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**Jun 24 2020**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal York County  
The Honorable William A. Mckinnon, Circuit Court Judge  
Appellate Case No. 2019-000470  
Trial Court Case No. 2018GS4607326

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THE STATE,

Appellant,

vs.

HAROLD GENE WHITE, III

Respondent.

---

**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF YORK

2019 MAR 14 AM 10:30

THE STATE,

vs.

Harold Gene White, III,

Defendant.

DAVID HAMILTON  
Clerk of Court  
YORK COUNTY, SC

Indictment No.: 2018-GS-46-07326

ORDER GRANTING MOTION TO DISMISS

CERTIFIED TRUE COPY  
2019 MAR 14 AM 10:36  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

Defendant Harold Gene White, III ("White") has moved to dismiss the charge of Trafficking Hydrocodone, Indictment No. 2018-GS-46-07326.<sup>1</sup> For the reasons set forth below, the motion is GRANTED.

During a search of White's residence on April 17, 2017, 88 hydrocodone pills were found. The State then indicted White for trafficking pursuant to S.C. Code Ann. 44-53-370(e)(3), which makes it unlawful to traffic: "four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210...." The question before the Court is whether hydrocodone is included in this statute. As far as the Court can determine, this is an issue of first impression in South Carolina.<sup>2</sup>

The State conceded in this matter that hydrocodone is not chemically "any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin," but that Court will analyze that issue out of thoroughness since it appears an appeal is likely.

It is first necessary to define the terms in the statute. "Opium" is a natural product of the *papaver somniferum* poppy plant, and contains numerous chemical compounds including: morphine, narcotine, codeine, thebaine, papaverine and narceline.<sup>3</sup> "Morphine" is a specific chemical substance: C<sub>17</sub>H<sub>19</sub>NO<sub>3</sub> and one of the component drugs found in opium.<sup>4</sup> "Heroin" is chemically modified morphine, and is a different chemical compound: C<sub>21</sub>H<sub>23</sub>NO<sub>5</sub>.<sup>5</sup> Hydrocodone, the substance at issue in this indictment, is a

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SC Court of Appeals

<sup>1</sup> Although the motion was originally made by the White as an objection to the indictment, the Assistant Solicitor requested, and the Court agreed, to dismiss the charge rather than quashing the indictment to allow for an appeal. The ruling was made prior to the start of the bench trial, and therefore double jeopardy had not attached.

<sup>2</sup> The Court is aware of *State v. Miles*, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017), in which the Court of Appeals affirmed a conviction under S.C. Code Ann. 44-53-370(e)(3) for trafficking oxydodone. However, *Miles* presented the issue of whether the defendant must know the specific drug has was possessing, rather than the issue of what drugs are covered by the statute.

<sup>3</sup> United Nations Office of Drugs and Crime, "The Opium Alkaloids," [https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin\\_1953-01-01\\_3\\_page005.html](https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1953-01-01_3_page005.html), visited 3/12/19.

<sup>4</sup> Pubmed Chemistry Database, "Morphine," <https://pubchem.ncbi.nlm.nih.gov/compound/5288826>, visited 3/12/19.

<sup>5</sup> Pubmed Chemistry Database, "Heroin," <https://pubchem.ncbi.nlm.nih.gov/compound/Diacetylmorphine#section=Top>, visited 3/12/19.

synthetic derivative of codeine or thebaine with the structure  $C_{18}H_{21}NO_3$ .<sup>6</sup> It is chemically distinct from both heroin and morphine, and not one of the chemicals found in opium.

While hydrocodone is not a component part of opium, and is chemically different than heroin and morphine, S.C. Code Ann. § 44-53-370(e)(3) also includes a "salt, isomer, or salt of an isomer thereof." An isomer is a chemical compound with an identical number and type of atoms as another compound, but with a different three dimensional structure (i.e., the atoms are arranged and connected differently). Hydrocodone is not an isomer of either morphine or heroin (it has a different chemical formula), and opium cannot have an isomer because it is a mixture of numerous different chemical compounds.

A "salt" in this sense is a compound formed by mixing an acid with the base compound.<sup>7</sup> Drugs are often mixed with hydrochloric acid (HCl) or other acids to create a salt that is dissolvable in water (for use in IVs, injections, etc).<sup>8</sup> Although there are salt forms of hydrocodone (e.g., hydrocodone bitartrate)<sup>9</sup>, hydrocodone itself is not a salt, much less a "salt" of morphine, heroin, or opium.

S.C. Code Ann. § 44-53-370(e)(3) also uses the phrase "any morphine," which is difficult to interpret because morphine is a specific chemical compound. It is possible "any" refers to the "salts" and "isomers" language (i.e., it means "any salt or isomer of morphine"). Even if the "any morphine" phrase is construed as broadly as possible, and "any morphine" is read to mean any chemical derivative of morphine, hydrocodone is not included. Hydrocodone is a chemical derivative of thebaine and codeine, not morphine.<sup>10</sup>

The only remaining avenue to sweep hydrocodone into S.C. Code Ann. § 44-53-370(e)(3) is the "as described in Section 44-53-190 or 44-53-210" clause, and this is what the State argues. S.C. Code Ann. § 44-53-190 and § 44-53-210 are the two statutory lists of drugs in Schedule I and Schedule II, respectively. It is difficult to determine what the legislature intended here, as none of the important terms from S.C. Code Ann. § 44-53-370(e)(3) are "described" or defined in sections 44-53-190 or 44-53-210. Further, those statutes include large numbers of drugs that are chemically unrelated to morphine, opium, and heroin (e.g., marijuana, peyote, psilocybin, and amphetamines).

Perhaps recognizing this difficulty, the State does not argue for wholesale importation of every drug in either S.C. Code Ann. § 44-53-190 or S.C. Code Ann. § 44-53-210 into the S.C. Code Ann. § 44-53-370(e)(3) trafficking statute. Instead, the State argues the term "opiate" should be imported from S.C. Code Ann. § 44-53-190 and § 44-53-210 into the S.C. Code Ann. 44-53-370(e)(3). The State essentially argues the phrase "as described in Section 44-53-190 or 44-53-210" should be interpreted to mean

<sup>6</sup> Pubmed Chemistry Database, "Hydrocodone", <https://pubchem.ncbi.nlm.nih.gov/compound/hydrocodone#section=Top>, visited 3/12/19; and NIH Liver Toxicity, "Hydrocodone," <https://livertox.nih.gov/Hydrocodone.htm>, visited 3/13/19.

<sup>7</sup> Chemistry Explained, "Salt," <http://www.chemistryexplained.com/Ru-Sp/Salt.html>, visited 3/13/19

<sup>8</sup> Patel, et al., "Pharmaceutical salts: a formulation trick or a clinical conundrum?", *Br J Cardiol* 2009;16:281-6, <https://bjcardio.co.uk/2009/11/pharmaceutical-salts-a-formulation-trick-or-a-clinical-conundrum/>, visited 3/13/19

<sup>9</sup> Pubmed Chemistry Database, "Hycon," <https://pubchem.ncbi.nlm.nih.gov/compound/5463977#section=Top>, visited 3/13/19.

<sup>10</sup> NIH Liver Toxicity, "Hydrocodone," <https://livertox.nih.gov/Hydrocodone.htm>, visited 3/13/19.

"including opiates as listed in Section 44-53-190 or 44-53-210" even though the word "opiate" does not appear in S.C. Code Ann. 44-53-370(e)(3).

An "opiate" is generally considered to be a drug made from opium. For example, the National Cancer Institute at the National Institute of Health defines an opiate as "A substance used to treat pain or cause sleep. Opiates are made from opium or have opium in them. Opiates bind to opioid receptors in the central nervous system. Examples of opiates are codeine, heroin, and morphine. An opiate is a type of analgesic agent."<sup>11</sup> The Merriam-Webster Dictionary agrees that an opiate is: "a drug (such as morphine or codeine) containing or derived from opium and tending to induce sleep and alleviate pain."<sup>12</sup>

However, "opiate" is defined in the South Carolina Code in a very unusual way:

'Opiate' means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under this article, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include racemic and levorotatory forms.

S.C. Code Ann. § 44-53-110(31).

South Carolina's unusual definition of opiate includes not just drugs derived from opium, but *any* drug "having an addiction-forming or addiction-sustaining liability similar to morphine" or even being capable of "conversion" into such a drug. This language is staggeringly vague and broad. How does someone determine if a drug has "addiction forming liability similar to morphine"? How many steps of chemical "conversions" are allowed in determining if a benign chemical can be converted into a substance with "addiction forming liability similar to morphine"? Given the widespread acknowledgement of the addictiveness of nicotine, surely the Legislature did not intend to include trafficking in cigarettes in S.C. Code Ann. § 44-53-370(e)(3), but that is a possible result if "opiates" are included and defined in this way.

What settles this matter definitively is the rule of lenity. "[I]n construing a criminal statute, we are guided by the rule of lenity—the principle that any ambiguity must be resolved in favor of the accused." *Berry v. State*, 381 S.C. 630, 633, 675 S.E.2d 425, 426 (2009). An important part of the rule of lenity is the concept of fair notice—that a criminal statute should make it plain what is prohibited. "[I]t is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear." *McBoyle v. United States*, 283 U.S. 25, 27 (1931).

Weighed against the rule of lenity, it is plain the motion must be granted. Hydrocodone is not mentioned in S.C. Code Ann. 44-53-370(e)(3) by name, and neither is it morphine or opium or heroin or a salt or isomer of one of those. There is no possible way the phrase "four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210..." can be fairly said to unambiguously pull in the definition of "opiate" from 44-53-

<sup>11</sup> NIH National Cancer Institute, "Opiate", <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/opiate>, visited 3/13/19


<sup>12</sup> Merriam-Webster's Dictionary, "Opiate," <https://www.merriam-webster.com/dictionary/opiate>, visited 3/13/19

190 or 44-53-210 when the word "opiate" appears nowhere in S.C. Code Ann. 44-53-370(e)(3). And even if that hurdle were somehow met, the rule of lenity would be further violated by the statutory definition of "opiate," of definition so vague and broad that it provides inadequate notice of what drugs are covered.

The abuse of opiates and other narcotics is one of the pressing legal issues of our time, but this Court "may not resort to subtle or forced construction in an attempt to limit or expand a statute's scope." *Paschal v. State Election Comm'n*, 317 S.C. 434, 437, 454 S.E.2d 890, 892 (1995).

MOTION GRANTED. TRAFFICKING HYDROCODONE CHARGE DISMISSED.

AND IT IS SO ORDERED this 14 day of March, 2019.

  
# 2767  
WILLIAM A. MCKINNON  
Presiding Judge  
Sixteenth Judicial Circuit

York, South Carolina

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STATE OF SOUTH CAROLINA

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STATE,

Plaintiff,

Case No.

-against-

2018-GS-46-07326

HAROLD WHITE,

Defendant.

-----x

March 12-13, 2019

York, S.C.

B E F O R E:

HONORABLE WILLIAM MCKINNON

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

ERIN JOYNER,

Attorney for the State

CHRISTOPHER WELLBORN,

Attorney for the Defendant

Aileen Butler

Official Court Reporter

EXHIBITS

3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
4	Court's 1	Document		30
5	Court's 2	Warrant		67
6				
7	Plf's 7	Photograph		110
8	Plf's 8	Diagram		110
9	Plf's 9	Diagram		
10	Plf's 10	Photographs		
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	<u>I N D E X</u>			
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1				
2				
3	Trista Baird			
4	Ms. Joyner	24		39
5	Mr. Wellborn		33	
6	Charity Chappellear			
7	Ms. Joyner	102		
8	Melissa Wallace			
9	Ms. Joyner	107		
10	Mr. Wellborn		127	
11	Willy Wylie			
12	Ms. Joyner	132		149
13	Mr. Wellborn		145	
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1 MS. JOYNER: The State is calling the case of  
2 State of South Carolina versus Harold White. They are  
3 Indictments 2018-GS-46-07326, trafficking hydrocodone,  
4 2018-GS-46-07327, possession with intent to distribute  
5 oxycodone, 2018-GS-46-03874, possession of cocaine,  
6 and 2018-GS-46-03876, possession with intent to  
7 distribute marijuana.

8 THE COURT: Miss Joyner, would you say that one  
9 more time. I was setting up my laptop.

10 MS. JOYNER: Yes, Your Honor.

11 The first is trafficking hydrocodone.  
12 2018-GS-46-7426.

13 THE COURT: Okay.

14 MS. JOYNER: Possession with in intent to  
15 distribute oxycodone which was the Indictment ending  
16 7327, possession of cocaine, Indictment ending in  
17 3874, and possession with intent to distribute  
18 marijuana, 3876.

19 THE COURT: Thank you, ma'am.

20 MS. JOYNER: Your Honor, the possession with  
21 intent to distribute oxycodone and trafficking  
22 hydrocodone are direct indictments. We provided a  
23 copIES to Mr. Wellborn. I think he indicated he will  
24 not require a formal arraignment.

25 THE COURT: Is that correct, Mr. Wellborn?

1 MR. WELLBORN: We have notice of those  
2 Indictments.

3 We are not requiring a formal arraignment.

4 THE COURT: Thank you, sir.

5 MS. JOYNER: Your Honor, Mr. Wellborn indicated  
6 yesterday that he wished to have a bench trial in this  
7 case.

8 THE COURT: Okay.

9 MS. JOYNER: The State does not wish to contest a  
10 bench trial. We agree to waive the State's right for  
11 a jury trial in this case.

12 THE COURT: Okay.

13 MS. JOYNER: And Your Honor, I prepared a jury  
14 list -- or a witness list in anticipation of a jury  
15 trial which would list out all the names that we  
16 expect to arise in this case. Not everybody  
17 necessarily to be an active witness. So -- but for  
18 the Court's information on the witnesses we expect to  
19 call or may be needed, we also -- so this is the names  
20 you may expect to hear and the second list is the  
21 redaction of people that we don't think we'll actually  
22 be calling in reference to this case or anticipate  
23 calling.

24 THE COURT: Whenever you all are ready.

25 MS. JOYNER: Your Honor, I know that Mr. Wellborn

1 has indicated that he has some pretrial. The State  
2 likewise has some pretrial.

3 THE COURT: Okay.

4 MS. JOYNER: I don't know how the Court would wish  
5 to proceed. Mr. Wellborn did subpoena Judge Wood who  
6 was the issuing Magistrate on the search warrant of  
7 the residence. I don't know if we wants to take up  
8 that issue first.

9 THE COURT: Why don't we do that first. Is Judge  
10 Woods here?

11 MR. WELLBORN: She is. But to be fair to the  
12 Court it would make sense to handle the first very  
13 quick motion before Judge Wood search warrant motion  
14 because one really kind of falls as a result of the  
15 other.

16 THE COURT: Okay. What's the first motion?

17 MR. WELLBORN: The first motion is a motion for a  
18 bill of particulars in this matter and that was filed  
19 last week. The purpose of the motion for the bill of  
20 particulars is somewhat simple in that my client was  
21 charged and surrendered himself on a warrant as of the  
22 sixth of March of last year. And among those warrants  
23 they all alleged offenses. That the offenses that are  
24 are on trial occurred at a specific location on on a  
25 specific day. Specifically, April 17, 2017, at 1635

1 Amanda Lane. My client was given those warrants. He  
2 was therefore put on notice that that was the charge  
3 against him which he would have to defend himself.  
4 The direct indictments in this case which were issued  
5 by the Grand Jury as of October 11th of 2018, so, more  
6 than a year later, said that my client committed these  
7 offenses on or about April 17th in York County.

8 Now, the problem with that is that in speaking  
9 with solicitor and maybe we can clear this up very  
10 quickly today -- that the solicitor has indicated that  
11 she feels that there are acts for which my client  
12 could be found guilty of these offenses that occurred  
13 at potentially other locations and other times other  
14 than those alleged in the warrants, which are April  
15 17, 2016, 1635 Amanda Lane. So there's a difference  
16 obviously between evidence that may come in such as  
17 404(b) evidence, right, evidence of a subsequent act  
18 or other act, that is -- makes it likely or more  
19 likely or less likely that the act on trial occurred.  
20 But what we're talking about is what is on trial.  
21 What you as the finder of fact will have to find that  
22 shows that my client is guilty of the discrete  
23 offenses for which he is on trial. We don't know what  
24 those act or acts are because the solicitor has  
25 indicated there maybe other acts that she feels

1 constitute the offenses for which my client is on  
2 trial. We haven't been given notice of what those  
3 acts are.

4 Now, why is that important? Well, it's important  
5 for multiple reasons. Number one, the due process  
6 clause of the Fifth Amendment of the United States and  
7 the due process clause of Article I, Section Three of  
8 the South Carolina Constitution demand it.

9 Number two, my client has a Sixth Amendment right,  
10 both to compulsory process and the right to present a  
11 defense under the Sixth Amendment of the United States  
12 Constitution and Washington versus Texas and United  
13 States versus Nixon and United States versus Burr,  
14 B-u-r-r. Also, under the South Carolina Constitution  
15 and South Carolina Common Law, stating State versus  
16 James Lemarcus Page. The cite for State versus James  
17 Lemarcus Page which quotes Washington versus Texas is  
18 750 S.E. 2d 623, the South Carolina Court of appeals  
19 case from 2013.

20 THE COURT: What do these cases say Mr. Wellborn?

21 MR. WELLBORN: Basically they're saying somebody  
22 has a right to present a defense.

23 THE COURT: Okay, I agree with you.

24 MR. WELLBORN: Okay. But the problem is we can't  
25 present a defense if we don't know what we are

1 defending and we also have a right of course to  
2 confrontation under the Sixth Amendment of the United  
3 States Constitution and under Article 1, Section 14 of  
4 the South Carolina Constitution. We can't know what  
5 we're going to confront and prepare a defense to  
6 confront that if we don't know what the acts are that  
7 they are going to try. So they have to give us  
8 notice.

9 Furthermore, the South Carolina Constitution is  
10 very clear.

11 THE COURT: Mr. Wellborn, are you alleging the  
12 Direct Indictments don't give you sufficient notice of  
13 what the acts are?

14 MR. WELLBORN: They give me notice of -- what the  
15 Indictment in trafficking hydrocodone gives me notice  
16 --

17 THE COURT: Do we have copies of the Indictments?

18 MR. WELLBORN: I do and I will be glad to hand up  
19 a copy.

20 THE COURT: Hold on to the original. Mr. Wellborn  
21 do you have copies.

22 MR. WELLBORN: Would you like to see my copies of  
23 the Indictments?

24 THE COURT: Do you have a copy for me, additional  
25 copy.

1 I think the clerk is going to make copies for me.

2 MR. WELLBORN: Okay.

3 THE COURT: Okay. I am looking at them now, Mr.  
4 Wellborn. Tell me what are you concerned about.

5 MR. WELLBORN: Okay. Well, I am concerned about  
6 the fact that the Indictments do not -- they allege  
7 all kind of possibilities for what might constitute  
8 the offense. Now, that's not uncommon in a  
9 trafficking case.

10 THE COURT: That is what the statute says.

11 MR. WELLBORN: Yes, it does. But the statute  
12 doesn't say that any old thing applies. The  
13 Indictment is a notice document and the notice has to  
14 be giving my client fair notice of what he is  
15 defending himself for.

16 Now, obviously we've been given notice that he is  
17 defending himself potentially for selling,  
18 manufacturing, bringing in to the state, assisting  
19 others in doing all this, on or about April 17th.

20 THE COURT: Right.

21 MR. WELLBORN: But what it doesn't give him notice  
22 of are where these locations are. Anywhere in York  
23 County on or about April 17th doesn't give him proper  
24 notice. Especially since by way of --

25 THE COURT: Do you have case law saying they have

1 to identify the location that it occurred at in the  
2 Indictment?

3 MR. WELLBORN: What I have, Your Honor, is the  
4 South Carolina Constitution which says that he has to  
5 be given proper notice and let me read the provision  
6 to you. This is Article 1, Section 14, of the South  
7 Carolina Constitution.

8 "Any person charged with an offense shall enjoy  
9 the right to a speedy and public trial, be fully  
10 informed of the nature and cause of the accusation."  
11 What we had up to the point of the direct indictment  
12 was we had absolute. We had a date. We had a  
13 location. We had what he was accused of. We knew  
14 what we were defending. Up until last week I was  
15 assuming that we were defending act or acts that  
16 occurred at 1635 Amanda Lane, on April 17, 2017. I  
17 assumed that the solicitor would attempt to introduce  
18 404(b) evidence that was -- made it more likely that  
19 those acts occurred under some theory of either common  
20 scheme or plan, or motive or identity. Whatever it  
21 might be under a Lyle exception to the general rule of  
22 preclusion. But I did not expect that there would be  
23 other acts that the solicitor would say, oh, at some  
24 other location at some other time he also committed  
25 the acts alleged in the indictment. That's what I'm

1 troubled about.

2 Now, if the solicitor says what she really intends  
3 to do is simply introduce 404(b) evidence and we're  
4 only trying the acts that allegedly occurred, those  
5 are the acts you have to make a finding of guilt or  
6 innocence, of those acts that occurred at 1635 Amanda  
7 Lane on April 17, 2017, then I have no argument.

8 THE COURT: Mr. Wellborn, let me stop you there.  
9 It may help me if one of you want to give me kind of  
10 brief summary of what happened in this case. I know  
11 nothing.

12 MR. WELLBORN: Sure. I will glad to since it's my  
13 motion.

14 On April 17, 2017, a search warrant was served on  
15 my client's home at 1635 Amanda Lane. As a result of  
16 that search warrant the drugs that are the subject of  
17 this particular trial were found in my client's  
18 residence.

19 THE COURT: What was found Mr. Wellborn?

20 MR. WELLBORN: Well, there was cocaine found,  
21 there was oxycodone found. There was hydrocodone.  
22 There was marijuana.

23 THE COURT: Okay.

24 MR. WELLBORN: All of which is the subject of this  
25 trial.

1 THE COURT: Okay.

2 MR. WELLBORN: So all the drugs that are the  
3 subject of this particular trial are before this Court  
4 as a result of this search warrant. There were no  
5 drugs that were found or will be placed into evidence  
6 in terms of tangible evidence that were found at any  
7 other location at any other time in York County or  
8 anywhere else. So, given that and given the warrants  
9 it's not hard to believe that we would expect we be  
10 trying a case that again other than 404(b) issues  
11 would be about the events and the items found at 1635  
12 Amanda Lane on April 17, 2017 and not trying acts that  
13 occurred at some other location, some other time.  
14 Again, it may be a complete nullity if the solicitor  
15 says I'm only going to introduce acts from other  
16 events for purposes of 404(b), but that has not yet  
17 been represented to me.

18 I actually did make the inquiry whether she  
19 intended on trying acts that occurred at other  
20 locations and simply introducing Lyle evidence or  
21 whether she just intended on introducing Lyle  
22 evidence.

23 THE COURT: Let me hear from Miss Joyner.

24 MS. JOYNER: Your Honor, just to supplement the  
25 facts that have already been presented, and I think

1 the motion does correctly stated that the defendant  
2 was arrested on March 6th of 2018 and was indicted in  
3 October of 2018.

4 So, as an initial matter, we do have an issue with  
5 the motion that Mr. Wellborn has presented to the  
6 Court because we don't believe that it is a proper  
7 motion under state law. And I am handing up a case to  
8 the Court.

9 THE COURT: Well, I'm not familiar with the motion  
10 for a Bill of Particulars. I have Westlaw on my  
11 computer here so I am looking up.

12 MS. JOYNER: That was State versus Wells, 162 S.C.  
13 509 (1931) and we've highlighted the appropriate  
14 section. It says, "The third contention of the  
15 appellant is that, on the second indictment, the Court  
16 should have granted this motion" --

17 THE COURT: I see it. You have highlighted in  
18 yellow.

19 MS. JOYNER: -- "requiring the State to furnish a  
20 bill of particulars." We know of no provision in our  
21 law requiring the presentation or delivery of a bill  
22 of particulars. It seems to be the practice in some  
23 jurisdictions, but it is not known in ours.  
24 Generally, the same result may be accomplished,  
25 however, by a motion to quash the indictment because

1 it does not furnish a defendant with the necessary and  
2 proper information for him to meet the charges  
3 preferred against him.

4 So I did key cite State versus Wells. I didn't  
5 find any more recent cases that talk about the bill of  
6 particulars except for two out of state cases. So I  
7 don't think that the motion as captioned and presented  
8 to the Court is a proper motion for the Court's  
9 consideration. That's the first part of the State's  
10 argument.

11 Secondly, factually, Your Honor, Mr. Wellborn  
12 communicated with me last Tuesday. He sent me an  
13 e-mail somewhere shortly after nine, asking if we  
14 could speak and I replied that I had to go to prelims.  
15 Could he e-mail me. I'm not the sure if he had gotten  
16 that email. In the meantime he called my paralegal to  
17 see if he could speak with me and I asked her to let  
18 him know if he hadn't seen my e-mail that I was going  
19 to prelims and that if he really needs to talk to me  
20 he can stop by prelims. So we had a very brief  
21 conversation last Tuesday and I already -- we already  
22 communicated that the State did intend to introduce  
23 evidence that his client is a drug dealer. But I  
24 think that -- I don't think it's proper for Mr.  
25 Wellborn -- it would be proper for him to object to

1           admissibility of certain evidence but I don't think  
2           that I'm required in advance of the trial to lay out  
3           my case or to try to quantify it as to under what  
4           legal theory it will come in and I was reluctant to do  
5           that with him. And -- but, in candor to the Court, he  
6           did indicate he was going to file a motion for a bill  
7           of particulars, but there was some kind of breakdown  
8           and I didn't actually get a copy until it came to the  
9           clerk so it perhaps may have got lost somewhere in my  
10          office but I got this yesterday. Again, personally I  
11          didn't have a chance to look at it.

12                 I don't think, for example, the State versus  
13          Lemarcus Page answers the question. That was my case,  
14          my trial case, and I don't have any similar issue that  
15          circled around that case.

16                 The State's position is that we are going to  
17          present evidence regarding prior drug dealing and we  
18          have a witness in the holding cell who will talk about  
19          prior drug transactions regarding roxy. That goes as  
20          to the oxycodone. We have the processing of the  
21          defendant's phone which talks about roxies -- well,  
22          talks about what we believe are oxycodone and refers  
23          to them as blues, roxies. We also have mention of  
24          pain pills. We have mention of what we believe is  
25          hydrocodone in the form of references to something

1 called a seven five. It could be hydrocodone or it  
2 could be oxycodone, but we believe that we could have  
3 some testimony come before the Court in the form of  
4 Eddie Black who is an investigator with the Department  
5 of Health who is also has a doctor in Pharmacy and  
6 investigated prescription pill fraud regarding what  
7 some of these terms mean.

8 So there's a lot on the phone. I would say  
9 different dates, but the earliest we would be looking  
10 at would be January of 2017, leading up to the search  
11 warrant that was served on April 17th of 2017.

12 THE COURT: Okay.

13 MS. JOYNER: So that's what we intend to introduce  
14 at this stage, however that is captioned or understood  
15 by the defense, but that's our intention.

16 THE COURT: Thank you, Miss Joyner.

17 MR. WELLBORN: Briefly in response.

18 I would point out two things. Number one, a bill  
19 of particulars is a vehicle that is very commonly  
20 filed and very commonly argued, very commonly heard in  
21 Federal Court.

22 THE COURT: Well, I understand Mr. Wellborn, but  
23 this case Miss Joyner passed me up seems to say there  
24 is no such provision in South Carolina.

25 MR. WELLBORN: And that's true and that was the

1 state of the law in 1931.

2 THE COURT: And today.

3 MR. WELLBORN: Well, I mean, I think it's open. I  
4 think whether we term it a motion for bill of  
5 particulars or motion for specificity or a motion to  
6 quash, the basis of it remains the same. I would also  
7 point out that Miss Joyner in response has said that  
8 she intends on introducing evidence. That's a  
9 separate issue then what acts my clients is on trial  
10 for. I'm simply asking that it be pinned down before  
11 we begin the defense of what acts my client is on  
12 trial for in terms of, are we defending a trafficking  
13 that occurred in January? Are we defending a  
14 trafficking that occurred in April whereby evidence  
15 that supports that April allegation will come in from  
16 a January act?

17 THE COURT: Mr. Wellborn, I'm looking at all four  
18 indictments. They seem to be standard indictments.  
19 They identify the date, the alleged conduct on or  
20 about and they give you the statute that your client  
21 is alleged to have violated. Is that not sufficient?

22 MR. WELLBORN: No, and I will tell you why.  
23 Because at some point in this trial you will have to  
24 make a determination as a matter of law whether or not  
25 the State has sustained enough in this matter whether

1 a directed verdict should be granted. The directed  
2 verdict has to be, have they proven that the acts  
3 alleged have occurred. Not have they shown me enough  
4 to make something that is a prior act that is evidence  
5 is admissible or not. They are two different issues  
6 and that's where you have to make that decision, is my  
7 client for instance in a --

8 THE COURT: I understand the distinction.

9 MR. WELLBORN: Right. Right. It's a very huge  
10 distinction between somebody in a Lyle situation  
11 whether they stole a gun to rob a bank and that is  
12 admissible as part of a common scheme or plan but they  
13 are not on trial for stealing the gun.

14 THE COURT: I understand.

15 MR. WELLBORN: And if the Court believes that they  
16 stole the gun but didn't rob the bank they don't get  
17 convicted of robbing the bank. That's basically were  
18 we are.

19 THE COURT: But the date is on or about April  
20 17th. Why is that not enough?

21 MR. WELLBORN: If the solicitor says that she  
22 agrees that we're trying -- that's what on trial is  
23 what occurred on April 17th at 1635 Amanda Lane and  
24 she just intends on introducing other acts, fine. We  
25 can have that argument. But my client -- we all need

1 some clarity as well as a review in Court of what we  
2 are actually trying in terms of the acts alleged, not  
3 the evidence.

4 THE COURT: What you want is a ruling if testimony  
5 comes in that a month prior to this your client sold  
6 drugs to someone I'm not going to convict him of  
7 possession for that based on that testimony.

8 MR. WELLBORN: That's correct.

9 THE COURT: Miss Joyner.

10 MS. JOYNER: Your Honor, I think primarily, when  
11 we're -- taking out Mr. William Wylie's testimony who  
12 is the individual who is going to testify regarding  
13 some prior drug transactions, specifically the  
14 oxycodone as he had purchased via a third party from  
15 the defendant. Regarding the trafficking in oxycodone  
16 the evidence of the prior dealings we would be relying  
17 on the telephones and so I think that on or about --  
18 on April 17th of 2017, 88 hydrocodone pills were found  
19 in Mr. White's home. The weight of those pills create  
20 the trafficking charge.

21 The -- by statute we're required to prove that he  
22 was -- the knowing element of the statute that he knew  
23 that -- that he was knowingly doing one of the  
24 criminal acts and that he knew that he had illicit or  
25 illegal drugs.

1           We also have -- we also have -- so you could  
2           constructively possess, you can actually possess, you  
3           can deliver, or you can attempt to deliver. So  
4           there's all different kinds of ways that he could be  
5           guilty of trafficking as to the hydrocodone. So I  
6           think the text messages that we have go back to  
7           showing all the different ways that the Court can find  
8           that he was trafficking the hydrocodone that he had in  
9           his possession.

10           It's sort of a res gestae of that possession on  
11           April 17th of 2017. So are we asking for the Court to  
12           say, oh, here's text message that he is going to sell  
13           hydrocodone but include that in the weight. No. But  
14           we're talking about the 88 pills that he had in his  
15           home. We're talking about what the text messages are  
16           going to show, his dominion and control. They are  
17           going to show his intention, which it can be simple as  
18           actual constructive possession. They also show that  
19           he had these with the intention of delivering which  
20           also is provided for in the hydrocodone statute. And  
21           they show the knowing, the knowing element that we are  
22           required to prove.

23           THE COURT: I think what Mr. Wellborn is trying to  
24           get at, is he wants to preclude an argument that,  
25           well, even if you know, for example -- and I'm not

1 suggesting I will rule that way, but if I find that 88  
2 pills that you just talked about he is not guilty on  
3 those but, well, the text messages shows he was guilty  
4 of possession on a different date. I think that's  
5 your argument.

6 MR. WELLBORN: That is my argument, Your Honor.

7 MS. JOYNER: Yes, we are not trying to ask you to  
8 add the weight of those pills. We're simply talking  
9 about the res gestae, the center of the nucleus being  
10 the 88 pills he's in possession.

11 THE COURT: The four indictments are all referring  
12 to the drugs that were found with the search warrant  
13 at his house on April 17th?

14 MS. JOYNER: Correct.

15 THE COURT: Okay, and you are going to want to  
16 bring in other evidence to show that he met the  
17 element of the statute but it's still the quantity of  
18 the drugs found on April 17th?

19 MS. JOYNER: That's correct. That's correct, Your  
20 Honor.

21 THE COURT: Mr. Wellborn, is that satisfactory?

22 MR. WELLBORN: That is. That is the substance of  
23 the motion.

24 THE COURT: Let's move on.

25 MR. WELLBORN: Thank you, Your Honor. May I

1 approach?

2 THE COURT: Absolutely. I would like to get Judge  
3 Woods out of here as quickly as possible.

4 MR. WELLBORN: This is the next motion. (Handed.)  
5 And those are cases I will be referring to.

6 THE COURT: All right. Quite a stack.

7 MR. WELLBORN: The next motion I have is to  
8 suppress any and all evidence that the State seized or  
9 found as a result of the search warrant served at 635  
10 Amanda Lane on April 17, 2017, as violative of my  
11 client's rights under the Forth Amendment of the  
12 United States Constitution and the provisions of the  
13 South Carolina Constitution arguing that under South  
14 Carolina Constitution we have even more enhanced  
15 rights because we have a specific constitutional right  
16 to privacy that does not exist within the federal  
17 constitution, albeit it does exist in common law.  
18 Obviously the onus would be on the State, but it's our  
19 position that the search warrant itself was invalid  
20 because it did not give --

21 THE COURT: Do you have a copy of the warrant?

22 MR. WELLBORN: So, I guess the State would have to  
23 put up argument because they are required to prove it.

24 MS. JOYNER: Could I ask Your Honor, Mr. Wellborn  
25 stated the argument again about what's wrong with the

1 warrant. I think that under -- I will be happy to put  
2 up witnesses, but I think under State versus Patton  
3 there has got to be more than just a generalized  
4 complaint.

5 THE COURT: It would certainly help the Court if  
6 you could tell me what --

7 MR. WELLBORN: Absolutely. The search warrant  
8 lacks probable cause.

9 MS. JOYNER: Your Honor, we've marked this as  
10 Court's Exhibit One. We are prepared to present the  
11 evidence of Special Agent Baird at this time.

12 THE COURT: Yes.

13 TRISTA BAIRD, called as a witness, having been  
14 duly sworn by The Clerk, was examined and testified  
15 as follows:

16 DIRECT EXAMINATION

17 BY MS. JOYNER:

18 Q Can you please states your full name for the Court.

19 A Trista Baird.

20 Q How are you employed?

21 A I work for the State Law Enforcement Division.

22 Q In what capacity?

23 A I'm special agent in the Special Victims Unit  
24 Department of Child Fatalities.

25 Q All right. How long have you been with SLED?

1 A Since May of 2013.

2 Q And that entire time have you been with child  
3 fatalities?

4 A I have.

5 Q Prior to that did you have any other law enforcement  
6 experience?

7 A I did. I worked for Rock Hill Police Department.

8 Q How long did you work for Rock Hill Police Department?

9 A As a police officer from 2007 to 2013.

10 Q In what capacity?

11 A I began on patrol. I also worked for the street crimes  
12 unit, worked for professional standards and also for the  
13 detective division.

14 Q What did you do with the detective division?

15 A Investigated child and vulnerable adult abuse.

16 Q So, going back to April 17th of 2017, were you employed  
17 with the South Carolina Law Enforcement Division?

18 A I was.

19 Q And at that time were you working on an investigation  
20 into the death of a nine-month old child, Juliana White?

21 A I was.

22 Q Had this occurred at 644 Simpson Street?

23 A That's right.

24 Q I am going to show you what has been marked as Court's  
25 Exhibit One. Do you recognize -- take a look at it and tell

1 the Court if you recognize that document?

2 A I do.

3 Q Okay. And what do you recognize that document as?

4 A It's the search warrant for 1635 Amanda Lane.

5 Q And were you the affiant on that search warrant?

6 A I was.

7 Q Who was the Magistrate or Municipal Judge that signed  
8 that search warrant?

9 A Judge Wood.

10 Q And is she a Magistrate in Rock Hill?

11 A She is.

12 Q For York County South Carolina?

13 A That's right.

14 Q And is the address of 1635 Amanda Lane within York  
15 County, within Rock Hill?

16 A It is.

17 Q Okay. Do you recall -- did you met with her on April  
18 17th of 2017?

19 A I did.

20 Q And do you recall what time you met with her, morning  
21 or afternoon?

22 A That morning.

23 Q And where did you met with Judge Wood?

24 A At her office on Cherry Road.

25 Q So when you met with Judge Wood. Had Judge Wood been

1 involved in this case or investigation of this case?

2 A No.

3 Q And when you arrived to met with her, did she place you  
4 under oath?

5 A She did.

6 Q Okay. And did you provide her the sworn affidavit that  
7 is pages two and three?

8 A I did.

9 Q Okay. And if you could please read for the Court going  
10 to your reasons for affiant's belief that property sought is on  
11 the subject premises.

12 THE COURT: Do you have a copy by any chance?

13 That would help me.

14 MR. WELLBORN: Your Honor, I have an extra copy if  
15 you like to make a copy of that.

16 MS. JOYNER: I got one, Your Honor.

17 THE COURT: Okay. Thank you ma'am. (Handed up to  
18 the Court)

19 Q Going to page three, can you please read the narrative  
20 that you presented to Judge Wood.

21 A "I, Special Agent, Trista Baird, being duly sworn state  
22 the following:

23 Special Agent, Trista Baird is employed with the South  
24 Carolina Law Enforcement Division and is assigned to the Special  
25 Victims Unit Department of Child Fatalities. S/A Baird has

1 worked in law enforcement since 2007. S/A Baird has been  
2 employed by SLED since May of 2013. Prior to working with SLED,  
3 S/A Baird was employed with the Rock Hill Police Department. As  
4 a detective assigned to investigate child and vulnerable adult  
5 abuse.

6 On March 29, 2017, at approximately 5:56 p.m. Piedmont  
7 Medical Center EMS and Rock Hill Police Department were  
8 dispatched to 644 Simpson Street in the city limits of Rock  
9 Hill, South Carolina in reference to a nine-month-old female,  
10 Juliana White, date of birth 6/15/2006. Date of death, 3/29,  
11 2007.

12 Q Is that '17?

13 A '17. I'm sorry. "3/29/2017. Unconscious and not  
14 breathing. EMS arrived on scene and found Juliana White supine  
15 on the living room floor with a female performing chest  
16 compressions. She was unresponsive, not breathing, had no  
17 pulse, and had vomit coming from her mouth. She was transported  
18 to Piedmont Medical Center where she was pronounced deceased.  
19 York County Coroner's Office, Rock Hill Police Department and  
20 SLED responded to the hospital.

21 According to Juliana White's father, Harold Gene White III,  
22 his mother, Yolanda Harris Adams, picked up his twins, Juliana  
23 White and Harper White from his residence at 1635 Amanda Lane,  
24 Rock Hill, South Carolina, at approximately 11 o'clock a.m. or  
25 12 o'clock p.m. on March 29, 2017. Adams took the twins to her

1 residence at 644 Simpson Street. Later in the afternoon, he  
2 went to Adam's house and found on Juliana White asleep in Adams'  
3 bed. Harper White was playing with Adams' friend, Williette  
4 Woodard Beard in the living room. Adams was not home. He then  
5 left the residence.

6 According to Adams, her neighbor, Jasmine Latasha Rawlinson,  
7 picked up the twins from Harold White and brought them to her  
8 house around lunchtime. Adams fed the twins each a bottle with  
9 formula mixed with infant cereal. Then, the three of them lay  
10 down on her bed and went to sleep. Adams and Harper both woke  
11 up, got out of bed, and left Juliana White sleeping in the bed.  
12 Adams got her children ready for their doctor's appointment and  
13 asked Amanda Joe Pettrey who resides at her residence and Beard  
14 to watch Juliana White and Harper White while she took her  
15 children to the doctor. When she was home Adams was told.

16 Q Did you insert a word there?

17 A I meant when she got home. When she got home Adams was  
18 told that Juliana White was still asleep and went to check on  
19 her. She found her unresponsive and not breathing. Adams  
20 brought Juliana White to Julisa White who had arrived on scene  
21 at some point prior to Adams arrival. Amanda Pettrey began CPR  
22 in the living room. Rawlinson, who was also on scene called  
23 911. Darrell Rodney Ross, who resides at the residence, was  
24 asleep in one of the bedrooms for most of the day.

25 An autopsy was completed on March 30, 2017. The toxicology

1 report from NMS labs revealed that Juliana White had 17  
2 nanograms over milliliters of of Fentanyl and 5.2 nanograms over  
3 milliliters of Norfentanyl in her blood at the time of her  
4 death.

5 It is the belief of this affiant that information gained  
6 from this search is necessary to assist investigators in  
7 determining the cause and manner of death of Juliana White, the  
8 individuals who were present at the time and leading up to her  
9 death, and the timeline of events surrounding her death."

10 MS. JOYNER: Your Honor, I'm sorry, I may have  
11 neglected to enter this as a Court exhibit. I ask  
12 that it be entered now.

13 MR. WELLBORN: Without objection.

14 THE COURT: It is entered into evidence.

15 (WHEREUPON, Court's Exhibit One, received in  
16 evidence as of this date.)

17 Q Now, Detective Baird, let's go step-by-step through the  
18 affidavit that you presented. Is all the information that is  
19 contained in affidavit correct?

20 A It is.

21 Q Correct as to what you knew from your investigation at  
22 that point?

23 A Right.

24 Q Had you been assigned to the case on March 29th at the  
25 time of 2017 when Juliana passed?

1 A I was.

2 Q Now, going to the description of properties sought. Go  
3 over to the second page. Can you please read that description  
4 to the Court?

5 A "Any and all evidence related to the death of Juliana  
6 White date of birth 6/15/2006, date of -- I'm sorry, 2016. Date  
7 of death 3/29/2017, to include Fentanyl, DEA scheduled II  
8 synthetic morphine substitute anesthetic/analgesic, any  
9 substances suspected to be Fentanyl, any and all paraphernalia  
10 or items associated with the use of Fentanyl; state issued  
11 identification card and/or driver's license of any and all  
12 individuals at the residence; any and all cellphones belonging  
13 to: Yolanda Harris Adams, date of birth 4/29/1971; Darrell  
14 Rodney Ross, date of birth 2/11/1951; Harold Gene White III,  
15 date of birth 10/1/1990; Jasmine Latasha Rawlinson, date of  
16 birth 10/24/1991; Julisa Gabrielle White, date of birth  
17 4/4/1990; Williette Woodard Beard, date of birth 7/24/1953, and  
18 Amanda Jo Pettrey date of birth 1/10/1982.

19 Q Are the names of those last cellphones belonging to are  
20 those the names of all the individuals that are listed were  
21 contained in your narrative?

22 A Right, they are.

23 Q Okay. And the property to be searched is listed as 1635  
24 Amanda Lane, within the limits of Rock Hill, County of York.

25 A That's correct.

1 Q And have you reviewed the address or the description of  
2 how to get to the residence and is that all correct?

3 A It is.

4 Q And again going back to the 1635 Amanda Lane am I  
5 correct it the residence that is referenced as belonging to the  
6 defendant, Harold Gene White III?

7 A That's right.

8 Q And Juliana White -- according -- going back to the  
9 affidavit had been at that residence up until lunchtime?

10 A That's right.

11 Q And then had gone to her grandmother's house at 644  
12 Simpson Street where she passed?

13 A That's right.

14 Q So going back to this reason for affiant's belief that  
15 the property sought, that narrative, was any other information  
16 provided to Judge Wood in support of probable cause in this  
17 case?

18 A No.

19 Q Okay. And were you sworn at the time this affidavit  
20 was presented to the judge?

21 A I was.

22 MS. JOYNER: I don't have any other questions at  
23 this time. I may have some additional questions  
24 depending on Mr. Wellborn questions.

25 THE COURT: Mr. Wellborn.

1 MR. WELLBORN: Thank you.

2 CROSS EXAMINATION

3 BY MR. WELLBORN:

4 Q Would you like some water?

5 A I am good.

6 MR. WELLBORN: Your Honor, is it all right if I  
7 stand here.

8 THE COURT: That will be fine.

9 MR. WELLBORN: Thank you.

10 Q So, I would like to go through with you your warrants.  
11 There are actually three warrants issued in this case, correct?

12 A Actually more. But for the homes and the phones.

13 Q Well, let me maybe help you out with some specificity.  
14 I don't want you guessing.

15 The warrants that was served at 6:35 Amanda Lane, that  
16 warrant was sought on the morning of April 17, 2017, correct?

17 A Correct.

18 Q At the same time or shortly thereafter within minutes  
19 you also sought a warrant for 644 Simpson Street, correct?

20 A Correct.

21 Q And I have that copy of that warrant with me but  
22 perhaps you may remember, the language in that warrant was  
23 identical with the exception of 644 Simpson Street to the  
24 warrants for Amanda Lane, correct?

25 A Correct.

1 Q And in fact specifically that warrant alleged the same  
2 exact facts verbatim. Basically you used the same language kind  
3 of carbon copied it, right?

4 A That's right.

5 Q Okay. And again, the warrant for 644 Simpson Street  
6 just like the warrant for Amanda Lane said, quote, it is the  
7 belief of the affiant, that is you, right?

8 A That's right.

9 Q That information gained from this search is necessary,  
10 right?

11 A Right.

12 Q To assist investigators in determining the cause and  
13 manner of death of Juliana White, right?

14 A Yes, sir.

15 Q The individuals who are present, right?

16 A Right.

17 Q At the time, I presume at the time of death, right?

18 A Time of death.

19 Q And leading up to her death and the timeline of events  
20 surrounding her death?

21 A That's right.

22 Q Okay. All right. You also sought a warrant which was  
23 issued on the 19th of April, so two days later, for Williette  
24 Beard, correct?

25 A I am not sure when it was. Is this for a phone or for

1 her hair.

2 Q I am going to show you this. This is dated April 19th,  
3 and it is for cellphones belonging to Williette Beard. Does  
4 that ring a bell?

5 A That's right.

6 Q Okay. And the language in the affidavit supporting  
7 supporting that warrant was the same identical language that had  
8 been used for the warrant for 644 Simpson Street and 1635 Amanda  
9 Lane. Correct?

10 A If I can read it. Probably, but --

11 Q Well, I don't want to -- let's go through that. Take a  
12 moment if you don't mind. And if you can look at the affidavit  
13 and tell me if there is a single word that is different from the  
14 affidavits that were issued two days before the other two  
15 locations?

16 A Right. It appears that it is the same.

17 Q Would you agree that it is in fact identical? And you  
18 typed it up, right?

19 A I did.

20 Q Okay.

21 A Yes, it is the same.

22 Q All right. It is identical. Okay. So you didn't  
23 actually individual type up each one of these warrants? You  
24 basically just did it in triplicate, xeroxed them, spit it out  
25 on the computer?

1 A No, I typed each one separately because the property  
2 and the place to be searched are all different.

3 Q But the affidavit is identical word for word, right?  
4 So is that spit out in triplicate or just copied?

5 A No, I probably copied it. It's all the same purpose.

6 Q All right. So three different locations, two separate  
7 days, same exact affidavit, the same need for the same stuff,  
8 right.

9 A For Williette it was just her phone.

10 Q Understood. But the affidavit was identical?

11 A Right.

12 Q All right. Let's go through the timeline if you don't  
13 mind leading up to this. As of March 29th is when Juliana White  
14 was taken to Piedmont Medical Center, correct?

15 A Correct.

16 Q And she was taken from 644 Simpson Street?

17 A That's right.

18 Q Not 1635 Amanda Lane?

19 A No, from Piedmont she came from Simpson Street.

20 Q Correct. And she arrived at Piedmont and on the same  
21 day, on the 29th of March she died, correct?

22 A Correct.

23 Q And she died at Piedmont Medical Center?

24 A Right.

25 Q And she presumably died in the presence of various

1 doctors and nurses, correct?

2 A That's right.

3 Q All right. So it wouldn't have been necessary as  
4 indicated in the affidavit to determine who was present when she  
5 died because you knew she died in Piedmont in the presence of  
6 doctors and nurse, correct?

7 A At the time at Simpson Street.

8 Q Well, I am reading from your affidavit and it says  
9 because this is what you told the judge and you did tell the  
10 judge this under oath, right?

11 A Right.

12 Q Okay. That it was necessary to assist investigators in  
13 determining the cause and manner of death and the individuals  
14 who were present at the time.

15 At time of death it would have been doctors and nurses,  
16 right?

17 A She was unconscious and not breathing. I'm not sure.  
18 I would have to look at the report but I don't think she came  
19 back from the hospital.

20 Q Sorry, I didn't mean to cut you off. I apologize for  
21 that. You wouldn't have found any -- realistically, any doctors  
22 or nurses that assisted Juliana White at either 644 Simpson  
23 Street or 1635 Amanda Lane by way of a search warrant, would  
24 you?

25 A No. My intent was that at the present, at the time she

1 was unconscious, not breathing.

2 Q Okay. Fair enough. But the irony is in the affidavit  
3 you already indicated who was present leading up to her death.  
4 That was the basis of your affidavit?

5 A That's what we were told.

6 Q Okay. And by searching someone's home you were going  
7 to be able to say oh, I can search the home and know they were  
8 present before this child died?

9 A Well, we were requesting cellphones in all of these.  
10 Right, by cellphones, yes, that would have helped us with that.

11 Q Okay. Fair enough.

12 A Or could have help us with that.

13 Q Cause and manner of death. Now, the arrant was sought  
14 on April 17th, correct?

15 A Yes, sir.

16 Q All right. As of March 30th there was an autopsy at  
17 Piedmont Medical Center, correct?

18 A Correct.

19 Q And so then as of April 15th two days prior to the  
20 warrant being sought you already knew the cause of death. It  
21 was from Fentanyl or Norfentanyl because you had the report from  
22 NMS labs, right?

23 A The cause of death was not told. We just had the  
24 toxicology report.

25 Q Okay. All right. Well, and so -- fair enough. So

1 then you get the search warrant and it is executed on the 17th,  
2 buy two days later you still feel you need to find out why this  
3 child died and who she was present -- who was present when she  
4 died which is why you're seeking Willette Beard's cellphone?

5 A Right. Her phone was one of the only ones that we  
6 couldn't get on the original search warrant.

7 Q Okay. All right. And as you said you presented no --  
8 there was no oral supplementation? You're familiar with that  
9 means, oral supplementation?

10 A Yes, sir, and no, there wasn't.

11 Q You just presented the warrants and they were signed  
12 and then you did your searches?

13 A That's right.

14 MR. WELLBORN: That's all the questions.

15 THE COURT: Any redirect Miss Joyner?

16 MS. JOYNER: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MS. JOYNER:

19 Q So going back, I just want to go back and direct your  
20 attention to the reason for affiant's belief that property  
21 sought is on the subject premises. Going to the second  
22 paragraph beginning on March 29, 2017. Please begin reading  
23 just again for EMS arrived on scene.

24 A "EMS arrived on scene and found Juliana White supine on  
25 the living room floor with a female performing chest

1 compressions. She was unresponsive, not breathing, had no  
2 pulse, and had vomit coming from her mouth. She was transported  
3 to Piedmont Medical Center where she was pronounced deceased.  
4 York County --

5 Q That's fine. You can stop now. So when you indicated  
6 that she was not breathing and had no pulse and was unresponsive  
7 on scene. Did that -- did you have understanding that she had  
8 passed at that point?

9 A That's right.

10 Q Okay. Are EMS workers allowed to pronounce a person  
11 dead without taking them to the hospital?

12 A They usually don't.

13 Q They usually don't. With fatalities it's not their  
14 practice.

15 A Right, it's not their practice.

16 Q But you went to the hospital, as the next line says,  
17 York County Coroner's Office, Rock Hill PD and SLED responded to  
18 hospital?

19 A That's right.

20 Q And at that point she was pronounced dead?

21 A That's right.

22 Q But you're not indicating that she wasn't dead before  
23 she got there. You're just simply indicating that's where the  
24 official pronouncement was made?

25 A Right. In my experience they often die at the home but

1 are transported and a time of death is given at the hospital but  
2 they are never resuscitated after leaving the home.

3 Q So, Mr. Wellborn asked you about the autopsy and  
4 toxicology, at the day that you sought this warrant, the search  
5 warrant, had the autopsy report been issued?

6 A No.

7 Q According to what you knew through your investigation  
8 was it clear when exactly Juliana had died?

9 A On the 29th.

10 Q But when on the 29th?

11 A Right before 911.

12 Q Okay.

13 A That's when we knew she was unconscious and not  
14 breathing.

15 Q That is when she was found unresponsive?

16 A Right.

17 Q Okay. Did you know at that point how she had obtained  
18 Fentanyl? How she had come to be positive with Fentanyl?

19 A No.

20 Q Nothing in your investigation -- there's nothing -- no  
21 information left out in this affidavit that you knew how she had  
22 come into contact with Fentanyl?

23 A Right. We did not know.

24 Q Did you know that Fentanyl was a dangerous drug?

25 A At the time of the warrant, yes.

1 Q Mr. Wellborn ask you about the similar, identical  
2 language of 644 Simpson Street. Was that language identical  
3 because you were investing and looking for evidence in both  
4 locations where the child had been just prior to her death?

5 A That's right, I was.

6 Q Did you also use similar language for your probable  
7 cause as to the extraction search warrants for the cellphones?

8 A I did.

9 Q You testified you did not have oral testimony, am I  
10 correct, you did not offer anything outside of this affidavit in  
11 support of the probable cause?

12 A No, just the warrants.

13 Q Did you talk to Judge Wood? Do you talk to Judge Wood  
14 when you go in to see her about search warrants?

15 A Yes.

16 Q Have a conversation with her?

17 A I do, yes.

18 Q But you did not offer anything outside of what is  
19 contained in the four corners in support of the search warrants,  
20 is that correct?

21 A No, I didn't.

22 MS. JOYNER: I don't have any other questions.

23 THE COURT: Any recross?

24 MR. WELLBORN: No, sir.

25 THE COURT: Okay. Thank you. You may step down.

1 MR. WELLBORN: Your Honor, given the fact that the  
2 officer testimony that there was no oral  
3 supplementation I don't have any reason to call Judge  
4 Wood.

5 THE COURT: Okay. Any objection to releasing  
6 Judge Wood.

7 MS. JOYNER: Not from the State.

8 MR. WELLBORN: Thank you.

9 THE COURT: Thank you, Judge Wood.

10 MR. WELLBORN: I'm prepared to argue on the issue  
11 of the search warrants.

12 THE COURT: All right.

13 MR. WELLBORN: So, Your Honor, of course the issue  
14 is not what the officer knew or the officer believed.  
15 The issue is what the magistrate was presented with,  
16 and the law is clear that given the fact that there  
17 was no oral supplementation that you, as reviewing  
18 Court, are limited to the four squares or four corners  
19 of the search warrant and that's State versus Kinloch.

20 MS. JOYNER: Was that in the packet? I apologize.

21 MR. WELLBORN: It is not. It's not in the packet  
22 but I think we all kind of know that's the law. I'm  
23 certainly happy to provide the case to Miss Joyner if  
24 she needs to review it.

25 The applicant of course, or the application for

1 search warrant has to have probable cause to show that  
2 there is a legitimate object of a search and that it's  
3 going to be located in a particular place and that's  
4 Steagald versus United States which is in the packet,  
5 that's United States Supreme Court 451, 204. Steagald  
6 is S-t-e-a-g-a-l-d versus United States, 1981 case.  
7 All of this of course flows from the seminal case of  
8 Illinois versus Gates, 462 U.S. 213, where the United  
9 States Supreme Court said sufficient information must  
10 be presented to a magistrate to allow -- to determine  
11 probable cause can't be a mere ratification of the  
12 bear conclusions of others. Mere affirmance of belief  
13 or suspicion is not enough.

14 That is also -- that's Nathanson versus United  
15 States which is in the packet. That goes back to  
16 1933, 290 United States Supreme Court, 41. That's  
17 found on page 47 of that opinion.

18 Fortunately we have a lot of guidance in South  
19 Carolina on this issue and there are several cases.  
20 First of all we have a statute which is 1713 one forty  
21 in South Carolina Code.

22 THE COURT: Is that in your packet?

23 MR. WELLBORN: I'm sorry.

24 THE COURT: Is that in your packet?

25 MR. WELLBORN: It should be.

1 THE COURT: The reason I ask, for whatever reason  
2 the internet is going extremely slow this morning.

3 MR. WELLBORN: What I'll do if Your Honor likes I  
4 am pretty sure it is in the package, but if not I will  
5 hand --

6 THE COURT: If I need to see it I'll ask, but go  
7 ahead.

8 MR. WELLBORN: So, it says that magistrate or  
9 recorder or city judge having the powers may issue a  
10 search warrant, for and seize (1) stolen or embezzled  
11 property; (2) property, the possession of which  
12 unlawful. Property which is being used or has been  
13 used in the commission of a criminal offense, or is  
14 possessed with the intent to be used in committing a  
15 criminal offense, or concealed to prevent a criminal  
16 defense from being discovered, or property  
17 constituting evidence of a crime or tending to show  
18 that a particular person committed a criminal offense.

19 Now, that's what our law allows somebody to be  
20 searched for and seized. Further, under the statute  
21 it says a warrant issued hereunder shall be issued  
22 only upon an affidavit sworn before a magistrate or  
23 court of record establishing the grounds for the  
24 warrant. So we do have a statute. Now again that's  
25 rather vague, but the case law is much more specific.

1           Within the packet, both Your Honor and the State  
2           should have State versus Smith, from 1990. And what  
3           we're talking about here is a warrant that is in this  
4           case I would argue is conclusory and that is what is  
5           not allowed in South Carolina. State versus Smith  
6           from 1990, on the second page of the opinion it talks  
7           about a robbery and the warrant there said, quote,  
8           that on May 12th approximately 11:45, Reginald Jerome  
9           Smith went to the Master Inn in Savannah. He robbed a  
10          manager. He's been staying at the Host of America,  
11          room 216 since January first. There is every reason  
12          to believe the weapon used in the robbery would be  
13          located in the room. That's a much more -- has more  
14          of a nexus and much less conclusory than this warrant.  
15          This warrant that we are dealing with in this case  
16          does not say that they expect to find Fentanyl in my  
17          client's house, that they expect to find any  
18          Norfentanyl in my client's house. That there's any  
19          reason to believe that anything located at 1635 Amanda  
20          Lane are items that would be related to this case. It  
21          simply says that we think it is necessary to assist  
22          investigators --

23                 THE COURT: But Mr. Wellborn, I just read this  
24                 case very briefly. The issue seems that it isn't  
25                 talking about the evidence in the Smith case. It's

1 saying that the search warrant doesn't explain why  
2 they believe this particular individual committed the  
3 robbery.

4 MR. WELLBORN: That's correct.

5 THE COURT: Isn't that totally different issue  
6 than what we have here?

7 MR. WELLBORN: But it still has the same result  
8 which is that the warrant should not have been issued.

9 THE COURT: But the conclusory statement at issue  
10 is -- let's see.

11 MR. WELLBORN: We have two conclusory statements.  
12 We have one in State versus Smith and the one here.

13 THE COURT: Right. The one in Smith goes into  
14 some detail of why they expect to find evidence of the  
15 crime at this location, but the Court in Smith said  
16 that's not enough.

17 THE COURT: But what the Court said it was not  
18 enough in Smith was the identification of this person  
19 as the robber.

20 MR. WELLBORN: Yes.

21 THE COURT: Which is not --

22 MR. WELLBORN: But it goes on. It says mere  
23 conclusory statements which gives the Magistrate no  
24 basis to make a judgement to find probable cause are  
25 are insufficient. This action can not be a mere

1           ratification of the bear conclusions of others. The  
2           last paragraph or the second to last here the  
3           affidavit says forth no facts as to why, police  
4           believed submit did anything. This warrants in our  
5           case gives nothing to the Magistrate as to why they  
6           believe Harold White committed a crime or why Harold  
7           White would have any potential Fentanyl or Norfentanyl  
8           or why Harold White -- for that matter this warrant  
9           doesn't even alleged that a crime occurred. It says a  
10          child died and the child had Fentanyl in her system.  
11          But it does not alleged that anybody has committed a  
12          crime, let alone that Harold White has committed a  
13          crime. Let alone the evidence of this alleged crime.

14                 THE COURT: Mr. Wellborn, it's not an arrest  
15          warrant. It's a search warrant looking for evidence  
16          for the death of a nine month old child.

17                 MR. WELLBORN: I understand, but the search  
18          warrant still has to have something that tells the  
19          Magistrate as to why evidence that is of a criminal --  
20          that something has happened that's either currently a  
21          crime or is likely to be found at 1635 Amanda Lane.

22                 THE COURT: I'm really -- the way I read the  
23          affidavit what we have is, we have a toxicology report  
24          saying there's Norfentanyl and Fentanyl in the baby's  
25          system, a nine-month old infant.

1 MR. WELLBORN: Correct.

2 THE COURT: And they were two locations that the  
3 infant was previously were the Amanda Lane address and  
4 what is is the other one -- and the Simpson Street  
5 address.

6 MR. WELLBORN: That is correct.

7 THE COURT: Isn't that enough to get a search  
8 warrant?

9 MR. WELLBORN: No, it is not.

10 THE COURT: Tell me why.

11 MR. WELLBORN: Because there has to be a nexus.  
12 There has to be some explanation as to why you expect  
13 these drugs to be found. I would also like to cite  
14 the next case from South Carolina.

15 THE COURT: Okay.

16 MR. WELLORN: Which is State versus Backus, 2008.  
17 In Backus -- and this is page five of eight of the  
18 opinion -- the Court said the affidavit fails to set  
19 forth any facts as to why police believed appellant  
20 committed the crime. The affidavit lacks specificity  
21 and contains conclusory statement. And again, that  
22 affidavit had more in it in terms of a nexus than this  
23 one. This affidavit we are dealing with in our case  
24 is simply says, that my client is the child's father.  
25 That his mother, the grandmother of the child, my

1 client's mother picked up his twins from his residence  
2 been 11 or 12 p.m. on March the 29th, 2017.

3 Approximately a month before.

4 So, you got potentially staleness issue on top of  
5 everything else. And that the grandmother, my  
6 client's mother took the twins to 644 Simpson Street.  
7 Later in the afternoon he went by the house and he  
8 found this child, Juliana asleep in the bed and then  
9 he left, 644 Simpson Street. At this point it doesn't  
10 mention anything about Fentanyl, Norfentanyl, and  
11 evidence of a crime, any drugs, or anything else.  
12 Then the warrant says that Jasmine Rowlinson picks up  
13 the twins from Harold White or according to Adams, the  
14 mother, she thought Jasmine Rawlinson picked up the  
15 twins from Harold White and brought her to her house  
16 around lunchtime. She feed the twins a bottle and  
17 infant cereal and laid them all down to bed and go to  
18 sleep. Again, no evidence of any drugs, no evidence  
19 of any crime.

20 Adams and Harper both woke up. Got out of bed.  
21 Left Juliana sleeping in the bed. Again, no evidence  
22 of any drugs. No evidence of any crime. Let's see.  
23 Let's see -- got her children ready for the doctor's  
24 appointment and asked a Amanda Jo Pettrey, who was at  
25 her residence, and Beard, Williette Beard, to watch

1           Juliana White and Harper White while she took her  
2           children to the doctor. When she went home -- so  
3           sometime later, the grandmother, my client's mother,  
4           comes back to the residence at 644 Simpson Street and  
5           is told that Juliana White was still asleep. She goes  
6           to check on her. She found her unresponsive and not  
7           breathing. At that point still no evidence of any  
8           crime. No evidence of any drugs. No evidence of any  
9           Fentanyl.

10           Adams brought Juliana White to Julisa White, who  
11           arrived at the scene at some point prior to Adams  
12           arrival rifle. Pettrey began CPR in the living room.  
13           Rowlinson was also on the scene called 911. Darrell  
14           Ross, who resides at the residence, was asleep in one  
15           bedrooms for most of the day.

16           So as of the date this child died there was no  
17           evidence of any crime. No evidence of any drugs. An  
18           autopsy is completed on March 30th. Then we get this  
19           NMS toxicology lab report that says she had Fentanyl,  
20           Norfentanyl in her blood at the time of death. But  
21           there is no evidence as to where that Fentanyl would  
22           have come from.

23           THE COURT: That's what the police are looking.

24           MR. WELLBORN: That's what they are looking but  
25           you can't just look for stuff because you want to look

1 for it. You have to have a nexus.

2 THE COURT: Mr. Wellborn, let me ask you this.  
3 You're a detective. You need to get a search warrant.  
4 You want to know where the baby got the Fentanyl.

5 MR. WELLBORN: Correct.

6 THE COURT: What do you think should have been in  
7 the affidavit?

8 MR. WELLBORN: There should have been some  
9 specificity as why they expect that they are going to  
10 find evidence of Fentanyl or Norfentanyl at 1635  
11 Amanda Lane.

12 THE COURT: And you don't think the fact that that  
13 was where the baby was staying immediately prior to  
14 the overdose that's not enough?

15 MR. WELLBORN: That isn't where the baby was  
16 staying immediately prior to the overdose.

17 THE COURT: Within a few hours.

18 MR. WELLBORN: It's still not enough.

19 THE COURT: Tell me what you think would be  
20 enough.

21 MR. WELLBORN: Perhaps something suggesting that  
22 there was evidence to believe that they would find  
23 drugs at that residence. That Harold White had been  
24 involved in Fentanyl or Norfentanyl. Not just we  
25 think --

1 THE COURT: It doesn't have to be your client.  
2 It's just the location, right?

3 MR. WELLBORN: Well, it's my clients and the  
4 location are both listed on the search warrant. But  
5 there's nothing in this warrant that says or states or  
6 alleges that you're going to find anything related to  
7 Fentanyl or Norfentanyl at my client's address other  
8 than the fact that's where the the child lived.

9 THE COURT: And the child overdosed on those  
10 drugs.

11 MR. WELLBORN: Well, it doesn't say that because  
12 again, we don't know that the child overdosed on drugs  
13 until we get the autopsy report after the search  
14 warrant.

15 THE COURT: There are two extremely strong  
16 narcotics, anesthetic/analgesic in a nine month old.

17 MR. WELLBORN: I agree. But let's look at this  
18 hypothetically. Hypothetically if this was an armed  
19 robbery case and there was armed robbery that occurred  
20 at 644 Simpson Street and one of the victims of the  
21 armed robbery was Juliana White, but Juliana White  
22 happened to just be there visiting. But she lived at  
23 1635 Amanda Lane. You wouldn't issue a search warrant  
24 for Amanda Lane to determine whether or not there was  
25 anything related to the armed robbery. You have to

1 have some nexus to it. Some reason that is stated to  
2 the Magistrate to believe that there is going to be  
3 evidence of that armed robbery at that address. There  
4 is nothing in here that suggests there would be  
5 evidence of Fentanyl or Norfentanyl that they are  
6 looking for or suggesting anything relating to her  
7 death because they know where she went down. They  
8 know where she was unresponsive. They know where she  
9 stopped breathing.

10 THE COURT: Are you making a time argument?  
11 Basically too much time has elapsed from when she was  
12 at the Amanda Lane address and therefore the warrant  
13 is not value.

14 MR. WELLBORN: Well, there are two arguments.  
15 Number one, I think the warrant is defective on its  
16 face. Number two, I think it is stale because it was  
17 sought a month later.

18 THE COURT: No, I mean, are you arguing it is  
19 defective because the elapsed time from when the baby  
20 left Amanda Lane to when she was discovered overdosed?  
21 Is that your argument, too much time has passed?

22 MR. WELLBORN: No, I am arguing they don't even  
23 allege that there is a reason they are going to find  
24 anything at Amanda Lane that relates to the death.

25 THE COURT: And you think they need something more

1 than a nine-month old infant had two different  
2 narcotics in her system and was unconscious and  
3 unresponsive.

4 MR. WELLBORN: They need something more than it's  
5 the belief of the affiant that the search is  
6 necessary. They need something in there that says  
7 they have reason to believe they are going to find  
8 something at Amanda Lane that will assist them in this  
9 investigation. They need something to suggest that  
10 they are going to find something that suggests that a  
11 crime occurred. And by the way, they don't even  
12 allege that a crime occurred.

13 THE COURT: They don't have to allege a crime  
14 occurred.

15 MR. WELLBORN: Well, they have to allege -- they  
16 have to be searching by law for evidence of a crime or  
17 concealment of a crime. That's required.

18 THE COURT: They can conclude that a crime didn't  
19 occur after the warrant. They are investing. They  
20 are investing a suspicious death. Isn't that not  
21 enough?

22 MR. WELLBORN: No, its not because a suspicious  
23 death can be anything. That can be somebody dies in a  
24 hospital of medical malpractice.

25 There has to be by our statute an under the

1 constitution of law a search warrants can only be  
2 issued if there is probable cause to believe that a  
3 crime has occurred and that evidence of this crime is  
4 going to be found at this particular location. That  
5 is not in the warrant. Simply not.

6 THE COURT: I'll hear from Miss Joyner.

7 MR. WELLBORN: And I would ask, Your Honor,  
8 also --

9 THE COURT: Mr. Wellborn, I will come back to you.

10 MR. WELLBORN: Thank you. There are two cases  
11 from 2018 that I think are are instructive as well.

12 MS. JOYNER: Your Honor, the State submits the  
13 affidavit, support of the search warrant, is supported  
14 by probable cause. I'm handing up to the Court, State  
15 versus Fletcher. It is a Court of Appeals decision  
16 and it does have a red flag so it was overruled on a  
17 different ground but the search warrant discussion I  
18 think is as close to being on point as can be. It's  
19 it looks long with a number of case notes. So getting  
20 to the discussion about the search warrant is on page  
21 18 of the Westlaw number and on 19 going into probable  
22 cause. But the underlying facts were that there was a  
23 deceased child, also nine months old. The deceased  
24 child was brought to a hospital and at about 1:15  
25 p.m., and the child was in full cardio pulmonary

1           arrest. Medical personnel ventilated, the medicated,  
2           they tried to resuscitate. They ultimately had to  
3           pronounce this child dead about three hours later. CT  
4           scan and x-rays showed that this child had suffered  
5           injuries to the abdomen, internal bleeding, bruising  
6           to the liver, bowels, pancreas low blood flow to the  
7           kidney, spleen and liver. So police began investing.  
8           They interviewed the hospital staff regarding the  
9           injury. They interviewed the child's mother who  
10          provided the statement that the child had fallen off  
11          of the bed earlier. That she had picked the child up.  
12          Comforted the child and thought everything was fine.  
13          Went about her day and did not realize anything was  
14          wrong until the dentist office that they were leaving  
15          -- I think it was while they were leaving she noticed  
16          something wasn't right. They road to the hospital  
17          while the defendant, who was her boyfriend, was  
18          performing CPR. The boyfriend gave two statements.  
19          Neither a full confession. The first sort of  
20          mirroring the mother's. I performed CPR. The child  
21          didn't look right after the dentist. And I think he  
22          mentioned that he does play with the kid or wrestle.  
23          And in a second statement did admit to hitting the  
24          child twice, but it's not clear from the case or from  
25          my reading of the case when exactly he said that

1 happened. Also asked whether he could put some  
2 pressure inadvertently on the child while wrestling.  
3 So, he challenged the search warrant affidavit. That  
4 argument, Fletcher, this is beginning on page 19 of  
5 the Westlaw cite or Westlaw page numbers; "Fletcher  
6 asserts the search warrant affidavit did not contain  
7 sufficient facts to constitute probable cause to  
8 believe evidence of a crime would be found at the  
9 residence. We disagree.'

10 They go on to say that based upon the totality of  
11 the circumstance the affidavit provided the Magistrate  
12 with a substantial basis for finding probably cause to  
13 search the home of the mother and boyfriend. The  
14 mother and the defendant.

15 The affidavit edifies that the mother claims the  
16 child had fallen out of the bed. Was brought to the  
17 hospital because he stopped breathing. That there  
18 were bruises on the child. They go on to say,  
19 suspicion of child abuse is not only implicit but  
20 verifiable, and thus the suspicion supports the  
21 Magistrate's finding of probable cause thus a warrant  
22 is valid. Because the investigator searched the  
23 warrant pursuant to valid warrant the trial Court  
24 properly refuses to suppress the evidence including  
25 hand cuffs and photographs found in the residence.

1 Then they go on to the scope of the search warrant and  
2 he further claimed that he did not describe with  
3 sufficient particularity the property to be seized and  
4 the Court refused upset the trial Court had erred in  
5 not suppressing evidence on that grounds. They then  
6 disagree. They go on to say that the warrant in this  
7 case, the property to be searched was perfectly  
8 appropriate. And the language of the search warrant  
9 very much mirrored the language of our search warrant  
10 in this case. They say, then they go on -- they go on  
11 to say on page 21 of the Westlaw page, "The warrant in  
12 the instant case was limited to evidence of abusive  
13 behavior to the children. The exact characteristics  
14 of the evidence was unknown to investigators.  
15 However, requiring a more detailed description would  
16 unreasonably thwart an investigation. And so in this  
17 particular case, the warrant alleged very similar to  
18 the language in our warrant. And I think that what we  
19 have from our warrant, Your Honor, is information  
20 presented to the Magistrate that showed the child was  
21 at two different addresses within six or seven hours  
22 of being unresponsive, being found unresponsive, CPR  
23 attempted at the residence. That she was nine months  
24 old. We know that she is positive for Fentanyl and  
25 Norfentanyl and we know from the affidavit that this

1 is a schedule two synthetic morphine substitute. And  
2 there is simply no way for a nine-month old to have  
3 voluntarily ingested this. I think there is more than  
4 probable cause for police to search this residence and  
5 the other residence, the last two places the children  
6 -- the child was known to be. And I think the  
7 Fletcher case supports that finding and I am just  
8 looking in Fletcher to the language of the search  
9 warrant.

10 THE COURT: They said it was implicit, right?

11 MS. JOYNER: Implicit, yes, sir. So we submit  
12 that Fletcher as again, overturned on a different  
13 ground. We believe that this answers any issue  
14 regarding probable cause to the affidavit.

15 THE COURT: Mr. Wellborn, is your argument that  
16 they don't specifically allege what crime they think  
17 may have been committed, is that the complaint?

18 MR. WELLBORN: They don't even allege a crime.  
19 They don't even allege a crime. In Fletcher the  
20 warrant, the Court said quote, "The warrant in the  
21 instant case was limited to evidence of abusive  
22 behavior towards children." That's what the Court  
23 decided in Fletcher. That's on page 21. This warrant  
24 does not allege anything that constitutes child  
25 neglect or drugs. It does not allege any crime

1                   whatsoever.

2                   THE COURT: Mr. Wellborn, unless it is injected  
3                   under a doctor's orders there is no way that a baby  
4                   could obtain Fentanyl and it not be a crime, is there?

5                   MR. WELLBORN: No, I agree with you but here's the  
6                   problem, judge. You still have the issue. You got to  
7                   show two things. Number one, that we are looking for  
8                   evidence of a crime. The other thing is that there is  
9                   some reason other than, you know, there's some reason  
10                  you are going to find this evidence of the crime or we  
11                  expect to find this evidence of the crime at the  
12                  location a month later.

13                  THE COURT: But the temporal proximity from the  
14                  overdose and the time the baby was at Amanda Lane  
15                  location you don't think that is enough?

16                  MR. WELLBORN: A month later?

17                  THE COURT: No, no. The few hours from when the  
18                  time the baby overdose from when the baby was at the  
19                  location.

20                  MR. WELLBORN: If they had sought a warrant on  
21                  March 29th or March 30th.

22                  THE COURT: So now it's staleness argument?

23                  MR. WELLBORN: There is a staleness aspect to  
24                  this, but here's one thing. It is is very interesting  
25                  because even in Fletcher the Court says, quote, "A

1 probable cause determination requires the Magistrate  
2 to analyze the totality of the circumstances before  
3 him and set forth in the affidavit before him there is  
4 fair probability that contraband or evidence of a  
5 crime will be found at a particular place.

6 Our warrant is devoid of anything to suggest that  
7 there is going to be Fentanyl or anything else found  
8 on Amanda Lane.

9 THE COURT: Except that the baby was there a few  
10 hours there it died of an overdose.

11 MR. WELLBORN: Right. But it doesn't even say  
12 that they think that there is going to be that they  
13 think Fentanyl came from Amanda Lane.

14 THE COURT: Isn't that obvious?

15 MR. WELLBORN: No, it's not obvious, Judge, and I  
16 will tell you why. The baby was picked up by people  
17 and transported in a car. The warrant does not seek a  
18 search of any of those cars. The baby was at various  
19 points with various folks throughout the house at 644  
20 Simpson Street.

21 Now there is a warrant for 644 Simpson Street, but  
22 the warrant does not search every place this baby  
23 could have been. Furthermore, we don't know how long  
24 that Fentanyl had been in the system. That Fentanyl  
25 could have arguably been in the system days, hours.

1 We don't know. Where was the baby the day before?

2 Where was the baby earlier?

3 THE COURT: Can't the police do a search in  
4 stages? It seems to be your arguing that unless the  
5 police simultaneously obtain search warrants for every  
6 possible location for the baby, no warrant is valid.

7 MR. WELLBORN: I'm not arguing that. What I'm  
8 arguing is they reached a conclusion and their  
9 conclusion was because this baby is the child of  
10 Harold White who lives at 1635 Amanda Lane and that's  
11 where the baby was picked up that morning that  
12 therefore there is probable cause to believe we are  
13 going to find evidence of Fentanyl or Norfentanyl at  
14 1635 Amanda Lane. And the cases that Your Honor has  
15 before you -- and at this point I would like to draw  
16 the Court's attention to State versus Dill which was  
17 decided last June by Justice James.

18 THE COURT: I read that.

19 MR. WELLBORN: The affidavit --

20 THE COURT: That deals with the reliability of  
21 what was told to the Magistrate, right?

22 MR. WELLBORN: Which is what we are dealing with,  
23 the reliability. It says quote, "The affidavit as  
24 written supplies no information supporting the initial  
25 mere conclusory assertion that there was an active

1 methamphetamine lab. Now that case the Magistrate was  
2 provided a statement saying there was a  
3 methamphetamine lab at this address we want to search.  
4 This is nothing in this warrant saying Magistrate, we  
5 believe we're going to find Fentanyl or Norfentanyl or  
6 evidence of at 1635 Amanda Lane.

7 THE COURT: I think I've heard enough. Mr.  
8 Wellborn, I disagree with you. I may be wrong but I  
9 think the search warrant is sufficient.

10 MR. WELLBORN: All right. Thank you, Your Honor.

11 THE COURT: What they have is, they have a baby, a  
12 nine-month old that can't voluntarily ingest Fentanyl.  
13 Who was exposed to Fentanyl and Norfentanyl and a  
14 matter of a few hours at two different -- at least  
15 they know of two different locations. I think that is  
16 enough.

17 MR. WELLBORN: And Your Honor, I would argue --  
18 ask for a ruling on the staleness issue since the  
19 search warrant was issued a month later.

20 THE COURT: I'm going to overrule that objection  
21 as well. They've got to wait for the toxicology  
22 report.

23 MR. WELLBORN: I understand they have to wait for  
24 a toxicology report. But why do they think a month  
25 later this evidence is still going to be there if it's

1 there at all.

2 THE COURT: They have to try.

3 MR. WELLBORN: Okay. I mean if the position of  
4 the Court is they have to try and that's good enough  
5 then I understand that's the Court's ruling.

6 THE COURT: I assume they did it as quickly as  
7 they could.

8 MR. WELLBORN: And again, I respectfully take  
9 exception to that, they have to try or they did it as  
10 and quickly as they could is grounds for probable  
11 cause but I understand that is the Court's ruling.

12 THE COURT: Thank you. Anything else counsel?

13 MS. JOYNER: Your Honor, we also have search  
14 warrant for the extraction of the phone. We would  
15 inquire whether there is objection to that.

16 MR. WELLBORN: Well, Your Honor, I believe that  
17 the phones were taken into law enforcement custody as  
18 a result of the search that was issued on April 17,  
19 2017. If the solicitor indicates that is the case I  
20 think we preserved our objections to the search  
21 warrant.

22 THE COURT: That would be the same basis.

23 MS. JOYNER: We have a separate search warrant  
24 for the extraction.

25 MR. WELLBORN: I understand. Just so we are

1 clear, those phones were seized as a result of a  
2 search warrant on April 17th. If that is the State's  
3 position and then later a search warrant was issued  
4 for extraction based on the same identical language  
5 then, yes, sir we would take exception to that coming  
6 into evidence.

7 MS. JOYNER: We should offer evidence on this as  
8 well.

9 THE COURT: I think what Mr. Wellborn is saying he  
10 is making an objection on the same basis and he thinks  
11 he has sufficiently objected.

12 MR. WELLBORN: And if the State can perhaps  
13 clarify were the phones that Miss Joyner is talking  
14 about and the search warrant related to extraction of  
15 those phones if those phones were taken into the  
16 State's -- if they were seized by the State as a  
17 result of a search warrant issued on April 17, 2017,  
18 then I would object to those. I don't need to object  
19 to the separate search warrant.

20 MS. JOYNER: Okay. Your Honor, just for the  
21 record, so we have several search warrants that were  
22 taken in and we are going to be offering or presenting  
23 hopefully as evidence items from the phone taken from  
24 Mr. White's person during execution of the search  
25 warrant at 1635 Amanda Lane. And so it is almost

1 identical language up until the cell phones were  
2 obtained. So we will make this a Court's Exhibit Two  
3 for the record.

4 (Court's Exhibit Two, warrant, received in  
5 evidence as of this date.)

6 THE COURT: I think what Mr. Wellborn said was he  
7 is not objecting to the warrant issued for the  
8 contents of phone.

9 MS. JOYNER: Yes, sir.

10 THE COURT: Maintaining the same objection to the  
11 issue of the original warrant. Is that correct Mr.  
12 Wellborn?

13 MR. WELLBORN: Yes, that's correct. The warrant  
14 issue and the contents of the phone is something that  
15 flows from the seizure and therefore it fruit of  
16 poison in the tree.

17 Now, just to protect the record I guess what I  
18 need to do is just go ahead and raise an objection to  
19 those search warrants as well. And Your Honor of  
20 course can make your ruling on that.

21 THE COURT: Well, your now objecting to the second  
22 warrant for the contents?

23 MR. WELLBORN: Yes, sir.

24 THE COURT: Miss Joyner, you need to put evidence  
25 on that.

1 MS. JOYNER: Okay.

2 MR. WELLBORN: And Your Honor, if the evidence is  
3 going to be the identical language in the search  
4 warrant and I think we probably already heard the  
5 predicate for it so you may not need to hear evidence,  
6 but that's up to Your Honor.

7 THE COURT: I think Ms. Joyner said there was some  
8 additional language in the warrant.

9 MS. JOYNER: Yes. We will ask Special Agent Baird  
10 to retake the stand.

11 DIRECT EXAMINATION

12 CONT'D BY MS. JOYNER:

13 Q Detective Baird, you are still under oath. I am going  
14 to show you briefly what has been marked as Court's Exhibit Two.  
15 Is this a copy of the warrant, search warrant you obtained for  
16 extraction of the phones that were seized from 1635 Amanda Lane?

17 A It is.

18 Q And could you tell the Court what date you sought that  
19 warrant?

20 A On April 25, 2017.

21 Q Okay. And when you presented that affidavit to the  
22 Magistrate were you under oath?

23 A I was.

24 Q Okay. And was the information that you provided to the  
25 Magistrate contained in the four corners of that affidavit?

1 A Yes.

2 Q Okay. So you offered no sworn testimony in addition to  
3 oral testimony in addition to what is contained in here?

4 A No.

5 Q And going to the affidavit section, coming up to just  
6 the section regarding the autopsy. Is that language all  
7 identical to the language that you previously submitted in your  
8 affidavit for the search of 1635 Amanda Lane?

9 A It is.

10 Q Okay. The final section of the last paragraph of the  
11 affidavit, if you could please read that to the Court?

12 A The cell phones were obtained from a search warrant  
13 that was executed on April 18, 2017 at 1635 Amanda Lane, Rock  
14 Hill, South Carolina. Extractions of these cell phones are  
15 needed at this time. It is the belief of this affiant that  
16 information gained from the search is necessary to assist  
17 investigators in determining the cause and manner of death of  
18 Juliana White, the individuals who are were present at the time  
19 and leading up to her death and the timeline of events  
20 surrounding her death.

21 Q Okay. And the phones that are referenced in this  
22 Court's Exhibits Two are they the same phones that are listed in  
23 the return of Court's Exhibit One?

24 A They are.

25 Q Okay. And there is a mention of the phones being

1 obtained during a search warrant on April 18th. Is that the  
2 correct date?

3 A No, it was the 17th.

4 Q Is that a typographical error on your part?

5 A It was.

6 Q So all other the information contained in affidavit  
7 truthful and accurate?

8 A It is.

9 MS. JOYNER: Those are the State's questions.

10 MR. WELLBORN: I have no questions.

11 THE COURT: Okay. Thank you, ma'am. You may step  
12 down.

13 Mr. Wellborn, I understand your motion is for the  
14 same reasons as your previous motion, lack of probable  
15 cause in the initial search warrant and this is fruit  
16 of the poisonous tree.

17 MR. WELLBORN: That is correct.

18 THE COURT: I will deny your motion for the  
19 record.

20 MS. JOYNER: Thank you, Your Honor.

21 MR. WELLBORN: Your Honor, one more motion related  
22 to the search.

23 THE COURT: We have been going for quite a while  
24 now. Let's take a 15 minute break and we will come  
25 back.

1 MS. JOYNER: Thank you, Your Honor

2 (WHEREUPON, court was in recess.)

3 THE COURT: Counsel, there is something I should  
4 have put on the record in the beginning just to make  
5 sure my brother had no involvement with this case. I  
6 know obviously, Mr. Wellborn, you are private counsel.  
7 Did your client consult with my brother at all before  
8 you were retained.

9 MR. WELLBORN: Not to my knowledge.

10 THE COURT: Miss Joyner, do you have any knowledge  
11 of my brother being involved in this case?

12 MS. JOYNER: No, Your Honor. Miss Adams is  
13 represented Jeff Zuschke but I have no belief that  
14 your brother is at all involved.

15 THE COURT: Thank you, very much. I appreciate  
16 that counsel.

17 All right. Any other pretrial motions?

18 MR. WELLBORN: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. WELLBORN: The next motion I have would be to  
21 the State to establish what other acts they intend on  
22 introducing against my client and to what extent they  
23 meet the 404(b) Lyle exceptions. Because of course as  
24 we all know, 404(b) and Lyle creates a rule of  
25 exclusion that can only be surmounted if certain

1 standards are met.

2 THE COURT: Mr. Wellborn, let me stop you. I  
3 think since this is a bench trial, I think the better  
4 tactic here rather than doing a long motion in Limine  
5 hearing let's just as the evidence comes in you can  
6 make your objection to it and we will rule on it as it  
7 comes in if that's okay.

8 MR. WELLBORN: That's fine. And of course as a  
9 courtesy to Your Honor each objection will be in  
10 multiple parts because of the whole matrix that one  
11 has to go through in terms of necessity, clear and  
12 convincing, and then what particular exception it  
13 meets and whether in fact meets that exception.

14 THE COURT: I'd prefer, rather than trying to  
15 guess what Ms. Joyner is going to try to introduce,  
16 let's just proceed and since there is no jury you can  
17 make the objections as it comes up.

18 MR. WELLBORN: That's fine.

19 MS. JOYNER: Your Honor, I do want to inquire  
20 before we begin the bench trial and jeopardy attaches  
21 whether Mr. Wellborn has any motion as regards to the  
22 appropriateness of tracking hydrocodone Indictment.

23 MR. WELLBORN: There was a direct Indictment. I'm  
24 not sure that there is anything beyond that. The  
25 Indictment has been directly indicted.

1 As an officer the Court is the State aware of any  
2 impropriety relating to the Indictment?

3 MS. JOYNER: No, I'm not. I just wanted to make  
4 sure you didn't have any objection to or intend to  
5 raise after jeopardy had attached any issues that he  
6 felt legal arguments regarding trafficking hydrocodone  
7 outside of a directed verdict motion based upon the  
8 evidence.

9 MR. WELLBORN: Well again, I'm not aware of any  
10 irregularity with the Indictment but I would ask as an  
11 officer of the Court if the solicitor is aware of such  
12 irregularity that she mention that which I believe she  
13 would be required to do.

14 MS. JOYNER: As an officer of the Court I'm not  
15 aware of any irregularity with the Indictment. I just  
16 wanted to be clear.

17 THE COURT: Mr. Wellborn, obviously you will make  
18 a directed verdict motion as some point as to the  
19 sufficiency of the evidence. Other than that, do you  
20 have any objection to trafficking hydrocodone  
21 Indictment?

22 MR. WELLBORN: I -- well, I do not. No. Bare  
23 with me one second just to make sure.

24 MS. JOYNER: And to be clear, the State's  
25 question is whether he intends to argue at any point

1 after jeopardy is attached that hydrocodone is not  
2 appropriate subject matter of the trafficking charge  
3 under 44-53-370(e)(3).

4 THE COURT: Okay. Mr. Wellborn.

5 MR. WELLBORN: Well, there's that, but there is  
6 another issue too. And that is that the Indictment of  
7 possession of -- well, I apologize. It's not  
8 trafficking in oxycodone. To be clear the Indictment  
9 I have is possession with intent to distribute  
10 oxycodone.

11 MS. JOYNER: I may have misspoke. Trafficking  
12 hydrocodone.

13 My question is if intends to raise a legal  
14 argument that hydrocodone does not fall within that  
15 statute and if he does I would like to handle that  
16 before double jeopardy.

17 THE COURT: Okay.

18 MR. WELLBORN: Your Honor, I am a not aware of an  
19 argument there but perhaps just because I'm not aware  
20 of and maybe we don't want this revisited later, it  
21 might be a good to have a Court finding related to  
22 that. So, yes, I will go ahead on behalf of my client  
23 I will raise that issue just to be...

24 THE COURT: We will have argument on it then.

25 MS. JOYNER: And Your Honor, the State fully

1 believes that we are appropriate to make this charge.  
2 We did -- we do understand that there are are  
3 different feelings about this issue and so wanted to  
4 go ahead and address it before beginning of the trial  
5 so that if so so both sides have fair opportunity to  
6 argue this point.

7 THE COURT: All right.

8 MS. JOYNER: I have prepared a brief, not nothing  
9 whether it was going to be raised. (Handed up to the  
10 Court.) And I do have the supporting cases that  
11 somehow become separated from...

12 THE COURT: Okay. Ms. Joyner, the Alabama case, I  
13 read the quote. It says this Court has previously  
14 recognized that opiates are included within the  
15 prohibition of 13(a)-12-231-3, isn't that the issue we  
16 are talking about here?

17 MS. JOYNER: Yes, but I think when you look at the  
18 reasoning in the Alabama case they are explaining back  
19 to the statutory construction. Basically the  
20 identical statute that we have.

21 THE COURT: Okay. But I mean they're saying that  
22 the prosecution didn't present scientific evidence  
23 that it was an opiate, but let's go back to our  
24 statute. That to me is a difference.

25 Our statute doesn't say opiate it says opium or

1 morphine.

2 MS. JOYNER: Our statute -- this Alabama statute,  
3 you go to the trafficking provision itself, it says --  
4 it has identical language as ours. So by Westlaw  
5 number is page two, their trafficking statute is  
6 section 13(a)-12-231 subsection 3, "any person who  
7 knowingly sells or manufactures, delivers or brings  
8 into the State, or who is knowingly in actual or  
9 constructive possession of, four grams of morphine,  
10 opium, or any salt, isomer, or salt of an isomer  
11 thereof, including heroin as described, in Section  
12 20-2-23(20) or 20-2-25. It says (a)(a). That's a  
13 typo. It actually one (a) you'll see later. Or four  
14 grams or more of any mixture containing any such  
15 substance, is guilty of a felony which shall be known  
16 as trafficking in illegal drugs. And then they have  
17 it looks like they have similar tiered system based on  
18 weights as we do.

19 They then go on to explain that -- they go into an  
20 analysis about the board of health is the one that is  
21 classified as a schedule drug which is similar to our  
22 DHEC. And they may have listed in this case it was  
23 oxycodone as -- it's listed as scheduled two as  
24 promulgated by their public health department.

25 Then going forward, page three by Lexus or Westlaw

1 numbers, the paragraph that begins, opiate is a drug  
2 containing or derived from opium. They say  
3 specifically -- the next line is, that the trafficking  
4 statute specifically provides and they go on and quote  
5 it, they italicized as described in these sections.  
6 Then they go on from there to say, that there law --  
7 they have list of schedules as adopted by the  
8 legislature, of schedule two drugs. They go to the  
9 definition specifically cited to, or the statute  
10 specifically cited to the trafficking statute which  
11 20-2-25-1(a) list, opium or opiate or any salt  
12 compound, derivative, preparation opium or opiate.

13 Then they say although the trafficking statute  
14 does not specifically list opiates, it does  
15 specifically include opiates by reference to 20-2-25  
16 one (a). So, this, is our argument. That as  
17 described in 44-53-210 incorporates those scheduled  
18 drugs into the statute. And the definition -- or the  
19 subsection they list in their discussion from 20-2-25  
20 (1)(a), is identical to what is listed 44-53-210(b)(1)

21 THE COURT: Okay. I'm not a chemist, but the  
22 dispute as I understand it is in our statute, as  
23 described in section 43-53-190 or 44-53-210, does that  
24 further describe the lists already given or does that  
25 add additional drugs to the list? Is that the

1 argument?

2 MS. JOYNER: I think it incorporates, yes. It  
3 Incorporates. It sort of in a way defines that  
4 provision, any morphine, opium, salt isomer, including  
5 heroin as described. An incorporation and I guess in  
6 a sense a definition to. And I think that's how  
7 Alabama Court goes because they say it's incorporated  
8 by reference. But then they go on to say that the  
9 oxycodone -- they don't have to actually prove it's an  
10 opium to prove the case because it's listed as a  
11 schedule two drug its designated by the opium or  
12 opiate, and the trafficking statute incorporates that  
13 statute, then it's okay to traffic oxycodone.

14 THE COURT: I'm not a chemist. I'm assuming from  
15 this argument that the State is not going to be able  
16 to offer evidence that hydrocodone is morphine, opium,  
17 a salt, or a salt of an isomer, of those drugs; is  
18 that correct?

19 MS. JOYNER: Correct. We're going to offer  
20 testimony that hydrocodone is a schedule II narcotic.  
21 Hydrocodone meets the definition of opiate which is  
22 contained in 110-31. An opiate is -- we have almost  
23 identical -- very, very similar definition of opiate  
24 as Alabama Court does as well.

25 HE COURT: My struggle with the Alabama decision,

1 isn't a pretty standard rule of interpretation in  
2 criminal cases criminal statutes are strictly  
3 construed against the State?

4 MS. JOYNER: They are, but I think if you go to  
5 State versus Miles, which is the South Carolina case.  
6 I think when you read those two together I think that  
7 --

8 THE COURT: Do you have a copy of Miles? I have  
9 it. All right.

10 MS. JOYNER: So State versus Miles is an appeal  
11 from a trafficking in illegal drugs, same subsection  
12 that we are under. In this case it was trafficking,  
13 again oxycodone. And oxycodone and hydrocodone  
14 they're on the same footing because they are both  
15 opiates, and under South Carolina law they're both  
16 Scheduled II narcotics. So what would apply to  
17 oxycodone would apply to hydrocodone.

18 In Miles, his actual challenge was, he was upset  
19 that he felt that the term knowing in the trafficking  
20 statute, in subsection (e)(3) should apply to every  
21 element of trafficking offense, including the specific  
22 type of drug listed. That he had to know that he was  
23 trafficking oxycodone, not just know that was  
24 trafficking in illegal drugs. The Court of Appeals  
25 went into a lengthy interpretation of this.

1 THE COURT: I read the quotes if your memo.

2 MS. JOYNER: I'm sorry.

3 THE COURT: I read the section. I read your whole  
4 memo.

5 MS. JOYNER: And so I think that what Miles is  
6 saying by implication, is that they -- first of all I  
7 think the Miles court spent a lot of time interpreting  
8 the statute. But the Miles court, or the Supreme  
9 Court that denied Cert, at any point said, wait a  
10 minute, this doesn't even apply. Why are we here on  
11 an oxycodone when this doesn't -- this isn't actually  
12 a crime. I think they could have raised it sui sponte  
13 and they didn't. I am not relying on that but just  
14 sort of as an aside I think they could. But there  
15 discussion is they are looking at the caption of the  
16 offense. They consider that. They talk about how  
17 long the drug code is and you got to look at it from a  
18 big picture standpoint. And they then go on to say --  
19 again, on a separate issue, but I think very  
20 informative, the quote that's included on page two of  
21 the brief. This dissent is unescapable when we  
22 consider (e) (3) reference to 190 and 210, which sets  
23 forth Schedule I and II governing classification of a  
24 controlled substances. While we can interpret  
25 statutes by bringing in rules of grammar logic, and

1 other tools, we must be careful not to construe common  
2 sense out.

3 So, they felt like in the massive structure of the  
4 the drug law, that their interpretation of the statute  
5 they had to look at all these different things and  
6 they specifically said trafficking in illegal drugs,  
7 clearly the legislature didn't intend to require us to  
8 prove the specific drug otherwise why call it  
9 trafficking in illegal drugs. Why include by  
10 reference these other code sections which bring in  
11 Schedule I and Schedule II. So --

12 THE COURT: I don't want to interrupt you. Go  
13 ahead.

14 MS. JOYNER: And I also think they go into -- I  
15 think I am done with that argument. I apologize.

16 THE COURT: That's okay. I understand that case is  
17 involving the level of knowledge required of the  
18 defendant. But this is more kind of a fundamental and  
19 critical issue. The legislature has to say what drugs  
20 are illegal drugs. And you're asking me to -- I think  
21 what you're saying I should read the quote as  
22 described in section 44-53-190 (sic) or 44-53-210. I  
23 should read that as in addition to the drugs listed in  
24 those statutes.

25 I think that's a stretch given I have to strictly

1           construe criminal statutes against the state.

2           MS. JOYNER: I think you have to look at all the  
3 words of the statute and assume that they all do have  
4 a purpose. So, kind of starting at the beginning of  
5 my argument. I think on the caption -- and I know the  
6 captioning alone is not the magic bullet, but the  
7 Miles' Court did talk about reading the caption as a  
8 significant factor. And when you look at this drug  
9 code we know that we have trafficking statute that was  
10 created within 370 and 375 and they are captioned  
11 very, very specifically to the drugs that the  
12 legislature intends to criminalize as far as  
13 trafficking goes. They'll all criminalized in other  
14 ways. So tracking marijuana, a Schedule I drug is  
15 pulled in specifically detailed. We have trafficking  
16 in methaqualone, very specifically a Scheduled -- I  
17 think it's a Schedule III. I could be wrong.

18           THE COURT: Quaaludes. I think they are a  
19 Schedule I.

20           MS. JOYNER: Schedule I, I apologize. Trafficking  
21 cocaine. We have the trafficking of flunitrazepam,  
22 which is scheduled four. All of those -- all the  
23 trafficking statutes are very specific to the  
24 particular class of drug, a particular drug that they  
25 reference. Even when you go to 375(E)(1), trafficking

1 in ephedrine, pseudoephedrine, phenylpropanolamine,  
2 their salts, isomers, or salts of isomers, or  
3 combination of any of these substances. And I think  
4 that final caption is very significant because had the  
5 legislature wanted that (E)(3) to just apply to -- to  
6 just apply to morphine, opium, salt, isomer or salt of  
7 isomer thereof, they could have captioned it as such  
8 and they didn't. They called it trafficking in  
9 illegal drugs.

10 I think that is one window into their retention  
11 when they created the statute. So now, we look at --  
12 moving away from the caption we look at the rest of  
13 the wording; morphine, isomer, salt, or salt of isomer  
14 thereof as described in 190 or 210. So, why if they  
15 only wanted to apply to morphine, they only wanted it  
16 to apply to opium or salt or isomer thereof, why do  
17 you reference these statutes as all.

18 The other subsections of the trafficking -- I  
19 think there is ten trafficking offenses created within  
20 370 and 375 -- only three of them are going to cite to  
21 a definition or site to a schedule. So, those -- and  
22 I know I included it in the brief -- but -- so you  
23 have the trafficking in illegal drugs, which cites the  
24 190 and 210. You have trafficking in the  
25 methamphetamine and cocaine base from 375 and

1 trafficking in cocaine. So, we know the legislature  
2 doesn't just include the schedule in all of the  
3 trafficking.

4 THE COURT: I'm listening.

5 MS. JOYNER: I know.

6 THE COURT: I am looking at the statute while we  
7 are talking.

8 MS. JOYNER: And so we have to assume there is  
9 some importance or significance attached to that  
10 language that we should try and understand. So when  
11 you go to the trafficking in cocaine. Trafficking in  
12 cocaine is (E) (2) under 370. They cite -- it contains  
13 the following language. I apologize the statute is so  
14 big. Ten grams or more of cocaine or any mixture  
15 containing cocaine as provided in 44-53-210(B) (4) is  
16 guilty of a felony known as trafficking in cocaine.

17 So, the 210 is the same statute that is described  
18 and incorporated in the (E) (3), but in contrast to  
19 (E) (3) that broadly includes all of 210, cocaine  
20 trafficking cites specifically to the definition that  
21 that the legislature -- or the language of the  
22 legislature feels is necessary for an understanding of  
23 that particular trafficking in cocaine statute.

24 So in that language is -- so you go to (A) the  
25 controlled substance listed in this section, schedule

1 II, and then (B); any of the following substances  
2 accept those narcotic drugs listed in other schedules  
3 whether produced directly or indirectly by extraction  
4 from substances of vegetable origin, or independently  
5 by means of chemical synthesis, or by a combination of  
6 extraction and chemical synthesis.

7 To subsection (4): Coca leaves and any salt,  
8 compound, derivative, or preparation of coca leaves,  
9 and any salt, compound, derivative, or preparation  
10 thereof which is chemically equivalent or identical  
11 with any of these substances, but not including -- and  
12 it goes on.

13 So instead of for the legislature, instead of  
14 cocaine just broadly citing the 210 and leaving us to  
15 figure out what that means, or to look through the  
16 whole statute, they go specifically to this provision  
17 as far as coca leaves salt and compound.

18 Then you look at trafficking in methamphetamine  
19 and cocaine base out of 375, they cite to the  
20 definition section, they say as defined and otherwise  
21 limited in 110, 210(D)(1) and (D)(2). So the 110 is  
22 going to go into the definitions of cocaine base and  
23 methamphetamine. But then you get the references to  
24 (D)(1) and (D)(2) under 210. So again, the reference  
25 by the legislature in that this trafficking statute is

1 specifically to two very small subsections of the  
2 statute, and those are ones that reference salt,  
3 isomer and salt compound, etc. So, again the  
4 legislature is citing very specific provision.

5 So now we get over to our statute of (E)(3) and it  
6 cites broadly to 190, which is a Schedule I and  
7 broadly to 210 which is the Schedule II, which is  
8 where hydrocodone lives. So, there has to be a reason  
9 that it's cited to and it says as described by. As  
10 described by is going to take us straight to, and of  
11 the following under subsection (B)(1), any of the  
12 following substances except those narcotic drugs  
13 listed in other schedules, whether produced directly  
14 or indirectly by extraction from substances, a  
15 vegetable or generated independently by means of  
16 chemical synthesis or by combination of extraction and  
17 chemical synthesis. One; opium and opiate and any  
18 salt compound derivative or preparation of opium or  
19 opiate, excluding certain drugs that are not at issue  
20 here.

21 So, we know 210 lumps together the opium and the  
22 opiate from the very beginning. And I think that when  
23 the legislature cites back to this broad statute they  
24 know this definition is in there and they know these  
25 two are lumped together.

1 THE COURT: Your not arguing that everything  
2 listed in that statute applies. You only want the  
3 opiate definition?

4 MS. JOYNER: Yes.

5 THE COURT: Your argument is not, like for  
6 example, the bottom of that statute, phenylacetone,  
7 phenyl-2-propanone, and all those. You're not saying  
8 those apply. What you want is the definition of  
9 opiate instead of opium?

10 MS. JOYNER: Yes, that they mean to kind of  
11 conflate those two things by reference and opiate fall  
12 under and that's what Alabama does. And I think Miles  
13 --I think Miles is a signal that if the issue were  
14 confronted by the Appellant Courts they would do the  
15 same. Because Miles' language is -- Miles -- the  
16 whole opinion of Miles they presume that oxycodone  
17 fits within the statute.

18 THE COURT: But it wasn't raised.

19 MS. JOYNER: It wasn't raised. That's true.

20 THE COURT: Miss Joyner, you have argued this  
21 really well and I understand your argument. Let me  
22 give Mr. Wellborn a try and then I more than likely  
23 what I'm going to do, we'll break for lunch.

24 My struggle -- I understand what you are saying  
25 and I understand the legislature, that may have been

1 their intent. But my struggle is, opiate and opium  
2 are two different words. The word opiate doesn't  
3 appear in the statute the Indictment alleges he  
4 violated and given the criminal statutes has to be  
5 construed strictly against the State I'm concerned.  
6 But let me hear what Mr. Wellborn has to say.

7 MR. WELLBORN: Yes, Your Honor, briefly.

8 I think that the statement by Miss Joyner that  
9 this should be quote conflated by reference sums up  
10 the State's position. But conflating by reference  
11 runs heads long into as Your Honor has already  
12 identified, not only the words of statutory  
13 interpretation which are quoted and cited on page five  
14 of the Miles' opinion, but also the rules of Lenity  
15 and the rule of Lenity goes even further and say if  
16 there is any ambiguity it cuts in favor of the  
17 defendant.

18 I would also mention that the statute in Miles  
19 specifically says opium. It does not say opiate.  
20 Furthermore, the Indictment, which is the notice  
21 document in this case, specifically says opium not  
22 opiate.

23 THE COURT: That's a whole different issue. I  
24 didn't even think about. The Indictment alleges he  
25 possessed opium or a salt or isomer. Even if the

1 statute permits it, is that Indictment sufficient?

2 MS. JOYNER: My Indictment does say hydrocodone,  
3 Your Honor.

4 THE COURT: Oh, it does. I'm sorry.

5 MS. JOYNER: I'm looking at the statute, it does  
6 say hydrocodone.

7 MR. WELLBORN: But to be clear, what the  
8 Indictment says, is 28 grams or more of any morphine,  
9 opium, salt, isomer or salt of an isomer thereof,  
10 namely hydrocodone. So arguably, if we were to  
11 conflate that --

12 THE COURT: Okay. To me the Indictment is okay.  
13 I understand, if the statute permits it that  
14 Indictment language is enough.

15 MR. WELLBORN: If the statute permits it.

16 But the statute is clear that we're talking about  
17 opium, not opiate.

18 THE COURT: Okay, Mr. Wellborn, the point that  
19 goes Miss Joyner's way is, the two statutes they  
20 reference, 190 has a list of opium, isomers and salts.  
21 So I'm comfortable. I can see saying, the reason the  
22 legislature included 190 was to give a list of salts  
23 and isomers and opium. But 210 doesn't. 210 doesn't  
24 define or explain any of the terms in 375(E)(3) so why  
25 is it there?

1 MR. WELLBORN: Well, that's an interesting  
2 question. Why is it there? Why is it there does not  
3 help us. That gives us ambiguity and ambiguity per  
4 the rules of Lenity cuts in favor of the defendant. I  
5 mean, the argument, that gee, we can all sort of  
6 postulate as to why would they he have done X,Y or Z  
7 when they drafted it is interesting. But if we're  
8 left with, we don't know why they did it and this is  
9 why I think they did it or they could have done it for  
10 this reason, or they might not have done it for that  
11 reason. That is not enough to pass the rule of Lenity  
12 test, especially since my client is to be put on trial  
13 for something that gives him specific notice under a  
14 specific statute and the language of this specific  
15 statute does not include opiates. It include  
16 specifically opium.

17 THE COURT: All right. Miss Joyner, any response?

18 MS. JOYNER: There is a section of the rule, one  
19 being in Miles and I know the Court has probably  
20 scanned through it. It does not intent to create  
21 ambiguity where there is none. And while, you know, I  
22 would just say -- point out to the Court regarding the  
23 schedule drugs, as well Your Honor, that sort of what  
24 is a Schedule I or Schedule II, is a polluted concept,  
25 so I think that another reason to broadly include as

1 described in 210 is to encompass the idea that those  
2 schedules they can change according to DHEC action,  
3 and hydrocodone was at one point was not a schedule  
4 two and now it is. So I think it is a practical way  
5 for legislature to build in that part of the drugs  
6 and how it works.

7 THE COURT: Okay. Well counsel, I think  
8 understand the arguments. I don't have the answer,  
9 but I understand the arguments. Like I said, let's  
10 take a lunch break. I am going to send this e-mail  
11 out to the judges and see if my colleagues can give me  
12 some advice. But I will say as it is right, the  
13 statutory construction rules make me think I have to  
14 rule against the State on this.

15 I don't think the language is clear. It says when  
16 it is prohibited four or more grams of morphine,  
17 opium, or a salt isomer, or a salt of an isomer,  
18 including heroin, as described in two other statutes.  
19 And I have a tough time saying that clearly adds on  
20 additional substances. Maybe I'm wrong. Let me talk  
21 to my colleagues, talk to law clerk and think about  
22 this. I'll consider it at lunch. Let's go to two  
23 o'clock.

24 MR. WELLBORN: Before you break, I would ask that  
25 my client be allowed to remain out on bond. He has

1 made every court appearance. He has been facing this  
2 thing for over a year. He was here yesterday. There  
3 is no evidence that he is a risk of flight. He turned  
4 himself in when he found out about the warrant at the  
5 Rock Hill Police Department and surrendered himself.  
6 Has not violated bond in any way whatsoever, so I  
7 would ask that he be allowed to remain out on bond for  
8 the course of trial.

9 All his family, all his contacts, his entire life  
10 has been spent in the city of Rock Hill.

11 THE COURT: Mr. Joyner, what's the State's  
12 position.

13 MS. JOYNER: I don't think jeopardy has attached  
14 at this point, Your Honor. We're still in the  
15 pretrial phase. I would be more concerned if the  
16 Court comes back, rules that we can go forward on the  
17 hydrocodone and that he would be facing 25 to 40. At  
18 that point I think that is a different scenario.  
19 Also, I point out with the oxycodone as charged it is  
20 no less than ten, but jeopardy has not attached at  
21 this point.

22 THE COURT: Okay. Well, I appreciate that  
23 clarification, Miss Joyner. We'll kick the can down  
24 the road. I will delay that decision until I have to  
25 make it. For right now jeopardy is not attached so he

1 MS. JOYNER: Just going back to Miles and it is  
2 not raised in Miles, but kind of the question is,  
3 would this be a subject matter jurisdiction issue if  
4 the statute does not cover the offense? Would that  
5 become a subject matter jurisdiction issue? I think  
6 that we just put forth to the Court if the Court would  
7 construe it as such, I think under Miles it could have  
8 been raised sui sponte. I know the limitations of  
9 that argument, but I did want to put forward that to  
10 the Court.

11 THE COURT: I would not think it's a subject  
12 matter of jurisdiction.

13 MS. JOYNER: Okay. That's all I have to include.

14 THE COURT: Mr. Wellborn.

15 MR. WELLBORN: Quite honestly, it could have been  
16 raised sui sponte and not on it's relevance, since it  
17 has been raised and is before the Court.

18 THE COURT: We never really talked about the exact  
19 motion that was before the Court. Is it a motion to  
20 quash the Indictment?

21 MR. WELLBORN: That seems to be the most  
22 appropriate is the way would I look at it.

23 THE COURT: Miss Joyner?

24 MS. JOYNER: Your Honor, we would -- certain  
25 limitation of the motion to quash is that we would

1 will be able to go to lunch.

2 MR. WELLBORN: Thank you.

3 (WHEREUPON, the court was in recess for lunch.

4 COURT:

5 THE COURT: Counsel, any further argument on the  
6 issue of trafficking oxycodone?

7 MS. JOYNER: Your Honor, just -- and we know this  
8 is not in any way binding to the Court, but we did  
9 want the Court to the know that we have prosecuted a  
10 jury trial on two other cases under the statute.  
11 Those were both oxycodone -- trafficking in oxycodone  
12 for the purposes of the State's argument.

13 THE COURT: Was it raised at those trials?

14 MS. JOYNER: The one, Acasio, the State versus  
15 Bernardo Venno Acasio (phonetics). Miss Jennifer  
16 Colton in our office, her recollection is that the  
17 defense counsel did raise that argument at trial, but  
18 it did not go up on appeal. So it was not raised on  
19 the appeal. It was affirmed on an unpublished opinion  
20 on a Batson argument that was raised on appeal.

21 THE COURT: Okay.

22 MS. JOYNER: The other case was Denaldi Keith  
23 (phonetics) and it was not raised at trial or raised  
24 on appeal, but we did want to include that.

25 THE COURT: I appreciate that.

1 like to appeal the issue. For clarity's sake, if the  
2 Court rules against us, and I don't know if it's  
3 procedurally proper for me to appeal for a motion to  
4 quash. I think a motion to quash allows me to go back  
5 to the Grand Jury which would sort of put us into a  
6 cycle.

7 I would request if the Court is going to quash the  
8 motion that there be some accompanying order from  
9 which we could ask the Attorney General's Office  
10 whether it would be appropriate to appeal.

11 THE COURT: I am more than happy to give you  
12 something to appeal. It would be great if we had  
13 clarity on this issue. I will be happy to do a  
14 written Order. What is the vehicle to do that?

15 MR. WELLBORN: Well, just procedurally, Your  
16 Honor, an appeal can not be taken from anything that  
17 does not foreclose the case from the State from  
18 prosecuting.

19 On a motion to quash the State, as Miss Joyner has  
20 pointed out, it's simply a matter of redrafting the  
21 indictment in a way that is compliant with the  
22 existing law and that would clear the problem and  
23 therefore they're not precluded from later prosecuting  
24 if that's what they choose to do.

25 THE COURT: My ruling would say -- if I ruled this

1 way which to be honest, I am probably going to do --  
2 is that the oxycodone doesn't fall under that statute.  
3 So there's way for re-indictment other than to  
4 re-indict not for trafficking.

5 MR. WELLBORN: Well, correct. I mean, the point  
6 is they can still prosecute. They can't prosecute it  
7 as trafficking. Whether or not that implicates State  
8 versus Regina McKnight and the other cases that talk  
9 about the State being enable to prosecute because of  
10 pretrial ruling is debatable. But certainly, I guess  
11 the request from the State is please give us  
12 clarification of your ruling in case we want to appeal  
13 it?

14 Obviously, I have no standing to argue for or  
15 against such clarification.

16 THE COURT: I think it's a fair request from the  
17 State. There's no appellant -- there's no guidance at  
18 all from our appellant courts.

19 MR. WELLBORN: Right. And again, I don't take  
20 any position on that because it's improper for me to  
21 take a position on whether or not you should give a  
22 ruling that is clear or not. Generally I prefer clear  
23 rulings.

24 THE COURT: Miss Joyner, what would you like me to  
25 do?

1 MS. JOYNER: I'm assuming from all of this, that  
2 you are going to dismiss the case -- that particular  
3 case. I believe an Order -- maybe if we could just  
4 draft an Order of dismissal with the ruling of the  
5 Court that the statute does not apply. I think that  
6 should be sufficient to allow for the State to appeal  
7 on that particular Indictment.

8 THE COURT: Rather than quashing the indictment I  
9 would dismiss the charge?

10 MS. JOYNER: I would think so. I think that is  
11 the best route, Your Honor.

12 THE COURT: And do you mind me putting in the  
13 Order that it is couched as an order of dismissal  
14 rather than an Order quashing the indictment an Order  
15 for allow for appeal.

16 MS. JOYNER: I have no issue with that language  
17 being included at all, Your Honor.

18 THE COURT: Right. Given that then I will grant  
19 the motion to dismiss and I am going to dismiss the  
20 Indictment for trafficking oxycodone on the basis that  
21 the statute 44-53-370(E) does not include oxycodone.  
22 I will explain my ruling for the record but I will  
23 also do a written Order.

24 The statute says, four grams or more of any  
25 morphine, opium, salt, isomer, or salt of an isomer

1           thereof, including heroin. It's not heroin, it's not  
2           morphine, it's not opium, it's not a salt or an  
3           isomer, or morphine or heroin. And so the State is  
4           asking me to it says as described in 44-53-190 or 210  
5           which are the Schedule I and Schedule II drug lists.  
6           And I don't think I can import. I mean, those statutes  
7           have a provision for opium and its derivative and a  
8           separate provision for opiates. And then they have a  
9           list of bunch of other drugs that are neither opium  
10          nor opiates. I don't think I can selectively add  
11          opiates into 370 when the phrasing is as described.  
12          Which again, implies to me it's describing what has  
13          already been listed in the statute.

14                 And then finally, given that I struggled with  
15          making all this out I think the rule of Lenity  
16          requires me. I can't figure out what the legislature  
17          intended. I am required to rule for the defense.  
18          That's the bottom line. Okay.

19                 All right. Now, I will do a written Order on  
20          that.

21                 MS. JOYNER: Beg the Court's indulgence.

22                 THE COURT: Certainly.

23                 MS. JOYNER: Your Honor, with that ruling I would  
24          still like to proceed on the remainder of the charges.

25                 THE COURT: Okay.

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

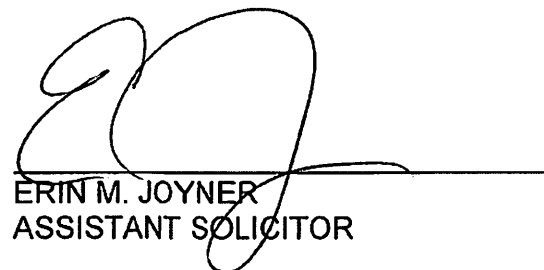
INDICTMENT

At a Court of General Sessions, convened on October 11, 2018, the Grand Jurors of York County present upon their oath:

**TRAFFICKING IN HYDROCODONE**

The defendant, Harold Gene White III, did on or about April 17, 2017, in York County, South Carolina, 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 twenty-eight (28) grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, namely Hydrocodone, as described in Section 44-53-190 or 44-53-210, or twenty-eight (28) grams or more of any mixture containing any of these. All in violation of 44-53-370(e), *South Carolina Code of Laws* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ERIN M. JOYNER  
ASSISTANT SOLICITOR

104

WITNESSES

SLED

Witnessing Officer: *Baird*

ARREST WARRANT NUMBER

*Direct Indictment*

ACTION OF GRAND JURY

TRUE BILL

*Uma Barnett*

Foreperson of Grand Jury

Date: *10-11-18*

VERDICT

Foreperson of Petit Jury

Date:

*Direct Indictment*  
DOCKET NO. 2018-GS-46-07326

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

OCTOBER 11, TERM 2018

THE STATE

VS.

HAROLD GENE WHITE, III

INDICTMENT FOR

TRAFFICKING IN HYDROCODONE

SC Code: § 44-53-370(e)

CDR Code: 0149

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I \_\_\_\_\_  
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFICATE OF COUNSEL**

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 

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ATTORNEYS FOR APPELLANT

June 24, 2020

**RECEIVED**

**Jun 24 2020**

**SC Court of Appeals**