}. It's not the phones that matter, it's the statements made by the people, so we would have to establish it was them communicating with each other.

BY MR. THOMAS:

Q. All right. And you weren't able to find any

communication between any of these people and Ms. White?
A. I don't recall. I'm sure we looked for it. I don't recall specifically. I'm sure we looked into that, but nothing -- nothing jumps out at me.
Q. And, again, none of the -- none of these transactions had anything to do with the transaction at hand, this was all prior?
A. Except for the fact that it was a conspiracy. So, yeah, I mean, we didn't allege that -- there was no dope recovered during those different days, but they did suggest the same common scheme and plan which is why we had a very long pre-trial hearing about it the week before they entered their pleas.

MR. THOMAS: Your Honor, if I can beg the Court's indulgence?

THE COURT: Yes, sir.

MR. THOMAS: Your Honor, I have no further questions.

THE COURT: Any wish to follow up?

MR. HUNTER: Nothing else, Your Honor.

THE COURT: All right, sir. You may step down. Thank you very much.

(Witness excused.)

THE COURT: Does the State have any other witnesses?

MR. HUNTER: No, Your Honor.

THE COURT: All right. Do you wish to argue the

case?

MR. THOMAS: Your Honor, I've been doing this a long time. I think the Court can understand what the issues are.

THE COURT: I do.

MR. THOMAS: I'd be glad to summarize them for you, but I think the Court -- we don't have a jury here, so I don't see the need to have argument.

THE COURT: All right. I'll take it under consideration and issue an order at a later time.

Thank you very much.

MR. THOMAS: Thank you, Your Honor.

MR. HUNTER: Thank you, Your Honor.

(Whereupon, the proceedings were concluded at 12:32 PM.)

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 7th day of November, 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

March 15, 2018

/S/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

421

RECEIVED Aug 30

FORM 4

C. 59(e)?

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4600818

Jacquese T Underwood		South Carolina State Of	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by: Janelle H Gregory		Attorney for: ☐ Plaintiff ☒ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER OF DISMISSAL

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/Roger L. Couch | 2135 | 8/27/2018

Circuit Court Judge | Judge Code | Date

For Clerk of Court Office Use Only

This judgment was entered on **August 27, 2018,** and a copy mailed first class or placed in the appropriate attorney's box on **August 27, 2018,** to attorneys of record or to parties (when appearing pro se) as follows:

Tommy Arthur Thomas PO Box 88 Irmo, SC 29063
Jacquese T Underwood, Kirkland Correctional Institute, 4344 Broad River Road, Columbia, SC 29210

Janell Gregory P.O.Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
JACQUESE T. UNDERWOOD, #323347)
Plaintiff,)
vs.)
)
STATE OF SOUTH CAROLINA)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-46-818

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED-RECEIVED
2018 AUG 27 PM 2:25
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, S.C.

Plaintiff's Attorney:	Defendant's Attorney:
Tommy A. Thomas, Bar No. _____	Janell H. Gregory, Bar No. _____
Address:	Address:
Post Office Box 88	Post Office Box 11549
Irmo, South Carolina 29063	Columbia, South Carolina 29211
Phone: _____ Fax _____	Phone: _____ Fax _____
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Janell H. Gregory
Signature of Attorney for ☐ Plaintiff /☒ Defendant

August 8, 2018
Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ _____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Jacquese T. Underwood, 323347, Applicant, v. State of South Carolina, Respondent.	2015-CP-46-818 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed on March 16, 2015, by Jacquese T. Underwood (Applicant). The State (Respondent) filed a Return on August 12, 2015, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on November 8, 2016, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Tommy Thomas, Esquire. Assistant Attorney General Justin J. Hunter from the South Carolina Attorney General's Office appeared on behalf of the State. At the hearing, Applicant testified on his own behalf. Vanessa Simpson (mother of Applicant), Leah Moody, Esquire, and Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor's Office testified during the hearing. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's order of commitment. Applicant was indicted during the May 2014 term of the York County Grand Jury for trafficking in cocaine, 400 grams or more (2013-GS-46-2073). Applicant was represented by Leah Moody,

PI

Esquire. Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case. On September 2, 2014, Applicant appeared before the Honorable Lee S. Alford and pled no contest to the lesser included offense of trafficking cocaine between 28 and 100 grams, second offense. Pursuant to negotiations between Applicant and the State, Judge Alford sentenced Applicant to imprisonment for twelve years and six months. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS

On October 30, 2012, an officer from the Drug Enforcement Agency Task Force, Frank Finch, was called to the UPS facility on Mount Gallant Road in Rock Hill, South Carolina in reference to a suspicious package. (Plea Tr. 13-14.) Agent Finch and his K9 are trained in package drug detection. (Plea Tr. 14.) Both Agent Finch and his K9 responded to the package location where a line-up of five packages was provided to the pair. (Plea Tr. 14.) The K9 alerted on the package during the line-up. (Plea Tr. 14.) There were also indicators visible on the package that suggested there was illegal contraband inside. (Plea Tr. 14.)

A search warrant was obtained and executed at the UPS facility and inside the package was what officers estimated to be a kilogram of cocaine. (Plea Tr. 14-15.) The cocaine was taken out of the package and placed into evidence and imitation cocaine was placed in the box and sealed for officers to conduct a "controlled delivery." (Plea Tr. 15.) The package was addressed to Sharika White at Shenandoah Circle, Rock Hill, South Carolina. (Plea Tr. 14.) Officers were able to confirm that Ms. White was in fact the resident of that house. (Plea Tr. 14.)

An agent out of Lexington County dressed in full UPS uniform went undercover in a white panel van and conducted the controlled delivery. (Plea Tr. 15.) Another officer, Leland

Harrelson, from the task force was already in the neighborhood conducting surveillance. (Plea Tr. 15.) During his surveillance, he observed Duane Harrison, Applicant's co-defendant, conducting counter-surveillance around the residence. (Plea Tr. 15.) Harrison followed the delivery van once he was in the neighborhood and then followed him out of the neighborhood. (Plea Tr. 15.) Applicant exited the residence to retrieve the package only after Mr. Harrison returned and drove slowly in front of the residence. (Plea Tr. 16.) Once he retrieved the package, Applicant put the package in the truck of the vehicle that was parked in the garage and then backed it out onto the driveway. (Plea Tr. 16.) Officers with the Drug Unit moved in on the residence to effect an arrest. (Plea Tr. 16.) As officers approached, Mr. Harrison fled the scene in his vehicle and officers pursued him. (Plea Tr. 16.) Applicant was outside at this time and Mr. Harrison alerted him to the officers' presence by blowing the horn. (Plea Tr. 16.) Mr. Harrison exited the vehicle on foot and continued to run from officers. (Plea Tr. 16.) As Mr Harrison fled on foot, he threw a couple of cell phones into the woods that were recovered by law enforcement. (Plea Tr. 16.)

Applicant attempted to flee out of the rear of the residence but was met by a law enforcement officer. (Plea Tr. 16.) Applicant then locked himself in the residence, however, he eventually opened the residence for officers. (Plea Tr. 16.) Officers had an anticipatory search warrant for the residence. (Plea Tr. 16.) Officers located the package in the trunk of the car. (Plea Tr. 16.) Applicant's cell phone was located in the front seat of the vehicle. (Plea Tr. 16.) Applicant's cell phone number matched the phone number saved as "Jacq" in one of the recovered cell phones that was tossed by Mr. Harrison. (Plea Tr. 16.) A series of text messages between Mr. Harrison's phone and Applicant's phone were located that appeared to be dealing with the package delivery to Ms. White's residence. (Plea Tr. 17.) The suspected cocaine was

tested by a certified chemist and the test returned positive for cocaine. (Plea Tr. 17.) The exact weight of the cocaine was determined to be nine hundred and sixty-five grams. (Plea Tr. 17.)

Prior to Applicant's plea hearing, Applicant's counsel filed numerous motions that led to a two day pre-trial hearing that started on August 25, 2014. The motions were as follows: 1) "I would ask the Court to limit any testimony coming from Dalmicos Hemphill as it relates to my client and only use his testimony, if necessary, for rebuttal purposes"; 2) "...[L]imit the text messages prior to October 30, 2012"; 3) [Prevent] any testimony from State's witness [Sharika] White regarding any prior knowledge of [Applicant's] criminal history." (Pretrial Hearing Tr. 5.) The State agreed with counsel as to the third motion, which related to limiting testimony from Sharika White regarding Applicant's criminal history. (Pretrial Hearing Tr. 5-6.) Additionally, Applicant's counsel testified to the State that she was going to challenge the search warrant for the suspicious parcel that was intercepted by law enforcement. (Pretrial Hearing Tr. 28.)

In response to these challenges, the State proffered testimony from numerous witnesses regarding the parcel interdiction, drug trafficking, and potential rebuttal that would implicate Applicant and his co-defendant in the incident. The judge took the motions under advisement and stated he would rule on those motions on "Tuesday" [September 2, 2014]. However, on September 2, 2014, Applicant chose to enter a plea of No Contest and received a negotiated sentence of twelve and a half years. (Plea Tr. 5.) The posture of the court went from a jury trial to a guilty plea, however, the judge went on the record to discuss the admissibility of the text messages and other evidence that would have been offered by the State had the jury trial moved forward. (Plea Tr. 19-26.) In his summary, the judge indicated text messages between Applicant and his co-defendant prior to October 30, 2012 would be admissible, although "somewhat prejudicial," the probative value was determined to outweigh the prejudicial effect in the

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balancing test. (Plea Tr. 20.) Additionally, the text messages would be admissible under Rule 404(b) to show identity and common scheme or plan of Applicant and his co-defendant.[1] (Plea Tr. 22-23.)

Applicant's no contest plea was accepted by the court as the court found "substantial evidence...based on pretrial information that came in as evidence" to accept the plea from Applicant. (Plea Tr. 28.) The negotiated sentence of twelve and a half years was also accepted. (Plea Tr. 29-30.)

ALLEGATIONS RAISED

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

SUMMARY TESTIMONY FROM EVIDENTARY HEARING

At the evidentiary hearing, Counsel testified she represented Applicant from the beginning of his case. (PCR Tr. 6.) She testified Applicant had the opportunity to accept a plea agreement from the State up until the pre-trial hearing. (PCR Tr. 7-8.) According to Counsel, the State offered a reduction in the charge and would have sentenced him to no more than ten years; his sentence would have been around seven years if he testified for the State against his co-defendant. (PCR Tr. 8.) Applicant did not want to testify for the State and did not accept the offers. (PCR Tr. 8.) She testified she talked to Applicant "a lot" and they went over his "voluminous" discovery. (PCR Tr. 11.) She testified, based on the State's theory of a

[1] The court also cited State v. Wallace, 384 S.C. 428, 683 S.E.2d. 275 (2009), State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009), State v. Martucci, 380 S.C. 232, 669 S.E.2d 598 (Ct. App. 2008), State v. Tuffour, 364 S.C. 497, 613 S.E.2d 814 (Ct. App. 2005), State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007), and State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001) regarding the admissibility of the text messages.

conspiracy, she wanted to have the text messages suppressed. (PCR Tr. 11.) She stated if the phone records were not suppressed, "it wasn't gonna look good for [Applicant]." (PCR Tr. 12.)

Ultimately, Applicant's co-defendant accepted a plea offer from the State. Counsel stated the co-defendant's plea "sent everything into a tizzy" since they did not know if he was going to testify against Applicant. (PCR Tr. 42.) Further, counsel for the co-defendant told Applicant's counsel that, according to the co-defendant, Applicant was aware there were drugs in the package even though Applicant maintained to his counsel that he did not know. (PCR Tr. 42.) According to Counsel's testimony, Applicant decided to accept the same no contest plea offer as his co-defendant. (PCR Tr. 42.) During the plea proceeding, Applicant signed a plea waiver form, which Counsel testified she went over with him. (PCR Tr. 47.)

Applicant testified on his own behalf during the post-conviction relief hearing. Applicant maintained his innocence and testified he believed books were in the package. (PCR Tr. 59-61.) Applicant further testified he pled no contest based on the advice from his counsel. (PCR Tr. 73.) On cross-examination, Applicant conceded he remembered telling the judge he was satisfied with his counsel, but testified he was responding "Yes, sir" to the judge because that is what Counsel told him to say. (PCR Tr. 78.) He testified he met with Counsel several times, but they mostly discussed payment. (PCR Tr. 82.) Applicant testified he did not believe Counsel was prepared for trial in his case and that influenced her recommendation to accept the plea in this case. (PCR Tr. 77.)

Assistant Solicitor Matthew W. Shelton of the Sixteenth Circuit Solicitor's Office testified for the State at the hearing. (PCR Tr. 94.) Mr. Shelton testified the only plea offer made to Applicant by the State was for twelve years conditional upon Applicant testifying against his co-defendant, and Applicant would have to admit guilt. (PCR Tr. 95.) Mr. Shelton

testified, according to the State's investigation, numerous text messages between Applicant and his co-defendant showed a pattern of behavior which led to the conspiracy charge. (PCR Tr. 97.) Mr. Shelton further testified the State's theory was the co-defendant was the "mastermind" and Applicant was a "secondary player." (PCR Tr. 99.) Mr. Shelton stated he was approached by counsel for the co-defendant after the judge indicated the text messages would be admissible. (PCR Tr. 99.) Mr. Shelton testified the judge's decision regarding the text messages "re-sparked" plea negotiations. (PCR Tr. 99.) According to Mr. Shelton, the co-defendant offered to testify against Applicant and Mr. Shelton felt that was unfair to Applicant. (PCR Tr. 99.) Mr. Shelton testified he, Solicitor Brackett, and the Commander of the York County Drug Unit decided to offer both parties twelve and a half years. (PCR Tr. 99.)

Additionally, Mr. Shelton explained at length the connection made during the State's investigation between Applicant and his co-defendant. (PCR Tr. 110-112.) According to Mr. Shelton's testimony, Applicant sent co-defendant a text message providing him with his current phone number. (PCR Tr. 111.) That phone number was found on the co-defendant's cell phone with Applicant's phone number stored under the name "Joc." (PCR Tr. 111.) The State's investigation showed numerous text messages between the cell phones known to belong to Applicant and the co-defendant, which led to law enforcement being able to uncover the conspiracy. (PCR Tr. 111-112.) Mr. Shelton testified the "most significant text outside of the broader conspiracy" was from the co-defendant to Applicant giving him the address where the package was delivered, which is where Applicant was arrested. (PCR Tr. 111.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

accordingly. Further, this Court has reviewed the Clerk of Court's records regarding the subject convictions, the pretrial transcript, the plea transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel,

the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Ineffective assistance of counsel for failing to prepare for trial

Applicant alleges Counsel was ineffective because she was not prepared to go to trial. This Court finds trial counsel was not deficient in her handling of either the pretrial hearing or the plea negotiations. Applicant has failed to establish any ineffectiveness of counsel as to this allegation.

Counsel testified at the evidentiary hearing that she had sufficient time to prepare Applicant's case for trial. Counsel also testified in preparation for trial, she filed several pretrial motions. Counsel testified the case was practically tried in pretrial motions. During the two-day pretrial hearing, Counsel made motions to limit testimony from two State witnesses, and suppress text messages prior to the date of the incident between Applicant and his co-defendant. Counsel argued the evidence the State was seeking to use against the Applicant was more prejudicial than probative under Rule 403, SCRE. Counsel testified her goal was to suppress the text messages to negate the State's theory that there was a conspiracy between Applicant and his co-defendant.

Ultimately, the court indicated the text messages would not be suppressed, and Applicant's co-defendant accepted a plea offer from the State, which indicated Applicant's co-defendant would testify against him at trial. At that time, Counsel felt a no contest plea was in the best interest of Applicant. Counsel's credible testimony shows she thoroughly reviewed all evidence and discovery material with Applicant and was in a trial posture up until the motion to suppress the text messages was unsuccessful. Applicant has failed to present credible evidence of

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any way Counsel should have better prepared for trial and thus has failed establish either deficiency of counsel or prejudice. Therefore, this allegation is denied and dismissed with prejudice.

Ineffective assistance of counsel by advising Applicant to plead no contest

Applicant alleges Counsel was ineffective for advising him to plead no contest. This Court finds Applicant has failed to establish any ineffectiveness of counsel as to this allegation.

An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969).

The record reflects Applicant was fully advised of the charges against him, his constitutional rights, and the consequences of entering a plea. This Court finds Applicant has failed to show Counsel was ineffective in this regard. On the morning of trial, Judge Alford informed the parties he intended to admit the cell phone records. This Court finds the judge's decision, coupled with the substantial evidence linking Applicant to the retrieval of the drug package, resulted in Counsel recommending Applicant accept the plea offer instead of proceeding with trial. This Court finds Counsel was not deficient in her handling the plea negotiations.

This Court finds the plea waiver form, signed and initialed by Applicant, clearly states Applicant agreed to plead no contest to conspiracy to traffic cocaine. The waiver form explains Applicant was pleading to a negotiated sentence of twelve years and six months. After reviewing the plea hearing transcript, this Court finds no deficient performance by Counsel during Applicant's plea. This Court also finds Counsel's ability to negotiate a no contest plea after pretrial motions had been heard resulted in a substantially lower sentence than Applicant was facing should he be convicted at trial, which was a benefit to Applicant. Finally, this Court finds the plea was voluntarily and intelligently entered into by Applicant. Applicant has failed to prove Counsel's performance was deficient or that he was prejudiced by Counsel's actions. Accordingly, this allegation is dismissed.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate Counsel's performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Further, this Court finds Applicant entered the plea voluntarily and intelligently. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if

Applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21st day of August, 2018.

ROGER L. COUCH
Presiding Judge
Sixteenth Judicial Circuit

Spartanburg, South Carolina

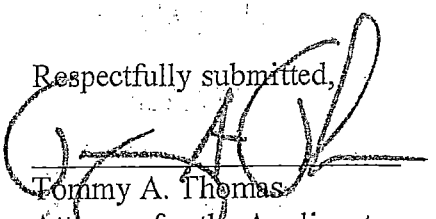
STATE OF SOUTH CAROLINA	)	IN THE COUNT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	DOCKET NO.: 2015-CP-46-00818
	)	
JACQUESE T. UNDERWOOD,	)	
	)	
Applicant,	)	NOTICE OF MOTION AND MOTION TO ALTER OR AMEND
	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

FILED-RECEIVED
2018 SEP 13 PM 12:08
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

PLEASE TAKE NOTICE that the Applicant, through his undersigned attorneys will move before the Honorable Roger L. Couch, to alter or amend the judgment entered in this action on August 21, 2018. A copy of the Order of Dismissal was received by the undersigned attorney on August 30, 2018. That the proposed Order lacks specific testimony by the Applicant and Trial Counsel. That certain allegations of ineffective assistance of counsel and involuntary guilty plea are set out in this testimony. That these issues are not addressed by the Court. In addition, an Affidavit of Gregory Parker was provided to the Court on December 12, 2017. That this matter needs to be addressed by the Court.

The Applicant would respectfully request that this Court alter or Amend the Order of Dismissal to allow for a complete addressing of all the testimony and ruling on all issues presented.

Respectfully submitted,



Tommy A. Thomas
Attorney for the Applicant
7588 Woodrow Street
Irmo, SC 29063
(803) 732-5507

September 10, 2018
Irmo, South Carolina

Appendix

That the applicant would suggest that the following testimony should be added:

1. That the package of imitation drugs was sent to the residence of Shaerica White and was addressed to her. (Tr. p. 58, lines 1-17) That her boyfriend Mr. Gregory Parker also lived there. That Mr. Parker had a number of drug convictions. (Tr. p. 59, lines 9-12) That Applicant discussed this matter with his attorney and she did not do anything in regards to looking into this matter and using it in preparation for trial. (Tr. p. 60, lines 4-10)
2. Trial Counsel told the Applicant that he did not have anything to worry about. That they were going to trial and that they were going to win. (Tr. p. 60, lines 23-25). The Applicant testified that he was not guilty and that he wanted his case to go to trial. (Tr. p. 60, lines 5-6)
3. Trial Counsel was concerned about a number of cell phones that the Police had seized as well as phone records. However, there was no direct link with his phone or with the phones found in the woods that belonged to the co-defendant. That the police had a number in the phone that showed JOC. They did not find any of these cell phones in his possession nor did this number match any number that he had. (Tr. p. 62, lines 1-23)
4. That initially, Ms. Shaerica White told the police that the Applicant had broken into her house and that he had no authority to be there. Later she recanted this testimony and told the police that he did not break into the residence and the charges of burglary were dismissed. (Tr. p. 63, lines 4-23)

5. That Applicant was concerned about the manner in which the original package of drugs was seized by the police. Whether there was a proper search warrant. Also, the issue of the substitution of imitation drugs into the package before it was delivered to the residence.
6. Applicant also testified that he was concerned that the original package had been opened. When asked if he had spoken with trial counsel about the substitution of drugs, he indicated no and that he did not know that the drugs had been substituted until trial. (Tr. p. 65-67) That Applicant did learn, just prior to entering into the plea, that the drugs had been substituted for imitation in the package. That he did not have an opportunity to speak with Counsel about the suppression of these drugs in the box nor about any type of chain of custody. He learned about these issues after the fact, after studying the discovery. (Tr. p. 68, lines 3-19)
7. That there was a lengthy Pre-Trial Motion that involved the cell phones and text messages. The Court delayed its ruling on the admissibility of this evidence. That he didn't find out about the Court's ruling until the plea. (Tr. p. 72, lines 12-23)
8. Counsel testified that Applicant agreed to take the plea because of her advice. That she kept telling him that he had to take the plea.
9. The Applicant testified that he did not feel that his plea was freely and voluntarily entered into nor was it knowingly and intelligently given. (Tr. p. 73, lines 1-25) Applicant pled no contest to Conspiracy to Traffic (Tr.p. 74, lines 11-12).
10. Applicant testified that he had notified Shaerica White that they had delivered a package and that she had asked him to drop it off to her work. That he had also brought this to Trial Counsel's attention.

11. That there was a YouTube Video that he felt was harmful and that she had done nothing regarding this issue. The Applicant stated that he did not feel that Ms. Moody was prepared for trial.

Trial Counsel Leah Moody testified to the following:

1. There had been several plea offers made in the trial. These were conveyed to her client (Tr. p. 8, lines 3-12) However, Applicant had rejected these offers.
2. She had made a Motion to suppress the phone logs and the text messages. (Tr. p. 10, lines 16-20)
3. Trial Counsel was asked about the substitution of drugs in the package, where they had taken out the actual drugs and put in an imitation drug into the package and that it was the imitation drugs that where delivered to the address. Trial Counsel testified that she did not make a motion, nor did she see any ability to make a Motion to suppress the fact that the package, as delivered did not contain any real drugs. (Tr. p. 22, lines 6-20)

That the following additional issues were raised at the hearing:

1. That Trial Counsel was not prepared for trial of this case.
2. That Trial Counsel was ineffective for not investigating the role of Shaerica White in the this crime and was not prepared to use the issue at trial.
3. That Counsel was ineffective in the handling of the package intercept, chain of custody and substitution of imitation drugs.
4. That the Applicant's plea was not freely and voluntarily given in that he was unaware of the Court's ruling on the Pre-Trial Motions until his Guilty Plea.

STATE OF SOUTH CAROLINA	)	IN THE COUNT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	DOCKET NO.: 2015-CP-46-00818
	)	
JACQUESE T. UNDERWOOD,	)	
	)	
Applicant,	)	CERTIFICATE OF SERVICE
	)	
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

FILED-RECEIVED
2018 SEP 10 PM 12:08
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, S.C.

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of a Notice of Motion and Motion to Alter of Amend by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Janell Gregory, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

The Honorable Rodger L. Couch
Judge of the Seventh Judicial Circuit
Spartanburg County Courthouse
P.O. Box 2614
Spartanburg, SC 29304

Jacquelyn E. Miller
Tommy A. Thomas, Esq.
Attorney at Law
7588 Woodrow Street
P.O. Box 88
Irmo, S.C. 29063
(803) 732-5507

September 10, 2018

STATE OF SOUTH CAROLINA COUNTY OF YORK Jacquese T. Underwood, #323347 Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT Case No. 2015-CP-46-818 **RETURN TO APPLICANT'S MOTION TO ALTER OR AMEND JUDGMENT**

Respondent, by and through undersigned counsel, making its Return to Applicant's "Motion to Alter or Amend," filed on September 13, 2018, would respectfully show this Court:

I. Procedural History

The records before this Court establishes Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's order of commitment. During the May 2014 term of the York County Grand Jury Applicant was indicted for trafficking in cocaine, 400 grams or more (2013-GS-46-2073). Applicant was represented by Leah Moody, Esquire (hereinafter Counsel). Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case. On September 2, 2014, Applicant appeared before the Honorable Lee S. Alford and pled no contest to the lesser included offense of trafficking cocaine between 28 and 100 grams, second offense. Pursuant to negotiations between Applicant and the State, Judge Alford sentenced Applicant to imprisonment for twelve years and six months. Applicant did not appeal his conviction.

II. Current Post-Conviction Relief Action

Applicant subsequently filed his post-conviction relief application on March 16, 2015. Respondent made its Return on August 12, 2015. Applicant raised the following issues in his application:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

A hearing into this matter was held on November 8, 2016, at the Moss Justice Center in York, South Carolina before the Honorable Roger L. Couch. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire. Assistant Attorney General Justin Hunter of the South Carolina Attorney General's Office represented Respondent. Through an order filed August 27, 2018, Judge Couch denied and dismissed the application. On September 13, 2018, Applicant filed a "Motion to Alter or Amend." This Return follows.

III. Applicant's Motion to Alter or Amend

In his "Motion to Alter or Amend the Judgment," Applicant requests numerous statements be added to the testimony summarized in the order of dismissal (hereinafter the order) as well as additional findings be made by this Court. However, many of the statements Applicant is requesting this Court to amend do not accurately reflect the testimony given during the post-conviction relief hearing. Applicant's motion to alter or amend is without merit and should be denied. This Court's Order of Dismissal contains the required findings of fact and conclusions of law necessary to dispense with Applicant's allegations as required by S.C. Code Ann. §17-27-80 and Rule 52(a), SCRCP; see also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). This Court properly ruled on all issues before it and Applicant's motion should be denied.

Response to Appendix 1

Applicant requests testimony be added about the package containing imitation drugs and being addressed to Shaerica White's residence, however, this information is already included in the order. In the Summary of Facts there are numerous detailed statements about the imitation drugs, the investigation into the package, and the package being addressed to Ms. White's residence. (OOD. 2.) If this Court finds the statements about Gregory Parker need to be added, Respondent requests the testimony from Assistant Solicitor Shelton also be added indicating Gregory Parker was not relevant to the State's case. (PCR Tr. 107.) Applicant also requests a statement be added stating Counsel, "did not do anything in regards to looking into this matter and using it in preparation for trial." This may be Applicant's argument based on the testimony he provided at the hearing, however the statement Applicant proposes to add is not a correct recitation of the statement made at the hearing and therefore should not be added.

Response to Appendix 2

This Court found credible Counsel's testimony that she advised Applicant to take the no contest plea after the cell phone records were going to be found admissible and Applicant's co-defendant took a plea. Additionally, this Court found credible Counsel's testimony that the decision to take the plea was Applicant's decision and she had not promised him anything in order for him to take the plea. (PCR Tr. 52.) Applicant requests this Court add several statements to the order regarding Applicant's desire to go to trial and Applicant's claim that Counsel assured him they would win at trial. This testimony was not found credible by this Court and this testimony

was not relevant to the findings made by this Court. However, if this Court feels this testimony should be added, Respondent would request Counsel's testimony noted above be added as well.

Response to Appendix 3

Applicant's requested additions in this section provides a summary that does not accurately explain the cell phone evidence the State had against Applicant. During the post-conviction relief hearing, this Court asked Assistant Solicitor Matthew Shelton to go over in detail the cell phone evidence the State had against Applicant. (PCR Tr. 110-111.) Mr. Shelton testified Applicant claimed ownership of a white Samsung phone that was left in a car. During the post-conviction relief hearing, Applicant also claimed ownership of the Samsung phone. (PCR Tr. 62.) The white Samsung phone texted "Doey" providing phone number (678) 517- with a text message stating it was Applicant's "new number." (PCR Tr. 111.) The "678" phone number was saved in his co-defendant's phone under the name "JOC." (PCR Tr. 110-111.) Based on this testimony, Applicant's requested additions are not an accurate summary of the credible testimony provided at the post-conviction relief hearing and should therefore not be included.

Response to Appendix 4

The testimony Applicant requests this Court add to the order regarding the burglary charge conflicts with the credible testimony provided by Assistant Solicitor Shelton during the post-conviction relief hearing. According to Mr. Shelton, the burglary charge was dismissed because he did not want to muddy the waters for the jury with that charge since the trafficking charge would carry a mandatory minimum of twenty-five years. (PCR Tr. 102.) At no time does Mr. Shelton testify that Ms. White recanted her statements to police. In fact, Mr. Shelton testifies Ms. White,

"never wavered in her statement to me. She never said I made this up." (PCR Tr. 102.) The statements Applicant is requesting this Court add to the order are not credible, however, if this Court would like any of this proposed testimony added to the order of dismissal, Respondent would request the above testimony from Mr. Shelton also be added.

Response to Appendix 5

Applicant stated he is concerned about the manner in which the original package was seized by police, the search warrant police obtained, and whether it was proper for the drugs to be replaced with an imitation substance prior to delivery. Currently, the order has detailed testimony regarding the identification of the package as a potential "suspicious package", the K-9 sniff, and the search warrant in the order. (OOD. 2.) The order also explains imitation drugs were put into the package and a controlled delivery was executed at Ms. White's residence. (OOD. 2.) Applicant has only set forth statements of issues in this section; Applicant has not provided specific testimony regarding those issues he would like added to the order. It is unclear to Respondent what Applicant is requesting from the Court on these issues.

Response to Appendix 6

Applicant's requested additions in this section are not meritorious. According to the transcript from the pre-trial hearing, Counsel's challenge to the search warrant and the suspicious package occurred well before Applicant took the plea offer. Applicant's claim that he learned of the substitution of the drugs in the package "just prior to entering into the plea" is not credible based on the pretrial transcript, which is cited in the order. (OOD. 4.) It was Counsel's motion to challenge the package and search warrant that led the State to proffer testimony about "controlled

deliveries" and parcel interdiction through numerous witnesses. Applicant was present for the pretrial motions and would have learned about the substitution of drugs well before his plea. Additionally, Counsel testified she went over the discovery with Applicant prior to trial. (PCR Tr. 49.) Based on this Court finding credible Counsel's testimony, Applicant's proposed amendments should not be added.

Response to Appendix 7

Applicant's requested additions in this section are not accurate based on the findings made by this Court. This Court found the ruling by Judge Alford on the pre-trial motions induced Applicant to take the plea, therefore Applicant had to be aware of the ruling *prior* to his plea. Although Judge Alford took the pre-trial motions under advisement, there was no testimony that he "delayed [his] ruling." Counsel testified, and the order accurately reflects, the pre-trial motion ruling "sent everything into a tizzy" and the posture went from trial to guilty plea because Counsel did not know whether Applicant's co-defendant would testify against him. This Court properly found, "On the morning set for trial Judge Alford informed the parties that he intended to allow admission of those records. That coupled with substantial evidence linking the applicant to the retrieval of the drug package resulted in trial counsel recommending the acceptance of the plea offer."[1] The order properly reflects the finding made by this Court and Applicant's proposed amendments should not be added.

[1] Email provided to the parties from Judge Couch detailing his findings on April 25, 2018.

Response to Appendix 8

The order accurately states Applicant testified he took the plea because of Counsel's advice. (OOD. 6.) There are no transcript citations provided by Applicant to show Counsel ever testified Applicant agreed to take the plea because of her advice. Counsel testified it was Applicant's decision to take the plea and she went over a plea waiver form with him. (PCR Tr. 47.) Counsel testified it was "absolutely" Applicant's decision to take the plea offer in this case and she did not promise him anything nor coerced him to plead. (PCR Tr. 52.) The statements requested in this section by Applicant are not accurate.

Response to Appendix 9

The order accurately states Applicant pled no contest to the lesser included offense of trafficking cocaine between 20 and 100 grams, second offense. (OOD. 2, 6.) This Court properly found Applicant's plea was voluntarily and intelligently entered into and the order appropriately reflects that finding.

Response to Appendix 10

The information Applicant proposes to add to the order is not credible based on the findings made by this Court. This Court did not find credible Applicant's testimony regarding his version of the facts. The co-defendant's attorney also told Counsel, according to the co-defendant, Applicant was aware there were drugs in the package even though Applicant maintained to Counsel that he did not know. This statement is accurately reflected in the order as this Court found credible Counsel's testimony during the post-conviction relief hearing. (OOD. 6.)

Response to Appendix 11

The order of dismissal already accurately reflects Applicant's testimony that he did not believe Counsel was prepared for trial. (OOD. 6.) Counsel testified she was aware of the YouTube video and because of Applicant's last name there was some pre-trial publicity for this case. (PCR Tr. 44.) Applicant's PCR Counsel also conceded during the post-conviction relief hearing that the pretrial publicity did not really matter since the case did not go to trial. (PCR Tr. 44.) The order currently and accurately reflects the meritorious statements requested in this section.

Leah Moody's Testimony

Counsel's testimony regarding the plea offers extended to Applicant and his rejection of those offers is reflected in the order. (OOD. 5.) Counsel's motion to suppress the phone logs and the text messages was also included in the order. (OOD. 4.) Applicant does not accurately summarize the testimony provided by Counsel regarding her motion to suppress. Counsel testified she filed a motion to suppress the drugs because of the charges Applicant was facing, her trial strategy was to suppress the drugs. (PCR Tr. 22-23.) The accurate statements Applicant proposes to add are already included in the order. The summary Applicant proposes to add does not accurately reflect the testimony cited in the PCR transcript. Counsel never testified that she "did not make a motion, nor did she see any ability to make a motion to suppress the fact that the package as delivered did not contain any real drugs", which is the statement Applicant is seeking to add to the order. Counsel does testify that she filed a motion to suppress the drugs because Applicant told her that he did not know what was in the package and was not involved. Counsel

further testified there were "other things that came into play that I moved to suppress and so we were going to trial." (PCR Tr. 22.) Applicant's proposed amendment is not accurate and should therefore not be included in the order.

Additional Issues Raised at the Hearing

Applicant lists four additional issues that were raised at the hearing. The order accurately states Applicant testified Counsel was not prepared for trial and that induced his plea. (OOD. 6.) Counsel testified she believed Applicant and felt Ms. White was setting up her client. It is clear from Counsel's testimony that she was aware of Ms. White and had investigated Applicant's case. It is also clear Counsel moved to suppress numerous items, including the drugs, which led to the extensive two day pre-trial hearing. As this Court properly found, it was Judge Alford's decision after the pre-trial hearing that led to Applicant's decision to accept the plea offer. Applicant's claim that he was unaware of Judge Alford's ruling until his guilty plea is not credible. This Court found credible Counsel's testimony and appropriately found Counsel was not deficient in this case and Applicant's plea was voluntarily and intelligently entered. The order accurately reflects the testimony that supports this Court's findings and Applicant's proposed amendments should not be granted.

IV. Conclusion

WHEREFORE, having made its Return to the motion, Respondent requests the relief requested in the motion be denied and that said motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JANELL H. GREGORY
Assistant Attorney General

BY: _____
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

12/10, 2018

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS 2015-CP-46-818
JACQUESE T. UNDERWOOD, #323347, Applicant, vs. STATE OF SOUTH CAROLINA, Respondent.	AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return to Applicant's Motion to Alter or Amend Judgment** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, South Carolina 29063

DATED this the 18th day of December, 2018.

Caroline Collins, Administrative Coordinator
For Respondent

file

STATE OF SOUTH CAROLINA	)	IN THE COUNT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	DOCKET NO.: 2015-CP-46-00818
	)	
JACQUESE T. UNDERWOOD,	)	
	)	REPLY TO RESPONDENT'S RETURN TO
Applicant,	)	APPLICANT'S NOTICE OF MOTION AND
	)	MOTION TO ALTER OR AMEND
v.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

FILED-RECEIVED
2019 JAN 14 AM 11:51
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

That the Applicant, through his undersigned counsel would make his reply to the Respondent's Return to the Applicant's Motion to Alter or Amend and would respectfully show unto the Court:

1. That the Applicant realleges all requests as set forth and stated in his Motion to Alter or Amend.
2. That there is still an outstanding issue regarding the Affidavit of Gregory Parker. A request was sent to the Court on December 12, 2017 regarding Mr. Parker's Affidavit and how the Court wished to proceed in this matter. Mr. Parker came forward after the Post Conviction Relief Trial but before the Court made a final decision in this matter. A copy of Applicant's letter of December 12, 2017 and Affidavit of Gregory Eugene Parker is attached hereto.

The Applicant would respectfully request that this Court alter or amend the Order of Dismissal to allow for a complete addressing of all issues.

Respectfully submitted,

Tommy A. Thomas
Attorney for the Applicant
7588 Woodrow Street
Irmo, SC 29063
(803) 732-5507

January 9, 2019
Irmo, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COUNT OF COMMON PLEAS
)	
COUNTY OF YORK)	DOCKET NO.: 2015-CP-46-00818

JACQUESE T. UNDERWOOD,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

CERTIFICATE OF SERVICE

FILED-RECEIVED
2019 JAN 14 AM 8:51
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of a Reply to Respondent's Return to Applicant's Notice of Motion and Motion to Alter of Amend by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Janell Gregory, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

The Honorable Rodger L. Couch
Judge of the Seventh Judicial Circuit
Spartanburg County Courthouse
P.O. Box 2614
Spartanburg, SC 29304

Jacquelyn E. Miller
Tommy A. Thomas, Esq.
Attorney at Law
7588 Woodrow Street
P.O. Box 88
Irmo, S.C. 29063
(803) 732-5507

January 9, 2019

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of York	)	2015-CP-46-00818
	)	
	)	
JACQUESE UNDERWOOD,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

May 6, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE ROGER COUCH, JUDGE.

APPEARANCES:

TOMMY A. THOMAS, ESQ.
Attorney for the Applicant

JANELL H. GREGORY, Assistant Attorney General
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

THE COURT: We're on the record in the case of Underwood vs. State. It's a Post Conviction Relief matter. I have issued an order in the case and the Applicant has filed a Rule 59(e) motion for me to reconsider that order.

Why don't we state our appearances on the record before we begin.

MR. THOMAS: Sure. Tommy Thomas, I am here for Mr. Underwood.

MS. GREGORY: Janell Gregory, Your Honor, and I am representing the State.

THE COURT: All right. Thank you very much.

Yes, sir, Mr. Thomas.

MR. THOMAS: Your Honor, may it please the Court. We filed a -- initially, we filed a 59(e) motion to address certain issues in the proposed order.

THE COURT: Yes, sir.

MR. THOMAS: And then, also, after that, there was a gentleman who -- Gregory Parker, who was one of the players, for lack of a better word, in this case in that he was living at the residence where the drug package was delivered.

THE COURT: Yes, sir.

MR. THOMAS: And he came forward, he said he had some information.

THE COURT: When you say he came forward, he came forward to you?

MR. THOMAS: To me, yes, sir. Someone -- I can't remember if he contacted me or somebody contacted me on his behalf. I felt uncomfortable speaking with him, so I suggested that he see an attorney in Rock Hill. And Michael Brown is who I suggested. I think he eventually went to see Mr. Brown.

Mr. Brown represented him for the purpose of taking a statement from him, and in that statement, which is dated -- it's a sworn affidavit, actually, December 7th, 2017. We attached that and, basically, supplemented our 59(e) motion.

Part of that was I felt at the time that it was after discovered, but I was concerned about procedural problems with me knowing about it and a final order not having been issued. So I wanted to bring that to the Court's attention.

THE COURT: Well, the way I view the situation is I have issued a final order.

MR. THOMAS: Yes, sir.

THE COURT: You've asked me to reconsider that order; however, I would not reopen the record of my hearing for someone who came forward after that hearing.

MR. THOMAS: Yes, sir.

THE COURT: And so I would consider that to be something that should be handled in a separate PCR as after-discovered evidence.

MR. THOMAS: All right, sir.

THE COURT: I'll leave it at that. I will not reopen this record to allow that testimony to be placed in this case.

MR. THOMAS: Yes, sir. And I understand the Court cannot make a ruling on this issue, but I just wanted to put on the record that that affidavit was dated December 7th of 2017.

The Post Conviction Relief hearing was actually November 8th of 2016. If there is a one-year statute of limitations on the after-discovered, I felt like the proper procedural issue was to bring it to the Court's attention first.

THE COURT: All right.

MR. THOMAS: To determine whether or not it should be included in the original Post Conviction. And that's why I didn't file two issues at the same time.

THE COURT: All right. Well, I'll just put on the record I would not reopen the record to allow that to come into this case.

MR. THOMAS: All right. Thank you, Your Honor.

THE COURT: Yes, sir.

MR. THOMAS: Your Honor, if it please the Court, the other issues are consider the 59 -- the original 59(e) motion that we filed.

I've spoken to the Attorney General, and I believe that it could be kind of simplified to some extent for the motion. We felt at the time that there were some issues that were not raised in the Court's order.

It's pretty -- it's pretty straightforward order, but there was an issue about -- that was testified to about Sherika White. Sherika White was the owner of the house where the package was delivered to.

It's my understand Ms. White -- supposedly, the package was addressed to her, and we had raised an issue of ineffective assistance of counsel for not investigating on defense counsel's part the role of Sherika White and that -- my client had testified that he felt like that she was not prepared to take that issue to trial. We would like to ask the Court just some clarification of addressing that issue.

And then, also, my client felt very strongly and has raised the issue about the intercept of the package at the facility. I can't remember if it was FedEx or UPS, one of those facilities, in that --

THE COURT: It was one of the package delivery services. I can't recall.

MR. THOMAS: Yes, one of those services, Your Honor. And that there was an issue of the drugs taken out of package and a substance, which was not a drug put into the package and actually delivered.

And he believes that counsel was ineffective in not addressing that issue about the substitution of the drugs and how that would have affected either the charges that he had, which were trafficking cocaine and/or he eventually -- and/or the conspiracy to traffic, Your Honor.

THE COURT: Okay. All right. I'll hear from the State on those matters.

MS. GREGORY: Thank you, Your Honor. And I failed to give you your judge's packet. May I approach?

THE COURT: You may pass it up. Thank you.

Yes, ma'am.

MS. GREGORY: Your Honor, regarding the additional issues raised -- and I believe that was in Mr. Thomas' 59(e) motion at the very end -- my return address is that -- if you look at the Order of Dismissal on Page 6, we believe that counsel did address the Ms. White issue; that she investigated the case and believed that Ms. White was setting her client up.

And it's clear from counsel's testimony during the PCR hearing that she had investigated that. I believe it

is addressed fully in the order of dismissal.

Regarding his next issue, which I failed to write down --

THE COURT: The substitution.

MS. GREGORY: Oh, the substitution, yes, thank you. The substitution of drugs. Thank you, Your Honor. The substitution of drugs is also addressed in the order of dismissal. I am flipping through it trying to locate it.

THE COURT: Well, take your time and reference it, please.

MS. GREGORY: Sure. In the summary of facts, Your Honor, it is discussed thoroughly with transcript citations and everything, and that's Page 2 of 12 and that continues on. Because there was an extensive pretrial motion hearing where they discussed the process of the K-9 sniff and I believe --

THE COURT: Well, I think that was done by Judge Alford and there were several issues raised at the pretrial hearing. I think it was an all-day hearing from what I remember reading in the information I had.

MS. GREGORY: Correct. And on my return to the Applicant's motion, under Appendix 5, I also addressed it. And if you'll look at the order of dismissal again on Page 2.

The order is detailed in identifying that the package

was suspicious. There was a K-9 sniff that led to the search warrant. The order also explains that imitation drugs were put in the package and a controlled delivery was executed at Ms. White's residence. Again, that's on Page 2 of the order.

The issues that were set forth in the return -- I'm sorry, in the motion to alter and amend, they're statements of issue. And I was fairly unclear by this motion what exactly he was asking to be added because I feel like I addressed in the statement of facts what transpired that led to the arrest. The imitation drugs were put in. I don't know, I'm kind of unclear as to what specifically --

THE COURT: Well, I can tell you that this Court reviewed the record that was given to me of the plea, the testimony that I received at the original hearing, the fact that Ms. White owned the house, that she -- the package, I believe, was addressed to her, it was delivered to her house. All of those facts were known to the defendant and his attorney, and that information was available at that time and considered by this Court.

I don't think those facts changed the posture of the case and so -- if the Court had considered looking any further, it would not have changed this Court's decision concerning the disposition of the application.

So to the extent that they're not highlighted maybe in the order, they were concerned by this Court, all those facts were. And so, I'll just say that for what it's worth. I would not change my decision based on what I've heard at this hearing --

MS. GREGORY: Sure.

THE COURT: -- at this time.

MS. GREGORY: Thank you, Your Honor.

MR. THOMAS: Thank you, Your Honor. Yes, sir.

THE COURT: I believe the statute includes an intent to commit these crimes.

MS. GREGORY: Yes, sir.

THE COURT: That's what the State has to prove.

MS. GREGORY: Yes, sir.

THE COURT: And based on what I heard about the case where the applicant was the one who picked the package up after what appears to be apparent signals from a codefendant who was driving the car outside following the delivery truck in, then even his behavior after the police approached the scene would indicate that he believed that there was something going down because he took off running and had to be chased down.

I don't know why you would run from a site where you didn't know something was wrong. You follow me? Just the totality of the circumstances --

MR. THOMAS: Yes, sir.

THE COURT: -- were such that I thought that the plea was justified. It was not a guilty plea. It was a no contest plea.

He didn't take full responsibility, but he wanted to go through with the negotiated sentence in this case. So he pled knowing what the sentence was going to be, knowing what was going to be presented to the judge and having all of this information available to him at that time.

MR. THOMAS: Yes, sir.

MS. GREGORY: Yes, sir.

THE COURT: That would be my ruling at this point in time.

MS. GREGORY: Yes, sir.

THE COURT: So I would ask the State at this time to prepare an order for me. Indicate that I considered the issues raised by the Applicant at this hearing; that those were factors that were considered in the order.

If I were to even reconsider them at this time, it would not change my ruling, and I would make the same ruling that I made earlier.

MS. GREGORY: Yes, sir.

THE COURT: All right. Prepare that order. Be sure to run it by counsel and then submit it to me.

MR. THOMAS: Yes, sir.

THE COURT: Thank you very much. That concludes the hearing.

MS. GREGORY: All right. Thank you.

(Whereupon, the proceedings were concluded.)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

I, Karen Ambroziak, Official Court Reporter for the 5th 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 Common Pleas for York County, South Carolina, on the 6th day of May, 2019.

November 8, 2019

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP4600818

Jacquese T Underwood	323347	South Carolina State Of	
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: The Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER DENYING APPLICANT'S MOTION PURSUANT TO RULE 59(e)

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

he judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this rm may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or ldditional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
ote: Title abstractors and researchers should refer to the official court order for judgment details.
-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/Roger L. Couch — **Circuit Court Judge**

2135 — **Judge Code**

6/20/2019 — **Date**

For Clerk of Court Office Use Only

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
)
) CASE NO.: 2015-CP-46-818
JACQUESE T. UNDERWOOD, #323347)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
STATE OF SOUTH CAROLINA)
Defendant.)

FILED-RECEIVED
2019 JUL -9 AM 11:24
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

Plaintiff's Attorney:	Defendant's Attorney:
Tommy A. Thomas, Bar No. _____	Janell H. Gregory, Bar No. _____
Address:	Address:
Post Office Box 88	Post Office Box 11549
Irmo, South Carolina 29063	Columbia, South Carolina 29211
Phone: _____ Fax _____	Phone: _____ Fax _____
E-mail: _____ Other: _____	E-mail: _____ Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Janell H. Gregory
Signature of Attorney for ☐ Plaintiff /☒ Defendant

June 21, 2019
Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ _____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
Jacquese T. Underwood, #323347 Applicant,	)	Case No. 2015-CP-46-818
v.	)	**ORDER DENYING APPLICANT'S MOTION PURSUANT TO RULE 59(e), SCRCP**
State of South Carolina, Respondent.	)	

This matter comes before the Court by way of Applicant's Motion pursuant to Rule 59(e), SCRCP, to alter or amend its order of dismissal denying the application for post-conviction relief.

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YORK COUNTY, SC

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the York County Clerk of Court's order of commitment. During the May 2014 term of the York County Grand Jury Applicant was indicted for trafficking in cocaine, 400 grams or more (2013-GS-46-2073). Applicant was represented by Leah Moody, Esquire (Plea Counsel). Assistant Solicitor Matthew Shelton of the Sixteenth Circuit Solicitor's Office prosecuted the case. On September 2, 2014, Applicant appeared before the Honorable Lee S. Alford and pled no contest to the lesser included offense of trafficking cocaine between 28 and 100 grams, second offense. Pursuant to negotiations between Applicant and the State, Judge Alford sentenced Applicant to imprisonment for twelve years and six months. Applicant did not appeal his conviction.

II. Current Post-Conviction Relief Action

Applicant subsequently filed his post-conviction relief application on March 16, 2015. Respondent made its Return on August 12, 2015. Applicant raised the following issues in his application:

1. Ineffective Assistance of Counsel
2. Involuntary Guilty Plea

A hearing into this matter was held on November 8, 2016, at the Moss Justice Center in York, South Carolina before the Honorable Roger L. Couch. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire (Counsel). Assistant Attorney General Justin Hunter of the South Carolina Attorney General's Office represented Respondent. Through an order filed August 27, 2018, Judge Couch denied and dismissed the application. On September 13, 2018, Applicant filed a "Motion to Alter or Amend." The Respondent made its Return to the Motion on December 31, 2018.

A hearing on Applicant's motion was held on May 6, 2018, at the Richland County Courthouse. Applicant was present and represented by Tommy A. Thomas, Esquire. Assistant Attorney Janell Gregory of the South Carolina Attorney General's Office represented the State. Applicant proceed only on the following issues:

1) On December 12, 2017, Applicant provided this Court with an affidavit of Gregory Parker (Parker) and that matter needs to be addressed.

2) Applicant requests the order of dismissal be amended to adequately address Applicant's allegation of ineffective assistance of counsel for failure to investigate Sharika White (White).

3) Applicant requests the order of dismissal be amended to adequately address the issue of ineffective assistance of counsel as it pertained to the substitution of imitation drugs prior to the controlled delivery of the package.

At the hearing, Counsel explained Parker came forward after the November 8, 2016,

post-conviction relief hearing stating he had some information. Counsel sent him to an attorney in Rock Hill and on December 7, 2017, Counsel received an affidavit from Parker stating he regularly received packages from the same company that sent the package in Applicant's case. Counsel also explained that the order of dismissal did not fully address the ineffective assistance of counsel claim regarding Plea Counsel's failure to investigate White. Counsel further requested the order be amended to explain that the package sent to White's residence was actually addressed to her and not to Applicant. Finally, Counsel requested the order be amended to address the interception of the package by the postal workers and the removal of the actual drugs by law enforcement. Counsel did not feel the use of imitation drugs during the controlled delivery was thoroughly addressed in the order.

As this Court immediately ruled on the issue regarding Parker's affidavit, the State responded to the remaining two issues Counsel raised during the hearing. The State argued that the order did address the ineffective assistance of counsel claim regarding Plea Counsel's failure to investigate White. The State explained the order does adequately address Applicant's claim that Plea Counsel was ineffective for failing to investigate his case and he did not believe she was prepared for trial. (OOD. 6.) The order further address Plea Counsel's testimony that she was aware of White and investigated Applicant's case. (OOD. 9) The State also argued the order adequately addresses the use of imitation drugs during the controlled delivery. The State explained that the details regarding the controlled delivery and the use of imitation drugs is explained at length in the order. (OOD. 2.) The order also explains the package was addressed to White and not Applicant. (OOD. 2.)

III. Applicant's Motion to Alter or Amend is Denied

This Court has carefully reviewed the record and considered Applicant's motion and the arguments presented by both parties and based upon careful reconsideration of all the evidence in this case this Court is not persuaded to alter or amend the judgment.

Affidavit of Gregory Parker

This Court will not reopen Applicant's record in order to consider and address the affidavit of Parker. If Applicant wishes to raise an argument regarding the Parker affidavit as newly discovered evidence, he should Applicant should file a subsequent post-conviction relief application.

Amendments Regarding Sharika White

This Court reviewed the record and was aware that White owned the house where the drugs were sent and that the package was addressed to her and not Applicant. The record also shows Applicant and Plea Counsel were aware of these facts as well. This Court knew and considered these facts prior to denying Applicant's application for post-conviction relief. This Court finds that considering those facts further would not have changed the outcome of this Court's decision.

Amendments Regarding the Imitation Drugs

In order for the State to prove Applicant was guilty of trafficking cocaine the State had to prove intent. This Court finds Applicant's actions showed intent. Applicant picked up the package after receiving signals from his co-defendant, and Applicant's behavior after the police approached further indicated Applicant knew there were drugs in the package. Based on the totality of the circumstances, this Court finds the plea was justified. This Court considered the

issues raised by Counsel when issuing the order of dismissal. This Court finds that considering these issues further would not have changed the outcome of the Court's decision.

Having carefully reviewed the record in this matter and arguments presented, this Court finds there is no basis for altering or amending its prior ruling. Therefore, this Court hereby denies Applicant's motion in its entirety, and affirms the previous order of dismissal.

This Court notes if Applicant wishes to seek appellate review of this order and the order of dismissal, a notice of appeal must be filed and served within thirty days of the service of this order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND IT IS SO ORDERED this 26th day of June, 2019.

Roger L. Couch
Presiding Judge
Sixteenth Judicial Circuit

Spartanburg, South Carolina

2019 476 17

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

CASE NO.: 2015-CP-46-818

Jacquese Underwood #323347,..... Appellant,

vs.

State of South Carolina, ...Respondent.

NOTICE OF APPEAL

The Appellant, Jacquese Underwood , appeals the Order of the Honorable Roger L. Couch, dated August 21, 2018. A Motion to Alter or Amend pursuant to Rule 59 (e) was timely filed and an Order Denying Applicant's Motion Pursuant to Rule 59 (e), SCRCP was signed by The Honorable Roger L. Couch on June 26, 2019 and filed on July 9, 2019. Appellant received written notice of entry of this order on July 11, 2019.

Respectfully submitted.

Tommy A. Thomas
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

August 6, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of General Sessions

Roger L. Couch, Circuit Court Judge

CASE NO.: 2015-CP-46-818

Jacquese Underwood #323347,..... Appellant,

vs.

State of South Carolina, ...Respondent.

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Secretary to Tommy A. Thomas, Esq., certify that I have served a copy of a Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid and the return address clearly shown on said envelope to:

Janell Gregory, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Jacquelyn E. Miller
Tommy A. Thomas, Esq.
Attorney at Law
7588 Woodrow Street
P.O. Box 88
Irmo, S.C. 29063
(803) 732-5507

August 6, 2019