

THE STATE OF SOUTH CAROLINA
In The Supreme Court

PETITION FOR CERTIORARI FROM GREENWOOD COUNTY
Court of Common Pleas

The Honorable J. Mark Hayes II., Circuit Court Judge
The Honorable Eugene C. Griffith, Jr., Plea Judge

Appellate Case No: 2020-000574

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S.C. SUPREME COURT

MAUNWELL ERVIN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MAUNWELL J. ERVIN,

APPELLANT

APPELLATE CASE NO. 2013-001656

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	
)	
COUNTY OF GREENWOOD)	COURT OF GENERAL SESSIONS
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
vs.)	No. 11-GS-24-0781 et al
)	
Maunwell Jabar Ervin,)	
)	
Defendant.)	

TRANSCRIPT OF SUPPRESSION MOTION

The within Motion was held in the above-captioned case on January 31, 2013, before the Honorable Frank Addy, Jr. in the Court of General Sessions for Greenwood County, South Carolina; attended by counsel, as follows:

APPEARANCES:

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Case No. 11-GS-24-0781 et al
Motion to Suppress
before The Honorable Frank Addy

1 JANUARY 31, 2013 9:00 A.M.

2
3

(DEFENDANT PRESENT)

4 THE COURT: Let's go on the record
5 in the case of the State v. Maunwell Ervin,
6 E-r-v-I-n.

7 Solicitor, tell me which cases that we
8 are proceeding on this morning.

9 SOLICITOR TAYLOR: Judge, we are
10 going forward on Indictments 11-GS-24-781 and
11 782. That's the PWID Ecstasy and proximity for
12 that charge. The other ones that we are moving
13 forward with today are 11-GS-24-783 and 787.

14 THE COURT: Very good. The record
15 should reflect that Mr. Ervin is present with
16 his attorney, Ms. Lauren Taylor.

17 It is my understanding that we have
18 several Motions that we need to take up this
19 morning before we proceed. I don't know who
20 wanted -- we have a *Jackson v. Denno*, I
21 believe, and there is also a Motion to suppress
22 the -- or Motion concerning the search warrant.

23 MS. TAYLOR: That is correct, Your
24 Honor. There is also a motion regarding some
25 statements that were made outside the presence

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1 of the courtroom that the jury pool may have
2 heard on Monday.

3 THE COURT: Okay.

4 MS. TAYLOR: I would like to make a
5 motion at this time for the prosecution to
6 recuse themselves from this case.

7 There were some threats made, I
8 believe by Sergeant Reeder against Sergio
9 Quarles as to he may charge him with further
10 drug indictments if he testifies in this
11 hearing.

12 There also may have been that same
13 statement said by the prosecutor to Mr.
14 Quarles, uh, so I would just like for that to
15 be on the record.

16 As well as I believe that there are
17 some jury pool issues that have been identified
18 this morning in York County, as far as the jury
19 pool only being picked from those that are
20 registered voters instead of those who are
21 registered voters, who have an ID card as well
22 as have a drivers license. So I would just
23 like that to be put on the record. I have no
24 indication that that is the case in this
25 county. I just want to make the court aware of

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1 that.

2 SOLICITOR STUMBO: Judge, I can
3 quickly respond to that about ---

4 THE COURT: Please.

5 SOLICITOR STUMBO: --- "threatening"
6 Mr. Quarles. I was back there setting up,
7 making sure that they were -- this was on
8 Monday. I was talking to the SCDC people about
9 how they were to get him over to the jail. He
10 started talking to me, complaining and saying
11 that we didn't give him a deal -- this was Mr.
12 Quarles.

13 I didn't handle the case, other than
14 handling the sentencing.

15 So he became angry, agitated with me.
16 I said, 'Listen, all I know is this. You were
17 treated fairly. Mr. Hodges treated you fairly.
18 Really they could go forward, they could charge
19 you -- not anything to do with testifying here
20 -- but they could have charged you with
21 trafficking crack cocaine.' For drugs that he
22 actually stole out of Mr. Ervin's house.

23 That was it. There was no threat.
24 'Hey, if you...' -- I never got into that.
25 That would be, to me, unethical and wrong.

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1 There was no threat made or anything like that,
2 Judge.

3 I can't answer for Mr. Reeder,
4 Lieutenant Reeder. I seriously doubt that
5 happened, as well. But again he is saying
6 it did, so I'm not sure.

7 THE COURT: All right.

8 MS. TAYLOR: That information was not
9 from Mr. Quarles. That information was from a
10 public defender who actually witnessed the
11 confrontation. I have not had a chance to
12 rediscuss this issue with Mr. Quarles this
13 morning.

14 The heart of the issue is that Jarvis
15 Reeder was talking to a journalist, I believe
16 from a Greenwood publication, and made the
17 statement that he could be possibly charged
18 with additional trafficking charges. And I
19 believe that the door to the jury room was open
20 at this point.

21 SOLICITOR TAYLOR: Judge, this
22 happened out back. There were no jurors
23 around. There was no public defender around.
24 So I don't know if this was a separate incident
25 that I wasn't involved with. I don't know.

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1 But there was nobody back there other than the
2 SCDC people and the bailiffs.

3 THE COURT: Okay. Just so that the
4 record is clear on this, I want to describe
5 briefly for the benefit of the record the set
6 up that we currently are engaged in. Because
7 the main courtroom here in the Greenwood County
8 Courthouse is being renovated and because we
9 only have one courtroom, we are actually
10 holding court in the former county council
11 chambers that are at the front of the
12 courthouse. We have been using a room that is
13 adjacent to the county council room, I believe
14 that it is Room 200, as the area where the jury
15 pool arrives and where we select the -- or
16 qualify and select the jury pool from. We are
17 on the second floor of the courthouse.

18 In the back of the courthouse, where
19 my office is, once you pass through the secured
20 doors, that are secured with a keycard, you get
21 to the back of the courthouse and that is where
22 the -- I believe Mr. Quarles was being held in
23 a holding cell that is right next to my office.
24 I'm -- if the conversation took place back
25 there, I don't know that it is possible for any

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1 juror to have heard or any prospective juror,
2 any member of the jury panel, to have heard
3 whatever conversation transpired between either
4 the Solicitor and Mr. Reeder or Mr. Quarles.

5 Certainly we can go forward with
6 whatever evidentiary hearings that we need to
7 in order to address those issues that are being
8 raised by Ms. Taylor.

9 As far as the jury pool issues, it is
10 my understanding that Greenwood County does
11 select from both voter registration and DMV
12 records. To the extent that an affidavit might
13 be necessary from the Clerk of Court, or I
14 imagine a statement from the Clerk of Court, I
15 imagine that we can get that. Is that your
16 understanding, Madame Clerk?

17 CLERK: That is my understanding.

18 THE COURT: Let's proceed with
19 whatever we need to address this morning as far
20 as the search warrant and the *Jackson v. Denno*.
21 Who has the floor?

22 SOLICITOR TAYLOR: Your Honor, I
23 was going to call Jeremy Adams, City detective.

24 THE COURT: All right. This is on
25 the *Jackson v. Denno*?

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1 SOLICITOR TAYLOR: Judge, do you
2 want to do that first?

3 THE COURT: I don't care.

4 SOLICITOR TAYLOR: No, sir, this
5 is on the search warrant suppression issue.

6 THE COURT: Come on up.

7 (WITNESS TAKES STAND)

8 JEREMY ADAMS, being duly sworn to tell
9 the truth, the whole truth and nothing but the
10 truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR TAYLOR:

13 Q. State your name for the record, please.

14 A. Jeremy Adams.

15 Q. What is your role at the Police Department?

16 A. Investigator and court officer.

17 Q. What role were you working in for the
18 Police Department back in December of 2010?

19 A. As an investigator.

20 Q. Are you familiar with the names Sergio
21 Quarles, Marcus Allen, Daniel Griffin?

22 A. Yes, sir.

23 Q. Why is that?

24 A. I charged all three of them with burglary
25 and larceny.

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9

1 Q. Is part of your duties charging and, I
2 guess, investigating crimes?

3 A. Yes, sir.

4 Q. Did you interview any of them?

5 A. Yes, sir, I interviewed all three of them.

6 Q. And let's focus on Mr. Quarles at this
7 point. Did Sergio Quarles confess to admitting
8 that burglary crime that you talked about?

9 A. Yes, sir, he did.

10 Q. Did he give you any details as to why he
11 went in the house?

12 A. They thought that there was drugs and money
13 in the house, guns.

14 Q. What about Mr. Allen, did he confess to the
15 crimes as well?

16 A. He did.

17 Q. Did he tell why they went in the house?

18 A. Again, he stated they went in there for
19 drugs.

20 Q. What about Mr. Griffin, did you get a
21 chance to interview him?

22 A. Yes, sir, I did. He said that Sergio and
23 Marcus broke into the house before they picked
24 him up, he did have any involvement.

25 Q. So he said -- he denied being involved in

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1 that crime?

2 A. Yes.

3 Q. Now, after you interviewed the three
4 defendants, did you talk to anybody outside of
5 the City Police Department about what they told
6 you?

7 A. No, sir.

8 Q. You didn't go and tell one of the narcotics
9 officers what they said?

10 A. No, sir.

11 Q. Did you think anybody -- or do you know of
12 anybody, excuse me, to your knowledge that used
13 that information found in the interview of
14 those defendants who went and told the
15 narcotics unit?

16 A. No, sir.

17 SOLICITOR TAYLOR: I have no
18 further questions, Your Honor.

19 CROSS EXAMINATION

20 BY MS. TAYLOR:

21 Q. I apologize, is it Detective Adams?

22 A. Yes, ma'am.

23 Q. Detective Adams, you said that you
24 interviewed all three. Is that correct?

25 A. Yes, ma'am.

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1 Q. And that no information was communicated
2 from your interview with those subjects to
3 anybody else in the Greenwood County Sheriff's
4 Department; is that correct?

5 A. Not from me, no.

6 Q. Not from you. How long did this
7 interrogation process last?

8 A. For each person?

9 Q. Yes. They were interviewed separately,
10 correct?

11 A. Yes, ma'am. I can't -- probably not more
12 than ten or fifteen minutes.

13 Q. Ten or fifteen minutes?

14 A. (No verbal response).

15 Q. And during the process of you interviewing
16 these individuals, did you only discuss the
17 burglary that occurred at [REDACTED] ?

18 A. Yes.

19 Q. You never discussed any other burglaries
20 with them?

21 A. No, ma'am, I don't believe so.

22 Q. And the statement that Quarles gave, you
23 recorded that statement; is that correct?

24 A. That's correct.

25 Q. Is that proper police procedure in a

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- 1 situation like this?
- 2 A. Yes, ma'am.
- 3 Q. Did you also get a written advisement of
4 *Miranda* rights?
- 5 A. Yes, ma'am.
- 6 Q. That is also proper procedure, is that
7 correct?
- 8 A. Yes.
- 9 Q. Was there any written statement made by
10 Sergio Quarles, Daniel Griffin or Marcus Allen
11 regarding the burglary at [REDACTED] ?
- 12 A. No.
- 13 Q. So all that -- the statement that you had
14 was the recordings that you took when they gave
15 statements during their interrogations? Is
16 that correct?
- 17 A. Yes, ma'am.
- 18 Q. How many officers were in that room while
19 this was going on?
- 20 A. Just me.
- 21 Q. Just you?
- 22 A. (No verbal response).
- 23 Q. There was nobody else taking notes or
24 anything like that?
- 25 A. No.

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13 13

1 Q. Were you taking notes?

2 A. I'd have to go back to look at my case
3 file. I think that I might have been but I
4 mostly was just concentrating on what they
5 were telling me.

6 Q. Do you typically take notes when
7 interrogating a suspect?

8 A. Yes, ma'am, sometimes.

9 Q. So you would say that is normal procedure
10 as well?

11 A. Yes, ma'am.

12 MS. TAYLOR: Thank you. No further
13 questions.

14 SOLICITOR TAYLOR: Judge, I have
15 just a few.

16 REDIRECT EXAMINATION

17 BY SOLICITOR TAYLOR:

18 Q. I failed to clarify which house that we are
19 talking about. Is this house that they
20 admitted breaking into, is that at [REDACTED]
21 [REDACTED]?

22 A. Yes, sir.

23 Q. Is that here in Greenwood County?

24 A. Yes.

25 Q. Do you know who the person was that was

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1 living in the house at the time?

2 A. Maunwell Ervin.

3 Q. Who was it?

4 A. Maunwell Ervin was living in the house.

5 Q. Do you know who that is?

6 A. Yes, sir, (pointing to defendant).

7 SOLICITOR TAYLOR: Your Honor,
8 may the record reflect that he pointed at the
9 defendant?

10 THE COURT: The record will so
11 reflect.

12 MS. TAYLOR: Your Honor, I have just
13 one redirect (sic).

14 RECROSS EXAMINATION

15 BY MS. TAYLOR:

16 Q. Did you have any information during the
17 course of your investigation that anyone other
18 than Maunwell Ervin was living in that house at
19 the time of the break-in?

20 A. No, ma'am.

21 Q. Nothing about any other member of his
22 family or anything like that?

23 A. No, ma'am, not that I know of.

24 MS. TAYLOR: Thank you, no further
25 questions.

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15

15

1 THE COURT: Thank you. You may step
2 down.

3 (WITNESS STEPS DOWN)

4 THE COURT: Mr. Taylor.

5 SOLICITOR TAYLOR: The State calls
6 Lieutenant Jarvis Reeder.

7 (WITNESS TAKES STAND)

8 JARVIS REEDER, being duly sworn to
9 tell the truth, the whole truth and nothing but
10 the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR TAYLOR:

13 Q. Would you state your name for the record,
14 please?

15 A. Jarvis Reeder.

16 Q. Where do you currently work, Lieutenant
17 Reeder?

18 A. Greenwood County Sheriff's Office.

19 Q. How long have you worked there?

20 A. Fourteen years.

21 Q. How long have you been in law enforcement?

22 A. Fourteen years.

23 Q. I am going to take you back to December,
24 November -- I guess the second part of 2010.

25 What was your role in the Sheriff's Office back

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1 then?

2 A. I was contacted by the criminal investi-
3 gation division about some subjects that had
4 been involved in a car chase with some of our
5 deputies, that has also been involved in some
6 armed robberies and some burglaries.

7 Q. What I guess -- I guess before we go there
8 -- what is your actual job with them? Do you
9 have a particular or -- a speciality or
10 anything that you do with the Sheriff's Office?

11 A. I am commander over the narcotics unit,
12 where I supervise a narcotics unit based up of
13 the Sheriff's Office and also members of the
14 City Police Department.

15 Q. How many agents are part of that
16 organization?

17 A. Currently we have three agents from the
18 City Police Department and six from the
19 Sheriff's Office.

20 Q. Are you familiar with the name Maunwell
21 Ervin?

22 A. I am.

23 Q. I want to talk to you more about the people
24 living here in Greenwood at [REDACTED].

25 Did you -- were you investigating them or

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17

1 keeping tabs on them at all at any point during
2 2010?

3 A. Yes.

4 Q. Can you tell me a little bit about that,
5 how that started or why you would do that?

6 A. Based on our narcotics investigations and
7 our interviews and things, we received a lot of
8 information from people about Maunwell Ervin
9 distributing drugs in Greenwood County.

10 A. Now, is that typical, as a drug agent, that
11 you get information? Do people tell you
12 things?

13 A. We get drug information all the time.

14 Q. So that is common in your job?

15 A. Yes.

16 Q. In particular about Mr. Ervin, his name,
17 was it him more than anybody else? I mean,
18 you're getting names all the time. Was there
19 anything special that made him stand out?

20 A. Yeah, we got more information about Mr.
21 Ervin because the word on the street was that
22 he was dealing more than anyone else.

23 Q. You mean like the actual amount of drug
24 deals or the volume?

25 A. Quantity and volume.

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1 Q. Could you tell me a little bit about what
2 you were told in terms of his role in the drug
3 trade?

4 A. We received information that Mr. Ervin was
5 one of the main sources of supplies of
6 narcotics in the Greenwood County area, that he
7 was responsible for moving large amounts of
8 cocaine and marijuana in the city.

9 Q. Was that just one person telling you 'hey,
10 this guy is doing this' or just a bunch of
11 different sources?

12 A. No, it was repeated sources.

13 Q. Are you familiar with Mr. Ervin other than
14 that? Had you dealt with him before?

15 A. I think prior to the -- I'd stopped him at
16 a nightclub one night. We were doing some
17 parking lot surveillance at the old Stokie's
18 building, right down here -- I think it's
19 Hampton Place. I spoke with him then. I think
20 he gave consent to search his vehicle.

21 Q. All right.

22 SOLICITOR TAYLOR: If I could mark
23 this as Court's Exhibit 3 for identification
24 purposes.

25 COURT REPORTER: Number 3 for

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1 identification.

2 SOLICITOR TAYLOR: Judge, may I
3 approach the witness?

4 THE COURT: You may.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR TAYLOR:

7 Q. Do you recognize this, see what this says?

8 A. (No verbal response).

9 SOLICITOR TAYLOR: Judge, this is
10 a self-authenticating document. I got this
11 certified copy from the federal government. I
12 will show this to Ms. Taylor. It's just proof
13 that he's been convicted, that the defendant
14 has been convicted before.

15 THE COURT: Is that a court's
16 exhibit or what is that?

17 SOLICITOR TAYLOR: Yeah, it's
18 Court's Exhibit 3.

19 MS. TAYLOR: No objection, Your
20 Honor.

21 THE COURT: Without objection.

22 (SO ENTERED AS COURT'S EXHIBIT 3)

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR TAYLOR:

25 Q. Did you know this when you were

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1 investigating Mr. Ervin, that he had prior
2 convictions in federal court for drug-related
3 offense(s)?

4 A. I did.

5 Q. You said that you were getting all these
6 tips and information on Mr. Ervin, did he have
7 a reputation on where he was at in terms of
8 level of drug dealers here in Greenwood?

9 A. From the information we were receiving in
10 the narcotics unit he was what we'd call an
11 upper level narcotics distributor here in
12 Greenwood County.

13 Q. Okay. So at this point you have all this
14 information that had been given to you. How
15 long was this information ---

16 A. Basically we were notified on his release
17 from prison. I can't tell you an amount of
18 time but somewhere shortly after him coming
19 back to the area, we started receiving
20 information.

21 Q. All right. So we got that. Let's fast
22 forward to November-December of 2010. All
23 right. Are you familiar with Sergio Quarles,
24 Marcus Allen, Daniel Griffin, any of those
25 names?

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- 1 A. Yes.
- 2 Q. Which one of those? All of them?
- 3 A. I know of all of them but I am more
4 familiar with Sergio Quarles.
- 5 Q. Tell me how you are more familiar with him
6 than the other three.
- 7 A. Throughout my law enforcement career Sergio
8 Quarles was -- he was known by the street name
9 of "Slow Joe".
- 10 Q. Okay. Now, did he give -- did you talk to
11 him about anything about Maunwell Ervin?
- 12 A. I did.
- 13 Q. Tell me a little bit about what the
14 conversation was.
- 15 A. It was conducted by Major General Murray
16 (phonetic). As I indicated earlier, these
17 individuals had ---
- 18 Q. Which individuals?
- 19 A. Sergio Quarles, Daniel Allen and a Griffin
20 subject and, uh, had been involved in a high-
21 speed chase with our uniform patrol. They also
22 had taken officers to stolen goods that they
23 had stole out of a house.
- 24 Q. How does that relate to Maunwell Ervin?
- 25 A. I was also informed that they had broken

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1 into [REDACTED], which was the home of
2 Maunwell Ervin and a friend.

3 Q. Okay. You said that you were told this by
4 John Murray. Did you -- and you said that you
5 talked to Sergio Quarles. What was your
6 conversation about?

7 A. Once I got to the Sheriff's Office, we met
8 in Murray's office in the investigative
9 division. Murray's office is, as you walk into
10 that division, on the left.

11 Sergio Quarles indicated that they had
12 broken into Maunwell Ervin's house in reference
13 to stealing narcotics.

14 Q. And that -- they told you why they were in
15 there?

16 A. Yeah, they told us that they knew him to
17 have possibly money and drugs in the house.

18 Q. Was there a follow-up? In other words,
19 they are saying that they are stealing all this
20 money and stuff. Was anybody following up on
21 whether that actually happened or not?

22 A. Yes, two of my agents actually accompanied
23 Sergio Quarles to the Promised Land area here
24 in Greenwood, which is located off of Highway
25 10 going towards the McCormick County line,

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1 where they recovered a quantity of drugs that
2 Quarles stated that they had stolen from this
3 residence.

4 Q. Based on your conversation and the amount
5 that they found, was it consistent? I mean, he
6 gave you good information?

7 A. He gave us actually accurate information.

8 Q. Now, did he give you any other information
9 about his relationship with Maunwell Ervin
10 prior to breaking into his house?

11 A. Uh, he stated that, uh, that he had saw
12 Maunwell Ervin and Brent Ervin and they told
13 him that they had received a package. By the
14 drug trade, the term "package" means a slide of
15 narcotics.

16 He also stated that he, uh, he saw them at
17 the Mr. Chip store and they followed him back
18 to their house, which was on Lawson Street.

19 Q. What happened after that? Did they
20 purchase drugs from him? Did they just talk to
21 him about it?

22 A. The way that he told me was that once he
23 was inside that house that he saw approximately
24 two pounds of marijuana, high grade marijuana.
25 That they didn't purchase any drugs at that

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1 time.

2 Q. Did he tell you that he had any prior
3 business relations -- meaning drug transactions
4 -- with Mr. Ervin?

5 A. Yes, he stated that in the past he had
6 purchased marijuana from Maunwell Ervin.

7 Q. Was it specific information or just that,
8 'I've bought marijuana in the past from him.'

9 A. On one occasion he's told me that he
10 purchased a pound of marijuana for approx-
11 imately eleven hundred and -- dollars (\$1,100).

12 THE COURT: Is this Mr. Quarles that
13 you are talking about?

14 SOLICITOR TAYLOR: Yes.

15 THE COURT: All right. Go ahead.

16 SOLICITOR TAYLOR: Thank you, Your
17 Honor.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR TAYLOR:

20 Q. Did he get into any information about other
21 drugs or prices that Mr. Ervin has given them,
22 or whatever it ended up costing him to buy
23 maybe another type of drug from them besides
24 marijuana?

25 A. He also -- Brent Ervin, who is related to

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1 Maunwell, stated that he's purchased cocaine
2 from him, that he would pay twenty-five (\$25)
3 to thirty (\$30) dollars per gram and that on
4 one occasion he also purchased a half ounce of
5 powdered cocaine from Brent for three hundred
6 fifty dollars (\$350).

7 Q. Well, that is a different person than
8 Maunwell; right?

9 A. Yes.

10 Q. How were they connected?

11 A. They are blood-related, cousins.

12 Q. Are they involved in the drug trade
13 together?

14 A. According to the information that we
15 receive and tips, they are.

16 Q. Were they living together?

17 A. Yes.

18 Q. Where were they living at?

19 A. They were both living at [REDACTED],
20 located in the City of Greenwood, located just
21 right across the road from Lander campus.

22 Q. Now, did you confirm that or did you just
23 go, 'oh, they live there because so and so told
24 me.' Did you go and follow up on that?

25 A. We actually confirmed that. I actually

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1 took a photograph of them there.

2 Q. Did you ever do any surveillance outside
3 the house?

4 A. We did.

5 Q. What did you see, anything that you can
6 remember seeing?

7 A. On one occasion, I observed the vehicles
8 that were given to us in the past, which was a
9 Dodge truck and also a Nissan Altima. Both of
10 those vehicles were there. On one occasion, I
11 did observe Mr. Ervin driving the pickup truck.

12 Q. All right. Let's go back to Sergio Quarles
13 again. Just to make sure, he is the one out of
14 those three people mentioned earlier that gave
15 -- that actually gave information. Right?

16 MS. TAYLOR: Objection, Your Honor.
17 Can you clarify -- he actually said "Mr. Ervin"
18 and I just want to be clear as to which Mr.
19 Ervin he is testifying to.

20 SOLICITOR TAYLOR: I'm sorry. I
21 meant Mr. Quarles.

22 MS. TAYLOR: No, Lieutenant Reeder
23 said the truck -- Mr. Ervin. I just wanted to
24 clarify which Mr. ---

25 SOLICITOR TAYLOR: Yeah. We were

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1 talking about Maunwell, but which one?

2 THE WITNESS: On one particular
3 incident, I observed Maunwell Ervin driving
4 a Dodge pickup truck. On another incidence,
5 actually the night of the search warrant, I
6 observed Brent Ervin leaving in a Nissan
7 Altima.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR TAYLOR:

10 Q. Did Marcus Allen give you any information

11 ---

12 A. I never talked with Marcus Allen.

13 Q. Did you ever talk to Daniel Griffin?

14 A. I never talked to Daniel Griffin.

15 Q. Did you ever threaten Sergio Quarles?

16 A. No, sir. Actually Sergio Quarles wanted to
17 talk to me, in the presence of SCDC workers,
18 and I told him that I had nothing to say to
19 him.

20 Q. When did this happen?

21 A. This happened in the back of the hall two
22 days ago.

23 Q. Well, I'm talking about -- that's good as
24 well, but I am talking about back when you
25 interviewed him in December of 2010, did you

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1 threaten him?

2 A. No.

3 Q. Did you promise him anything?

4 A. No. He voluntarily provided the infor-
5 mation.

6 Q. Did you tell him to lie?

7 A. Did I what?

8 Q. Did you tell him to lie?

9 A. No.

10 Q. To just make up information?

11 A. No.

12 Q. Let's back up. You mentioned that Sergio
13 Quarles said that he ran into Maunwell and
14 Brent Ervin at Mr Chip's.

15 A. Okay.

16 Q. Where was Mr. Chip?

17 A. Mr. Chip is a convenience store located
18 approximately a quarter mile from the court-
19 house, on South Main.

20 Q. When did this happen? I mean, you said --
21 and I just want to -- I guess to ask you again.
22 But what did Sergio Quarles do after he ran
23 into them at Mr. Chip?

24 A. Once he ran into them and they told him
25 that they had received a package, Quarles

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1 stated that he followed Ervin and -- both
2 Ervins, Maunwell and Brent Ervin, to their
3 location at [REDACTED].

4 Q. When did this happen?

5 A. I was given this information on November
6 29th.

7 Q. When did they say that they -- or when did
8 Sergio Quarles say that he went to their house
9 and saw this?

10 A. I don't know the exact date.

11 Q. Did he give you an idea, did he say two
12 years ago? Recently?

13 A. He stated that it was right before the
14 burglary, so I am assuming that it was recent.

15 Q. How about all these other drugs deals, how
16 -- when did that happen?

17 A. He didn't provide that time. He just said
18 in the past.

19 Q. Could you describe -- now, these drugs
20 deals, is this just something that they do once
21 a year to get a little money or -- I mean, is
22 it a-one-time-a-year deal? How do they
23 operate?

24 A. No, there is no set time with narcotics
25 dealers. Their time is not our time. So it

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1 could be today twice, tomorrow or it could be a
2 week from now.

3 Q. Do you think it's accurate to describe this
4 as continuous activity?

5 A. Yes.

6 SOLICITOR TAYLOR: Judge, I have
7 no further questions.

8 CROSS EXAMINATION

9 BY MS. TAYLOR:

10 Q. Good morning, Lieutenant Reeder. Give me
11 just one second -- all right, good morning.

12 Just to go back, can you give me a little bit
13 of information on what your background and
14 training was, specifically?

15 A. I am the commander of the drug enforcement
16 unit, which is the narcotics task force
17 comprised of the Greenwood County Sheriff's
18 Office and the City Police Department.

19 Q. I understand all that. I have your
20 affidavit.

21 A. You want to know my background?

22 Q. I do.

23 A. My background is listed on my affidavit.

24 Q. Can you tell me what specific training you
25 have had in the narcotics field?

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1 A. Specific training, I was assigned to the
2 DEA drug task force out of Greenville, South
3 Carolina for four years.

4 Q. Okay.

5 A. I also went to basic narcotics training.
6 I am also certified in meth labs, clandestine
7 meth lab dismantling. I've also prosecuted
8 cases in State court as well as Federal courts.

9 Q. Thank you, Lieutenant Reeder. And during
10 your time -- you did say that you were with the
11 DEA, correct?

12 A. (No verbal response).

13 Q. You were with the department of Drug
14 Enforcement?

15 A. I was a task force agent with the drug
16 enforcement ---

17 Q. Okay. During your time with the DEA, do
18 they have any specific policies or procedures
19 that they encouraged or made you follow as part
20 of their drug enforcement agency?

21 A. They were different from State.

22 Q. Can you detail what some of those policies
23 might be?

24 A. If you're a little more specific in your
25 question, I maybe could.

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1 Q. Sure, I'll be happy to be more specific.

2 As far as interviewing subjects, is there any
3 policies about taking notes on information that
4 a subject gives you?

5 A. There were times that we did document some
6 things. There were times that we did not
7 document.

8 Q. So you -- your statement is that that is
9 not a mandatory course of procedure.

10 A. No.

11 Q. It was left solely in your discretion?

12 A. Yes.

13 Q. In your experience in all these
14 prosecutions that you have done, have notes
15 been shown to be helpful when you are trying to
16 remember things that happened a couple of years
17 ago?

18 A. Most of the time in the Federal system,
19 once an offender is brought to -- I guess he's
20 indicted, there are a lot more -- the cases are
21 disposed of a lot quicker than the cases in
22 State court.

23 Q. So you're saying it's quicker and you don't
24 need to take notes because it happens faster?

25 A. No, I didn't say that.

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1 Q. But you implied that.

2 A. What I said is that the cases are disposed
3 of a lot quicker in Federal Court. So it is
4 left up to the officer whether he writes notes
5 or keeps notes.

6 Q. Right, and ---

7 A. Actually in Federal Court, what I have
8 learned from other agents was that it is best
9 not to write notes because those notes become
10 a part of the file.

11 Q. And what would be the negative impact of
12 those notes becoming a part of your file?

13 A. Defense attorneys.

14 Q. Is the main issue here to catch and
15 prosecute criminals or is it to go on (sic)
16 with defense attorneys?

17 A. It is to prosecute criminals but ---

18 Q. Can you use that ---

19 A. --- also ---

20 Q. Just answer the question. It's to
21 prosecute criminals.

22 THE WITNESS: Your Honor, could I
23 answer her question?

24 THE COURT: Answer hers first. I am
25 sure you'll have an opportunity to answer it in

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1 a minute.

2 CROSS EXAMINATION CONTINUED

3 BY SOLICITOR TAYLOR:

4 Q. It is to prosecute criminals, is that the
5 main purpose of your job?

6 A. The main purpose of my job is to make cases
7 on criminals and let the solicitor's office or
8 the federal government prosecute the cases.

9 Q. Thank you All right. Let's go back to how
10 you got in this particular situation. You said
11 earlier on Mr. Taylor's direct examination that
12 the information provided to you in this search
13 warrant affidavit that you drafted specifically
14 came from Sergio Quarles. You said that this
15 information was given to you on November 29th?
16 Is that correct?

17 A. Yes.

18 Q. So that would be the day before the
19 burglary at [REDACTED]?

20 A. If I could look at the incident report, I
21 could tell you what day the burglary occurred.

22 Q. Okay.

23 A. But I don't have that in front of me, so I
24 can't tell you.

25 Q. I can provide you with a copy, (tendering).

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1 See if this refreshes your memory.

2 A. (Upon review), this is not the day of the
3 burglary. This is the incident report of the
4 actual search warrant that we executed.

5 Q. Oh, I apologize.

6 MS. TAYLOR: Your Honor, may we
7 approach?

8 THE COURT: Certainly.

9 (OFF RECORD BENCH CONFERENCE)

10 THE COURT: Were there two
11 burglaries that took place?

12 MS. TAYLOR: There's three that took
13 place, total. And, again, Your Honor, you
14 know, there's -- I understand the solicitor's
15 argument that this is not relevant to this
16 particular case but we had this issue on
17 Monday. I asked for everything to be disclosed
18 again relating to all three of these
19 burglaries. Now in the middle of cross
20 examining a witness in a suppression hearing, I
21 get another incident report that I've not had a
22 chance to look at.

23 SOLICITOR TAYLOR: Which we
24 haven't either, Judge. I literally took it
25 from Detective Adams and handed it to her.

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1 THE COURT: Well, so we have ---
2 we've got a theft of a TV on this one.

3 SOLICITOR TAYLOR: Yes, sir.

4 THE COURT: And we have ---

5 SOLICITOR TAYLOR: They did that,
6 as well. It was crack and a TV at the same
7 house.

8 MS. TAYLOR: And, Your Honor, this
9 incident report does specifically relate to
10 this crack, to the burglary that led to the
11 probable cause. The others, I can maybe see
12 how they could argue that it is not relevant
13 but this specifically -- I mean, it has my
14 client's name, information, information that he
15 gave the police officers.

16 SOLICITOR TAYLOR: As the victim,
17 Judge. It's not exculpatory under Brady, I
18 don't think.

19 MS. TAYLOR: He was the victim. Then
20 the victim -- the victim of the crime. Then
21 the crime was turned against him, so ---

22 THE COURT: Let's see where we go
23 with this. Clear up, if you can, how many
24 burglaries and what information from each
25 related to -- because I am assuming that we

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1 are doing a *Franks* hearing here concerning the
2 affidavit.

3 MS. TAYLOR: Yes.

4 THE COURT: Am I wrong?

5 SOLICITOR TAYLOR: We are, Judge.

6 And my understanding is, and we can clarify,
7 that they've relied on information about one
8 burglary, not the other crimes, robberies and
9 other burglaries.

10 MS. TAYLOR: Unfortunately the
11 information that came out in the investigation
12 of the other three crimes is relevant to this
13 person's veracity, their reason to lie and
14 other knowledge that has been made available to
15 police officers, that should have determined
16 whether probable cause existed in this
17 situation.

18 SOLICITOR TAYLOR: Your Honor, I
19 think we can argue that after ---

20 THE COURT: Let's keep going along.
21 I understand the State's position on this most
22 recent incident report. But if -- let's find
23 out how many burglaries were involved, because
24 I was under the impression that there was only
25 one, the burglary where the dope was stolen and

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1 they found it later in the woods.

2 MS. TAYLOR: How do you want us to go
3 about that, Your Honor?

4 SOLICITOR TAYLOR: I can clear it
5 up if you don't get to it. I've got some other
6 stuff that I need to clear up on redirect.

7 SOLICITOR STUMBO: We can put
8 Adams back on the stand, as well, Your Honor.

9 THE COURT: I mean, a *Franks* hearing
10 is fairly limited in scope. To the extent that
11 we can focus on the central issues about
12 whether there was false information in the
13 affidavit, the extent to which accurate
14 information may have been included in the
15 affidavit, -- I mean, you all know what the law
16 is. Let's stay trained on that and see where
17 we go.

18 MS. TAYLOR: Thank you, Your Honor.

19 THE COURT: Thank you so much.

20 MS. TAYLOR: All right, back on the
21 record.

22 CROSS EXAMINATION CONTINUED

23 BY MS. TAYLOR:

24 Q. Lieutenant Reeder, ---

25 THE COURT: I don't think that we

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1 were ever off the record, Ms. Taylor.

2 MS. TAYLOR: Oh. I'm sorry.

3 THE COURT: Go ahead.

4 CROSS EXAMINATION CONTINUED

5 BY MS. TAYLOR:

6 Q. Just for the purpose of refreshing your
7 memory, I've circled the date that this
8 incident report happened so that you may be
9 better able to answer the question. The
10 question, again, was what -- you interviewed
11 Quarles on November 29th, which would have been
12 the day before the burglary took place at
13 Maunwell Ervin's house.

14 THE WITNESS: Your Honor, can you
15 give me a chance to read this?

16 THE COURT: Sure, go ahead.

17 THE WITNESS: (Upon review), okay.

18 CROSS EXAMINATION CONTINUED

19 BY MS. TAYLOR:

20 Q. Again, you said that you talked to Quarles
21 on the 29th, which was the day before the
22 burglary took place; is that correct?

23 A. Yes.

24 Q. Okay. So if you talked to him on the 29th
25 and he gave you all this information, how is it

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1 possible that he could detail stealing crack
2 from a house that at that point he had not yet
3 broken into?

4 A. Actually in my affidavit it says that
5 Quarles told me on the 29th. I didn't talk to
6 him on the 29th. I actually talked to him after
7 he was arrested and he was processed into the
8 office.

9 Q. Okay.

10 A. He told me that on November 29th, between
11 the hours of nine and eleven, that he and
12 Griffin saw Maunwell Ervin and Brent Ervin at
13 Mr. Chip on South Main.

14 Q. So in your previous statement you said that
15 he gave this information to you on the 29th. Do
16 you think that this might be a helpful reason
17 why you should keep notes when investigating
18 situations like that?

19 A. Ma'am, sometimes officers make mistakes.
20 My affidavit is a part and product of my notes.

21 Q. A product of the notes that you don't have.

22 A. Right here (indicating).

23 Q. You are now saying that your affidavit is
24 your notes? That is the statement that you are
25 making here for the court, that this affidavit

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1 is the notes that you took in interviewing
2 Sergio Quarles?

3 A. This affidavit reflects my interview with
4 Sergio Quarles.

5 Q. But you did not take any notes? I need you
6 to be real clear.

7 A. This affidavit reflects the interview that
8 I took with Sergio Quarles.

9 MS. TAYLOR: Your Honor, could you
10 please instruct the witness to answer my
11 question as to whether or not he actually took
12 notes. I am not asking whether he drafted an
13 affidavit. I am asking if in drafting that
14 affidavit if he took any notes in his interview
15 with Sergio Quarles?

16 THE COURT: Did you take any notes?

17 THE WITNESS: I don't recall.

18 THE COURT: All right.

19 CROSS EXAMINATION CONTINUED

20 BY MS. TAYLOR:

21 Q. All right. Let's get back to what you were
22 talking about on direct a little bit. You
23 mentioned something about coming into -- coming
24 into acquaintance with Maunwell Ervin and Brent
25 Ervin -- I believe you said that it was at, uh,

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1 -- I might have this wrong. This is the first
2 time I'm hearing about this. But you said that
3 he gave a consent to search of his property for
4 you. When was that?

5 A. I don't know an exact date or time.

6 Q. That's fine. I am saying more simply,
7 where are you saying that it took place?

8 A. It took place in the parking lot of
9 Stokie's nightclub. He was driving a -- at the
10 time he owned a Lincoln.

11 Q. Okay.

12 A. I think it was a Lincoln Town Car or a ---

13 Q. Do you know whose car that belonged to --
14 whose car that was, actually?

15 A. I assume that it belonged to him because on
16 numerous times he was always driving it.

17 Q. You saw my client driving a white Lincoln
18 Town Car on numerous occasions?

19 A. Yeah.

20 Q. And I don't mean to be repetitive but you
21 didn't take any notes of that either; is that
22 correct?

23 A. I don't recall.

24 Q. Okay. All right. Do you happen to know
25 what car Brent Ervin drove?

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1 A. I've seen Brent in several different cars,
2 as I've seen Maunwell in several different
3 cars.

4 Q. You say that you observed Maunwell at one
5 point driving a Dodge Ram truck and Brent Ervin
6 driving a Nissan Altima. Is that correct?

7 A. Yes.

8 Q. Did you make those observations during your
9 two-week surveillance of the Lawson Street
10 address?

11 A. My what?

12 Q. You say in your affidavit that you
13 surveiled the property for two weeks,
14 approximately two weeks, and that you were able
15 to identify that both individuals had been
16 residing there. It's in the first -- in the
17 second paragraph.

18 A. (Reviewing).

19 Q. Right here (indicating), you say that you
20 surveiled the property for two weeks.

21 A. (No verbal response).

22 Q. Just to be clear, you didn't note in your
23 report that you had observed what either
24 individual was driving, in your surveillance
25 report.

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1 A. I knew that those tags came back to -- if I
2 recall, a resident of the Mill Pond area.

3 Q. Mill Pond, is that what you said? I'm not
4 familiar with it. Is that a suburb or ---

5 A. Where his family is from, down south.

6 Q. Where you believe his family to be
7 residing?

8 A. (No verbal response).

9 Q. But -- just again, not to belabor the
10 point, but you did not put that information in
11 your ---

12 A. No.

13 Q. --- affidavit, nor did you have notes that
14 you saw these individuals driving specific
15 cars?

16 A. (No verbal response).

17 Q. All right. You detailed in your affidavit
18 -- and I am going to walk up here. Quarles
19 detailed to you that he'd purchased drugs from
20 both M Ervin and B Ervin; is that correct?

21 A. Yes.

22 Q. Yet you did not make any attempt to
23 investigate B Ervin in the crime or the drugs
24 that were found after you'd issued a search
25 warrant and searched [REDACTED] ?

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- 1 A. (No verbal response).
- 2 Q. B Ervin was never questioned, is that
3 correct?
- 4 A. Because at that time I had Maunwell Ervin
5 in custody as a suspect.
- 6 Q. Does that mean that you couldn't question
7 him?
- 8 A. I possibly could have.
- 9 Q. If you had information that he was a drug
10 dealer and your informant told you that he had
11 personally bought something from B Ervin, why
12 would you not question him?
- 13 A. I don't think that Quarles is an informant.
14 He's the one that provided ---
- 15 Q. Okay.
- 16 A. --- information when arrested, voluntarily
17 gave information.
- 18 Q. Okay.
- 19 A. I think that there is a difference when
20 someone is an informant, that provides ---
- 21 Q. I understand.
- 22 A. --- information to law enforcement ---
- 23 Q. So are you saying that Quarles is a
24 reliable source?
- 25 A. I would agree with you ---

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1 Q. Hold on now. Answer my question. Would
2 you say that Quarles is a reliable source?

3 A. He gave me information. I gave it to the
4 magistrate. They felt like it was enough to
5 get a search warrant.

6 Q. Would you, in your discretion as Lieutenant
7 Reeder, ---

8 A. Yes.

9 Q. --- claim that Quarles is a reliable
10 source?

11 A. Yes.

12 Q. Okay. So a reliable source gave you
13 information specifically detailing previous
14 drug buys from B, Brent, Ervin and you did not
15 investigate Brent Ervin at all?

16 A. I did not.

17 Q. Okay. Can you talk to me a little bit
18 about where you were when you interviewed
19 Quarles and he gave you this information about
20 these previous drug buys?

21 A. I was in the Sheriff's Office, in Major
22 Murray's office, which is located in the
23 Sheriff's Office. When you walk into the
24 investigation ---

25 Q. I don't need that. I mean, in an office in

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- 1 the Sheriff's Department?
- 2 A. Well, you asked me. So I am telling you.
- 3 Q. I understand. I -- it would be sufficient
- 4 to say that you were in an office in the
- 5 Sheriff's Department; is that correct?
- 6 A. Yeah.
- 7 Q. Okay. How many officers were present
- 8 during this interrogation or questioning?
- 9 A. Just Major Murray and myself.
- 10 Q. Just you and Major Murray?
- 11 A. (No verbal response).
- 12 Q. Were there any video cameras that were
- 13 turned on or anything like that?
- 14 A. No.
- 15 Q. Was there any audio capability to record
- 16 audio statements?
- 17 A. Yes, downstairs in a separate conference
- 18 room.
- 19 Q. So you just would have had to have taken
- 20 him downstairs to record that?
- 21 A. Yes.
- 22 Q. But you didn't do that?
- 23 A. (No verbal response).
- 24 Q. Okay. Did you interview Quarles before or
- 25 after Officer Adams -- or Detective Adams, I'm

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1 sorry -- interviewed him?

2 A. After.

3 Q. Okay, this is what the Judge was referring
4 to. We are going to talk now about the three
5 separate burglaries that happened. Officer
6 Adams interviewed Quarles after -- I believe
7 that it was after the burglary for the failure
8 to stop, where they had burglarized the man in
9 the subdivision and stolen some money from him?

10 A. I am not ---

11 Q. You don't know if he interviewed him?

12 A. I am not -- I remember interviewing him
13 after the break-in at [REDACTED] because Sergio
14 Quarles provided information about narcotics to
15 the officers, to retrieve the narcotics. So
16 therefore, I interviewed him after Detective
17 Adams had interviewed him.

18 Q. So it was after Adams?

19 A. (No verbal response).

20 Q. Okay. How many cases have you investigated
21 in your career, say a year, just a ballpark
22 number?

23 A. (No verbal response).

24 Q. You have no idea?

25 A. A hundred plus.

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1 Q. A hundred plus? Okay. Would you say that
2 this is an important case to the Greenwood
3 County narcotics department?

4 A. All cases are.

5 Q. Okay. Well, that being the case, wouldn't
6 you take every precaution that was available to
7 you?

8 A. I took the information that I had and I put
9 it in an affidavit and I received a search
10 warrant from it.

11 Q. All right. When you -- you reference, I
12 believe Major Murray is his title. You
13 reference him interviewing Quarles.

14 A. I interviewed Quarles. You asked me if
15 anyone was present. Major Murray was ---

16 Q. I was ---

17 A. --- present because he was over the
18 investigation.

19 Q. Okay. I was talking back in the direct, in
20 Mr. Taylor's direct examination. You mentioned
21 that Brent Ervin told -- or, I'm sorry. That
22 Quarles told Murray that Brent Ervin was a drug
23 dealer.

24 A. What?

25 MS. TAYLOR: Can we get the record

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1 back?

2 THE COURT: Repeat the question.

3 Did Mr. Murray tell you anything about this
4 incident?

5 DEFENDANT: About Brent Ervin.

6 CROSS EXAMINATION CONTINUED

7 BY MS. TAYLOR:

8 Q. About Quarles saying that Brent Ervin was a
9 drug dealer?

10 A. No.

11 THE COURT: What did Murray tell
12 you?

13 THE WITNESS: Murray informed me
14 that they had had some break-ins involving
15 Quarles and some subjects that had broken in
16 and stole crack from -- is that what you're
17 saying? From Brent Ervin and Maunwell Erwin's
18 house?

19 MS. TAYLOR: Right.

20 DEFENDANT: Yeah.

21 CROSS EXAMINATION CONTINUED

22 BY MS. TAYLOR:

23 Q. So he did tell you that it was from Brent
24 Ervin's and Maunwell Ervin's house?

25 A. Yeah.

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1 Q. So you have information to believe, again,
2 that Brent Ervin was with him?

3 A. Yes.

4 Q. You also stated that the amount that
5 Quarles told you that he stole and what it
6 actually ended up weighing out to be was exact?
7 Are you aware that in your affidavit that you
8 say that Quarles told you that he stole forty-
9 two (42) grams. Forty-one (41) grams. I
10 apologize. Forty-one grams of crack cocaine
11 and in the actual lab report it says two
12 ounces. Would you agree that that is a
13 discrepancy?

14 A. Two ounces is actually more than forty-one
15 grams.

16 Q. Exactly, so it wouldn't be exactly what he
17 said that -- you're admitting that it wasn't
18 exact?

19 A. Yeah.

20 Q. Let's go back to this anonymous tip that
21 you say that you received. You say that you
22 received several anonymous tips? Not just one.

23 A. Yes, I've received numerous tips about
24 Maunwell Ervin distributing drugs.

25 Q. Were any of these tips specific about maybe

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1 they purchased something from either one of
2 these individuals or they knew somebody that
3 purchased but they weren't able to give you
4 specific articulable facts?

5 A. In our line of work, people tell you things
6 all the time. When people repeatedly tell you
7 things about a certain individual, you try to
8 corroborate those things. Yes.

9 Q. Okay. So you are claiming that you had
10 repeated tipsters from the time that he got out
11 of jail until the day of this incident, that
12 were telling you that he was related in drug-
13 related activities?

14 A. (No verbal response).

15 Q. And, again, you didn't note that in your
16 report. You didn't make any notes of those
17 tipsters, when they called or what they said.

18 A. I didn't because I don't have to provide
19 tipster information.

20 MS. TAYLOR: Thank you. No further
21 questions, Your Honor.

22 SOLICITOR TAYLOR: Your Honor, I
23 have a few things I want to clarify.

24 THE COURT: Before we get there, ---

25 SOLICITOR TAYLOR: Yes.

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1 THE COURT: --- let me get something
2 clear that I want to clarify. We're -- now
3 we're going into a different direction. To
4 what extent did you rely on anonymous tips or
5 any known tipsters whose identities were known
6 to you? Did you rely upon that when you did
7 the affidavit?

8 THE WITNESS: No.

9 THE COURT: So that simply formed
10 your basis, the information that you received
11 from anonymous sources and from known sources,
12 simply formed your basis to express an interest
13 in Mr. Ervin?

14 DEFENDANT: Yes.

15 THE COURT: All right.

16 SOLICITOR TAYLOR: Thank you, Your
17 Honor.

18 REDIRECT EXAMINATION

19 BY SOLICITOR TAYLOR:

20 Q. I just want to clarify a few things that
21 you put in your affidavit. If you could,
22 identify this?

23 A. (Upon review), okay.

24 Q. Can you tell the court what that is?

25 A. That's an affidavit and also a search

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1 warrant.

2 Q. For what location?

3 A. [REDACTED].

4 Q. From you just reviewing it, does it seem to
5 be altered or changed in any way?

6 A. No.

7 SOLICITOR TAYLOR: Judge, at this
8 time I would like to enter what's been marked
9 as Court's Exhibit 1.

10 THE COURT: All right. No objection
11 to the court receiving Court's 1?

12 MS. TAYLOR: No objection. I'm
13 sorry.

14 REDIRECT EXAMINATION CONTINUED

15 BY SOLICITOR TAYLOR:

16 Q. There were a few things that I wanted to
17 clarify. I am going to read from this
18 affidavit to make sure that I am following you
19 here. I guess these dates that Ms. Taylor was
20 asking you about in terms of when stuff
21 happened, interviewing, you mentioned earlier
22 that you interviewed Sergio Quarles after he
23 was arrested for all of the things:
24 burglaries, robberies, all that stuff.

25 A. Yes.

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1 Q. In your affidavit here, it shows that they
2 were arrested on the 30th -- 2010. Is that
3 correct?

4 A. Yes.

5 Q. Did you interview him the same day or the
6 day after, which would be December 1st, 2010?

7 A. December 1st.

8 Q. That is consistent with your affidavit.
9 Now, you mentioned the date of November 29th,
10 2010, about Mr. Chip.

11 A. Yes.

12 Q. Based on those dates that we talked about,
13 did that happen before or after they broke into
14 the house?

15 A. Before.

16 Q. Let's change directions here. Let's go
17 back to before you executed the search warrant.
18 Do you know what date that was?

19 A. December 9th.

20 Q. What year?

21 A. 2010.

22 Q. Since you got the search warrant, were you
23 the lead investigator at the actual scene when
24 you executed the search warrant?

25 A. Yes.

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1 Q. Who was in charge of reading the *Miranda*
2 rights to the people that were inside?

3 A. Once they were secured, I read the *Miranda*
4 rights.

5 Q. Do you have any particular way that you do
6 it or do you just start reading out loud?

7 A. Normally I read the *Miranda* rights out loud
8 with all persons in a room. After I finish
9 reading them, I will ask each individual person
10 their name. I will also ask them if they
11 understood their rights. Once they indicate
12 that, I go to the next person.

13 Q. And you did that back on December 9th, 2010?

14 A. Yes.

15 Q. As far as you could tell, did Mr. Ervin,
16 Maunwell Ervin, understand his rights?

17 A. He did.

18 Q. Once this started, once this was going on,
19 you know, the process of searching the house,
20 did he make any statements? Did you
21 interrogate him at all there?

22 A. Do you have the incident report that I
23 could refer back to?

24 Q. (Tenders), looks like it is right in the
25 middle there.

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1 A. (Upon review), okay.

2 Q. Just to ask my question again, did you
3 interrogate Mr. Ervin -- and who was the other
4 person in the house?

5 A. There was a Benoit Bush.

6 Q. Did you interrogate him?

7 A. Under *Miranda*, Maunwell Ervin said that
8 Bush had nothing to do with the items that were
9 found in the house.

10 Q. I mean, did you ask him?

11 A. Yeah.

12 Q. Can you speak up a little bit and say one
13 more time what he said?

14 A. Maunwell Ervin stated that Bush had nothing
15 to do with the items that were found during the
16 search of the house.

17 Q. That's it? He didn't say anything else?

18 A. (No verbal response).

19 Q. That's fine if he didn't, I just want to
20 clarify.

21 A. Not that I recall.

22 Q. Did y'all take him and Mr. Bush back to the
23 Sheriff's Office and interrogate them?

24 Continue to question them? Or was that it?

25 A. Mr. Ervin was transported to the Greenwood

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1 County Sheriff's Office, then to the detention
2 center where he was booked. No further
3 questions.

4 Q. What happened to the other guy, Benoit
5 Bush?

6 A. Actually -- Ervin actually wanted to turn
7 the residence over to Bush to secure the
8 property while he was being transported to the
9 Sheriff's Office.

10 Q. And why wasn't he charged?

11 A. Ervin again stated that Bush had nothing to
12 do with the items found in the house during the
13 search.

14 Q. When he made that statement, were there
15 people -- did y'all threaten him at all?

16 A. No.

17 Q. Did y'all try to intimidate him?

18 A. No.

19 Q. Did you promise him anything?

20 A. No.

21 Q. How many people were in the room when he
22 made that statement?

23 A. There were several officers in the room at
24 that time. To name them exactly, I couldn't.

25 Q. Just based on your recollection, did anyone

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1 else threaten him?

2 A. I didn't hear anyone threaten him.

3 Q. What was his demeanor like?

4 A. That he was responsible for it.

5 Q. Was he scared or ---

6 A. No.

7 Q. Didn't seem intimidated?

8 A. No.

9 SOLICITOR TAYLOR: No further
10 questions, Your Honor.

11 THE COURT: Any follow up?

12 MS. TAYLOR: Your Honor, I didn't
13 know that we were doing the *Jackson v. Denno*
14 all at the same time.

15 THE COURT: No, it's ---

16 RECROSS EXAMINATION

17 BY MS. TAYLOR:

18 Q. Just to be clear, did you act or did you
19 Mirandize -- you didn't -- I'm sorry. You
20 didn't give an advisement of rights form to
21 either Maunwell or to Mr. Bush, is that ---

22 A. I gave them oral *Miranda*.

23 Q. You gave them an oral *Miranda* but you never
24 gave them the Advisement of Rights to sign?

25 A. No, I didn't.

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1 Q. Okay. When you asked or when the statement
2 was made by Maunwell that -- you're claiming
3 that you didn't ask him anything, that this was
4 a voluntary statement that he made about the
5 other person not being involved, was that
6 voluntary or were you questioning him when he
7 said that?

8 A. Voluntary.

9 Q. Was that statement made before or after the
10 drug dogs had entered the house and the search
11 completed?

12 A. That statement was made while he was under
13 arrest.

14 Q. I understand that.

15 THE COURT: One second. Your paper-
16 work is over the court reporter's microphone.
17 Would you mind ---

18 THE WITNESS: I'm sorry, (removed
19 paperwork from mic area).

20 THE COURT: Thank you.

21 RECROSS EXAMINATION CONTINUED

22 BY MS. TAYLOR:

23 Q. Again, when you made that statement, was
24 that before or after the search had been
25 conducted?

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- 1 A. The statement? After the search.
- 2 Q. It was after they'd found everything?
- 3 A. Yes.
- 4 Q. Uh, did you ever question Maunwell Ervin in
5 custody after he made the statement?
- 6 A. I don't recall.
- 7 Q. You don't recall if you questioned the main
8 defendant in this case?
- 9 A. In his home or ---
- 10 Q. No, after he was arrested and taken to
11 jail, was he questioned by you or any other
12 individual from your office?
- 13 A. Not at that point.
- 14 Q. When was he questioned?
- 15 A. I think that we met with Maunwell -- myself
16 and an ATF Agent met with Maunwell at the
17 county airport some weeks afterwards, when he
18 said that he was going to cooperate.
- 19 Q. Was that statement recorded?
- 20 A. No.
- 21 Q. It wasn't recorded?
- 22 A. No.
- 23 Q. Did you tell him that it was being
24 recorded?
- 25 A. No.

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- 1 Q. Never made any statement to that effect?
- 2 A. No.
- 3 Q. Was Mr. Ervin handcuffed -- going back to
4 the voluntary statement at the house. Was he
5 handcuffed when he made that statement?
- 6 A. Yes. Once we execute a search warrant and
7 we enter a house, all subjects in the house are
8 handcuffed at the time of executing the search
9 warrant. They remain handcuffed until the
10 conclusion of the search.
- 11 Q. That is procedure?
- 12 A. Yes.
- 13 Q. But it is not procedure to give them an
14 advisement of rights form?
- 15 A. It is not procedure when we execute a
16 search warrant. Once we have those persons in
17 custody, we don't take cuffs off and give them
18 a paper. We give them an oral *Miranda*. Like I
19 told you before, I actually go around and ask
20 each individual if they understood their
21 *Miranda* rights.
- 22 Q. You specifically explained his *Miranda*
23 rights to him?
- 24 A. I read ---
- 25 Q. Each one?

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1 A. I read him his *Miranda* rights and asked if
2 he if he understood them. He indicated to me
3 that he did understand his rights.

4 Q. But when Quarles, Griffin and Allen were
5 questioned, they were given an Advisement of
6 Rights form to sign.

7 A. I didn't -- first of all, I didn't
8 interview Quarles, Griffin -- I mean, didn't
9 interview Griffin and Allen.

10 Q. Okay.

11 A. I spoke with Quarles. I did not provide
12 him a form either.

13 Q. So this is more of a policy done by other
14 officers, not necessarily you?

15 A. I can't answer for other officers.

16 Q. But you ---

17 A. I did not provide Maunwell Ervin, at the
18 time of the execution of the search warrant or
19 at the time of the interview, an advisement of
20 rights form.

21 MS. TAYLOR: Thank you. No further
22 questions.

23 THE COURT: Judge, may I follow up
24 on the *Denno* part, if I may?

25 REDIRECT EXAMINATION RESUMED

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1 BY SOLICITOR TAYLOR:

2 Q. Lieutenant Reeder, whenever you read
3 someone their *Miranda* rights at search warrant,
4 like you did back on December 9th, 2010, do you
5 have a card that you read off of?

6 A. I do have a card.

7 Q. Is that what you read off of?

8 A. No, sir.

9 Q. What do you -- when you say that you read
10 him his rights, what do you say? Could you
11 repeat that on the record?

12 A. "First of all, you have the right to remain
13 silent. Anything that you say can be used
14 against you in court. You also have the right
15 to an attorney. If you can't afford one, one
16 will be appointed to you at no cost. You also
17 have the right not to answer any questions that
18 I may ask you without an attorney's presence.
19 If you wish to do so at any time, you may stop
20 and consult with an attorney."

21 Q. And you said that you have some specific
22 way -- you say that out loud to ---

23 A. Yes, and I actually point to each
24 individual, which my officers can verify, and I
25 say, 'Your name, sir?' They repeat their name.

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1 I ask them, 'Do you understand your rights?'

2 Then they say yes or no.

3 Q. Did either one of them say no?

4 A. Neither individual stated that they didn't
5 understand their rights. They both indicated
6 that they did understand their *Miranda* rights.

7 SOLICITOR TAYLOR: I have no
8 further questions, Your Honor.

9 MS. TAYLOR: No redirect, Your Honor.

10 THE COURT: Thank you, you can step
11 down.

12 (WITNESS STEPS DOWN)

13 THE COURT: I realize that we may or
14 may not be done with this at this point but the
15 bailiff has informed me that all jurors are
16 here. Are we done with testimony on this?

17 MS. TAYLOR: Your Honor, I have one -
18 - I would like to call Sergio Quarles. I don't
19 plan on getting that indepth with him. I think
20 it will just be probably two to three questions
21 on my part.

22 THE COURT: All right.

23 SOLICITOR STUMBO: Your Honor, we
24 have one more detective for a very short thing
25 with *Denno*, probably two minutes. If we could

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1 go ahead and put him up, then we would be done.

2 THE COURT: All right. Very good.
3 What I would like to focus on -- I realize that
4 we are doing a *Franks* hearing. Normally in a
5 *Franks* situation, the attack on the affidavit
6 has to be -- to even -- let me back up.

7 To even warrant a *Franks* hearing, the
8 attack on the affidavit must allege either
9 deliberate falsehood or, for lack of a better
10 word, conscious disregard or conscious
11 indifference to what the true facts are. I
12 have not had a chance to actually review the
13 affidavit. I realize that it was made Court's
14 Exhibit 1 but I -- is the State conceding that
15 there was misinformation in there or that there
16 was some effort to actively misled the
17 magistrate when he issued the warrant?

18 SOLICITOR TAYLOR: We do not
19 concede that at all, Judge.

20 THE COURT: Okay.

21 SOLICITOR TAYLOR: We are at the
22 other end of the spectrum. We believe that it
23 was all truthful and accurate.

24 THE COURT: Just so that I can --
25 before I take a five-minute break so that I can

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1 use the facilities, what is it exactly that
2 the defense is alleging was materially and
3 intentionally either omitted or misrepresented
4 in the underlying affidavit, Ms. Taylor?

5 MS. TAYLOR: Your Honor, I think that
6 Mr. Quarles will testify -- I mean, obviously
7 that is the issue at heart, whether or not that
8 information provided was true. I think as far
9 as what was intentionally left out, from the
10 testimony that we heard today, that it would go
11 to the anonymous tipster, what they actually
12 said. He claimed that there were numerous. It
13 makes no reference to that in the affidavit.

14 I think that there is a lot of
15 information that he could have put in there
16 that he deliberately didn't. What purpose that
17 was for, you know, I can't make an assumption
18 of that. It's really up to you, but he's
19 really just admitting, by his own admission,
20 that he had more evidence than he put in.

21 THE COURT: Okay. That was sort of
22 the reason that I asked Mr. Reeder pointblank
23 to what extent did he rely upon confidential
24 information from CIs or anonymous tipster
25 information in the underlying affidavit. His

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1 testimony to me was -- or to the court was --
2 that the scuttlebutt or the rumor mill or the
3 information that he was getting from known
4 sources, whose identities he knew, is what
5 caused or what piqued his interest in the
6 defendant as opposed to what served as the
7 basis for the affidavit. I hear where you are
8 coming from, though. Certainly we will go
9 ahead and proceed with Mr. Quarles testimony.

10 I am going to take a brief break
11 though and instruct the bailiff to let the jury
12 know that we will be just a moment longer,
13 because I hate keeping them waiting. They have
14 already been here -- they have already been
15 here -- a lot of them have been here since
16 10:00, but we had the full panel here about ten
17 after 10:00, about fifty-two individuals. So I
18 am going to let them know that I am handling
19 other matters and just to hang tight.

20 MS. TAYLOR: Your Honor, ---

21 THE COURT: Yes, ma'am?

22 MS. TAYLOR: Just one last thing that
23 I think kind of rounds out that argument. I
24 also wanted to point out the information that
25 when he was surveilling the property that he

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1 said that he identified M. Ervin driving
2 certain cars. None of that was put in there.
3 I don't know why he would leave out certain
4 identifying information such as what type of
5 vehicle these individuals are driving,
6 especially if he had that information. But
7 that concludes my argument.

8 THE COURT: Very good.

9 MS. TAYLOR: Thank you, Your Honor.

10 THE COURT: Are you going to want
11 Mr. Quarles to testify here in a minute or --
12 you just said that it completes your argument.

13 MS. TAYLOR: It completes -- I see
14 the *Franks* hearing as based on that -- the
15 tipster and surveillance, and then Quarles'
16 statement as additional added to that. So I'm
17 sorry if I wasn't clear. I would like to ask
18 him a couple of question.

19 THE COURT: Certainly, that's quite
20 all right. We will be at-ease for a few
21 moments. If someone can get me Court's 1, I am
22 going to take a quick gander at that.

23 (BRIEF RECESS)

24 (DEFENDANT PRESENT)

25 (OFF RECORD DISCUSSION RE JURORS)

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1 THE COURT: All right. Solicitor?

2 SOLICITOR STUMBO: Thank you, Your
3 Honor. Just briefly we are going to call
4 Detective Courtney Smith.

5 (WITNESS TAKES STAND)

6 COURTNEY SMITH, being duly sworn to
7 tell the truth, the whole truth and nothing but
8 the truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR STUMBO:

11 Q. Morning, Detective Smith. Please state
12 your name and rank for the record.

13 A. Detective Courtney Smith.

14 Q. Detective Smith, where do you work?

15 A. Greenwood Sheriff's Department.

16 Q. What unit are you attached to? You work
17 with Lieutenant Reeder?

18 A. Yes, he is the commander.

19 Q. Did you have an occasion to go execute a
20 search warrant with Lieutenant Reeder down at

21 [REDACTED], here in Greenwood?

22 A. Yes, sir.

23 Q. So you were a part of that raid?

24 A. Yes, sir.

25 Q. Whose house was that?

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1 A. Maunwell Ervin's.

2 Q. All right. Were y'all able to verify that?
3 Was he inside when you executed the search
4 warrant?

5 A. Yes, he was.

6 Q. Was he detained while you executed the
7 search warrant?

8 A. Yes, sir, he was.

9 Q. Who read Mr. Ervin his rights?

10 A. Lieutenant Reeder.

11 Q. Okay. Did Lieutenant Reeder read his
12 rights as he testified to earlier?

13 A. Yes, sir.

14 Q. What rights did he give him?

15 A. He gave him his *Miranda* rights. While he
16 was reading them, Mr. Ervin was handcuffed
17 behind his back. The other gentleman was
18 there. He had a statement, I believe, under
19 *Miranda*, that he didn't have anything to do
20 with the items that were found in the house.

21 Q. You heard Lieutenant Reeder read Maunwell
22 Ervin his rights?

23 A. Yes, sir, I did.

24 Q. You heard him tell him that he had the
25 right to remain silent?

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1 A. Yes, sir.

2 Q. He told him that he had the right to an
3 attorney?

4 A. Yes, sir, I did.

5 Q. That if he couldn't afford an attorney that
6 one would be provided to him?

7 A. Yes, sir.

8 Q. At the State's expense?

9 A. Yes, sir, he did.

10 Q. Did he advise him that anything that he
11 said at that time could be used against him in
12 a court of law?

13 A. Yes, sir, he did.

14 Q. Okay. Did you hear Lieutenant Reeder ask
15 Maunwell Ervin whether he understood his
16 rights?

17 A. Yes, sir.

18 Q. What did he say?

19 A. He understood them.

20 Q. Did he waive them?

21 A. Yes, sir. He waived his rights, Maunwell
22 Ervin.

23 Q. Did Maunwell Ervin say anything to y'all
24 that you documented at that point? Not at that
25 point. Let me back up. At any point during

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1 the search warrant did Maunwell Ervin speak and
2 waive his right to be silent?

3 A. After he read them?

4 Q. That's right.

5 A. Yes, sir. He made the statement that the
6 other gentleman that was inside the house at
7 the time had nothing to do with items that were
8 found within the home.

9 Q. And you did find items alleged to be drugs
10 in the home?

11 A. Yes, sir.

12 Q. Did he say that Mr. Bush had nothing to do
13 with those?

14 A. He had nothing to do with those items.

15 Q. Okay.

16 A. Yes, sir.

17 Q. Okay. You heard him say that?

18 A. Yes, sir, I did.

19 SOLICITOR STUMBO: No further
20 questions.

21 MS. TAYLOR: Just one question.

22 CROSS EXAMINATION

23 BY MS. TAYLOR:

24 Q. Just to clarify, he made the statement
25 after y'all had searched the home and found

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1 what?

2 A. The rights were read to him, he waived his
3 rights, he made the statement.

4 Q. But was that before y'all had actually
5 searched the premises and come up with the
6 alleged drugs that you found or was that after
7 the search?

8 A. He made the statement that Mr. Bush didn't
9 have anything to do with the things that was
10 found in his home.

11 Q. But at that point, nothing had been found
12 yet?

13 A. Nothing had been found.

14 MS. TAYLOR: No further questions.

15 SOLICITOR STUMBO: Nothing
16 further, Your Honor.

17 THE COURT: Thank you. You may step
18 down.

19 (WITNESS STEPS DOWN)

20 THE COURT: Ms. Taylor?

21 MS. TAYLOR: At this point I would
22 call Sergio Quarles.

23 SOLICITOR TAYLOR: Judge, it may
24 take a minute. They have to go around and get
25 him.

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1 THE COURT: Very good.

2 (WITNESS TAKES STAND)

3 SERGIO QUARLES, being duly sworn to
4 tell the truth, the whole truth and nothing but
5 the truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MS. TAYLOR:

8 Q. Good morning, Mr. Quarles. Do you remember
9 me from talking on Monday?

10 A. Yes.

11 Q. Okay. I just have a few questions about
12 what we talked about on Monday. Okay?

13 A. Yes, ma'am.

14 Q. Have you ever met Maunwell Ervin before?

15 A. No, ma'am.

16 Q. Never met him before?

17 A. No, ma'am.

18 Q. Did you ever tell Jarvis Reeder that they
19 stole drugs from his house?

20 A. Yes, ma'am.

21 Q. Why did you do that?

22 A. Because I had got messed up on another
23 charge and they told me that they would work
24 out some deal with me on the other charge.

25 When we was talking too, about that, and they

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1 was talking about Mr. Ervin had -- they went --
2 out on the street to look for the drugs. He
3 told me that he'd have to get back with me.

4 Q. Who told you that they would get back with
5 you?

6 A. Jarvis Reeder and Chad Cox.

7 Q. Okay.

8 A. And when I took, I took them to somebody's
9 house and they looked around. When we got to
10 the yard, they came back to me and made me a
11 promise that instead of the charge that I got
12 now, they could help me out. Which they didn't
13 help me out.

14 Q. Hold on, let's go way back. So you are
15 claiming that you never met Maunwell?

16 A. I never met Maunwell.

17 Q. But you told the police that you stole
18 crack from him? From Maunwell's house?

19 A. Yeah.

20 Q. And you told the police that because they
21 offered to help you out on another charge?

22 A. Yes, ma'am.

23 Q. Did that ever happen?

24 A. No, ma'am.

25 Q. Did you tell the police anything about

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1 previous buys, drug buys that you bought from
2 Maunwell Ervin?

3 A. No, ma'am.

4 Q. You didn't tell them that?

5 A. No, ma'am.

6 Q. You never gave them any information about
7 past drug deals?

8 A. No, ma'am. I never knowed Mr. Ervin.

9 Q. Did you ever know Brent Ervin?

10 A. No, ma'am. I don't know him either.

11 Q. Did you ever do any drug deals with Brent
12 Ervin?

13 A. No, ma'am.

14 Q. Did you ever tell the police that you did
15 drug deals with Brent Ervin?

16 A. I don't know him, ma'am.

17 Q. But did you tell the police that you did
18 any kind of deals with him?

19 A. No, ma'am.

20 Q. So your testimony today is that you never
21 met either one of these individuals and you
22 never told police that you had any prior drug-
23 related knowledge of these two individuals; is
24 that correct?

25 A. Yes, ma'am.

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1 MS. TAYLOR: No further questions,
2 Your Honor.

3 CROSS EXAMINATION

4 BY SOLICITOR STUMBO:

5 Q. Mr. Quarles, you pled guilty of breaking
6 into Maunwell Ervin's house, didn't you?

7 A. Sir?

8 Q. You pled guilty to breaking into this man's
9 house?

10 A. I pled guilty.

11 Q. But you never knew him before that, right?

12 A. No, sir.

13 Q. Well, how did you know to break into his
14 house?

15 A. The police -- Chad Cox, the way I remember,
16 they had came and got me out of County where I
17 was in on another charge. They came and got me
18 out of County and they was, like, uh,
19 -- like I just said, there was some drugs and
20 they wanted to get Maunwell Ervin. They was
21 like the drugs -- like the drugs that I'd got
22 off the street, they said that the drugs that I
23 had got they had went to get Maunwell Ervin
24 because they had some other kind of stuff. So
25 I never did -- I never did go in the man's

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1 house, nothing like that.

2 Q. Oh, you're saying you never went in his
3 house?

4 A. I never did, like, take the drugs -- back
5 when I was running from the police, I threw
6 the drugs.

7 So when the police came and questioned me
8 about another charge, they were asking me would
9 I -- they really were looking for the gun
10 because somebody had said that the gun that he
11 had was involved in a murder case. I was like,
12 'no, I never had a gun.'

13 He asked me where the drugs was at and I
14 told him that I threw them over on the land.
15 So Jarvis came, and a couple more polices came,
16 and got me out of County and took me down
17 there. Once I found the drugs, they made a
18 deal like I wasn't going to jail -- but then I
19 did.

20 Q. The drugs that you threw down in Promised
21 Land, you got out of this man's house; right?

22 A. Yeah.

23 Q. That night? Then you went on a high-speed
24 chase with the police, correct?

25 A. Yes, sir.

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1 Q. Then when they caught you, they started
2 talking to -- you talked to Detective Adams
3 from the City? This man sitting back here?

4 A. I talked to him.

5 Q. You talked to him, right?

6 A. (No verbal response).

7 Q. And you told him all about going into [REDACTED]
8 [REDACTED] and stealing some drugs and money?

9 A. No, at the time me and my codefendant we
10 had stole a TV out of Mr. Ervin's house. We
11 didn't say nothing about no drugs or anything.

12 Q. You didn't tell him that you'd broken in
13 the house and stole any drugs or any money?

14 A. I told him that we broke in the house and
15 stole a TV, some change and some lottery
16 tickets.

17 Q. But then you took them down to Promised
18 Land and showed them some drugs that you stole
19 out of his house. Right.

20 A. I didn't show him. It was me and Chad Cox
21 and some other fellows from the County.

22 Q. And that was after you had done your
23 interview and confessed to breaking into the
24 house, to Detective Adams?

25 A. Right.

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1 Q. You already confessed to breaking into Mr.
2 Ervin's house, right?

3 A. Yes.

4 Q. Then based on information that you were
5 giving them, the narcotics guys came and talked
6 to you. Right? Lieutenant Reeder?

7 A. I spoke with Reeder, you know. He asked me
8 about a couple of other people but I -- I
9 didn't get to the point with him. I was really
10 with Chad Cox. I was really with Chad. I
11 really didn't see Reeder no more. No more
12 whatsoever. He just asked me, like, did I know
13 this person, did I know that person, did I know
14 this person.

15 Q. Let's back up. So you took them down to
16 Promised Land to show them crack cocaine that
17 you had stolen out of Mr. Ervin's house;
18 correct?

19 A. Yes, sir.

20 Q. And there was indeed crack cocaine down
21 there that you took them to. You took them to
22 the crack, right?

23 A. First they was looking for the gun, the
24 murder weapon. Like I said, somebody had
25 already told the police that -- that the weapon

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1 that we had -- that they had robbed, had put in
2 the car. I told him that I never took the gun
3 but I'd show him where we threw everything.
4 I told him, 'okay, I know where the drugs is'
5 that I had gotten. We went to the house.

6 Q. So you told him that day that you got drugs
7 out of the house and took them down to Promised
8 Land; right?

9 A. (Affirmative nod).

10 Q. And that is still your testimony here
11 today?

12 A. (Affirmative nod).

13 Q. And the narcotics investigator, you said
14 Chad Cox ---

15 A. Chad Cox.

16 Q. Lieutenant Reeder sitting back here, you
17 told him all that information?

18 A. I didn't see Reeder and them but one time.
19 He asked me about some other boys and what I
20 know about some other cases, which I told him I
21 didn't. Chad Cox -- Chad Cox and some other
22 people come and take me out of County to go
23 look, search for some other stuff, a gun, and
24 look for the drugs that we supposedly got out
25 of Maunwell Ervin's house.

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1 Q. You said supposedly got out. But you did
2 get those drugs out of Maunwell Ervin's house
3 and took them down to Promised Land and threw
4 them there?

5 A. Yes, sir.

6 Q. And then you took the police down there and
7 showed them the drugs that you got out of his
8 house on [REDACTED], down there by Lander;
9 right?

10 A. That's what Chad Cox did and a couple other
11 officers, a couple of young boys. I don't know
12 them, I ain't never knowed them, I ain't never
13 knowed them young guys. I know Chad because me
14 and him, you know, talk. I get in trouble and
15 he talk to me.

16 Q. And you pled guilty for breaking into [REDACTED]
17 [REDACTED], Maunwell's house; right?

18 A. Yeah, I pled guilty.

19 Q. And you'd got down there before and bought
20 drugs, seen drugs in the house?

21 A. No, I never -- no, I never know Mr. Ervin.
22 I don't know his house, him or his cousin. The
23 police tried to make me -- before Mr. Andrew's
24 (phonetic) death, you know, he had called Chad.
25 He made out like he didn't know that me and him

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1 did business, but -- out here on the street.

2 SOLICITOR STUMBO: Okay, I get
3 what you're saying. No further questions, Your
4 Honor.

5 MS. TAYLOR: I just have one.

6 CROSS EXAMINATION

7 BY MS. TAYLOR:

8 Q. On the day that you broke into this house
9 on [REDACTED], you and Daniel Griffin,
10 y'all committed some other robberies around
11 that same timeframe. Correct?

12 A. Yes, ma'am.

13 Q. Okay. Were those people that you robbed
14 drug dealers?

15 A. Yes, ma'am.

16 Q. Okay.

17 A. All of them were drug dealers.

18 Q. Okay. Is there any way that you may have
19 got that crack from either one of the drug
20 dealers that you robbed before you got to
21 Lawson Street?

22 A. I know that we had some marijuana that we
23 put in the car.

24 Q. I just asked specifically about the crack.
25 Is there any way that you got that from any of

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1 the other drug dealers that you robbed earlier
2 in the day?

3 A. The drug dealers, the cocaine, -- my
4 codefendants, they got six hundred dollars
5 (\$600) from the car and he had like two or
6 three ounces of coke that he had in his car, or
7 his possession.

8 Q. So it is possible that the cocaine that you
9 led these officers to in Promised Land did not
10 come from Lawson Street? It is possible it
11 came from one of the other drug dealers?

12 A. Yes, ma'am.

13 MS. TAYLOR: No further questions.

14 THE COURT: Thank you, sir. You can
15 step down.

16 (WITNESS STEPS DOWN)

17 THE COURT: All right. No further
18 witnesses on this issue?

19 SOLICITOR TAYLOR: No, Your Honor.

20 MS. TAYLOR: No, sir.

21 THE COURT: Who wants to go first?

22 Ms. Taylor, I guess you since this is your
23 Motion.

24 MS. TAYLOR: Your Honor, really what
25 I would like to argue, based on the suppression

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1 hearing, is going to the *Illinois v Gates* case.
2 In that case, you know, the Court specifically
3 articulated that anonymous tipsters not only
4 have to give information in a drug case but
5 they have to give enough information that the
6 cops can corroborate that through surveillance.
7 I believe that they gave information
8 specifically detailing that the two individuals
9 were flying to Miami to pick up the narcotics,
10 then driving back on Interstate 95. All of
11 this was able to be corroborated through
12 surveillance. They were able to track down
13 plane records, corroborating all of it.

14 That is the not the case in this
15 hearing. As you just heard from Sergio Quarles
16 -- I would argue that he is not a reliable
17 informant. He's changed his story multiple
18 times, even from the conversation that I had
19 with him on Monday to what he said down here
20 this morning.

21 It is my argument that this anonymous
22 tip or these numerous anonymous tips that
23 Jarvis Reeder claims that he had in making the
24 determination of probable cause is not
25 sufficient under *Illinois v. Gate*.

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1 What he has now based it on is my
2 client's past criminal history, which again is
3 not enough, and the reliability of an admitted
4 burglar who had committed three crimes within a
5 twelve-hour period of this actually happening.
6 He had no legal authority to be in that house
7 and therefore I think we can make a reasonable
8 inference that the police officers had no legal
9 authority to be in that house at that time.

10 Again, I would just really argue that
11 the tipster is not specific enough, had no
12 personal knowledge of them purchasing drugs
13 from my client or that anybody that he knew
14 had. Nothing was found in the surveillance
15 that Jarvis Reeder did for two weeks in
16 surveiling this property. All he was able to
17 determine is that B Ervin and M Ervin were
18 residing there. He was not able to make any
19 kind of specific notations of drug deals that
20 he witnessed, or packages arriving or drug buys
21 that took place. None of that was able to be
22 articulated here, Your Honor.

23 So it is really just my position that
24 these anonymous tipsters -- while I understand
25 that their identity does not have to be

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1 revealed -- that along with my client's prior
2 history, is not sufficient to give probable
3 cause to entering his house.

4 If you want to add in this burglary
5 that happened with these three individuals who
6 have a reason and motivation to lie and falsify
7 information -- and who have even gone as far as
8 accusing police officers of getting them out of
9 jail for the purpose of actually breaking into
10 my client's house and securing drugs, so that
11 they can make this arrest, I would just argue
12 that he is not a reliable informant. They had
13 no reason to believe that he was a reliable
14 informant.

15 That's really what I base it on, Your
16 Honor.

17 THE COURT: Thank you, Ms. Taylor.
18 Mr. Taylor?

19 SOLICITOR TAYLOR: Thank you, Your
20 Honor. Judge, I will start at the beginning.
21 Jarvis Reeder testified and talked about in his
22 affidavit that he was receiving all these tips
23 from different tipsters. He made it clear that
24 he does not have to give up the identities of
25 those people.

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1 He did not rely solely on that in his
2 affidavit. Ms. Taylor referenced *Illinois v.*
3 *Gates*. That is a totality of the circumstances
4 case. So when you look at everything that was
5 testified to today, and that was specifically
6 in the affidavit, there is specifically enough
7 to go forward and there was probable cause when
8 the magistrate signed the search warrant.

9 Judge, they didn't just rely on these
10 tipsters. They followed up and corroborated
11 information that Mr. Ervin was dealing drugs
12 out of his house at [REDACTED].

13 Mr. Quarles came in here today and
14 said, 'Yeah, I told Jeremy Adams and I told
15 Jarvis Reeder where I took it. I broke in that
16 house, I took crack out of it. I took it down
17 there and I -- I took it down to Promised
18 Land.' That's what he just said. He asked him
19 three or four times and that's what he just
20 said.

21 Judge, also -- and he's now denying it
22 but at the time that he was interviewed by
23 Jarvis Reeder, he was giving very specific
24 details on prior drug deals. I know that he is
25 trying to cover himself by saying 'I don't know

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1 who Maunwell Ervin is.' But back in December
2 of 2010 he told the officers, 'Yeah, I know
3 him. I've done multiple drug deals.' Then
4 they corroborated it by going to Promised Land.
5 Not only, 'Yeah, I've not only done drug deals
6 but I've been in his house and stole crack.
7 Here it is.'

8 Judge, I've got a case, *State v.*
9 *Bellamy*, a Court of Appeals case from South
10 Carolina that references nonconfidential
11 informants. Mr. Quarles -- and I will read
12 straight from the language, Judge. It says,
13 (reading): "*A nonconfidential informant should*
14 *be given a higher level of credibility because*
15 *he exposes himself to public view and possible*
16 *civil and criminal liability should the*
17 *information prove to be false.*"

18 Judge, I mean he said that he -- he
19 pled guilty, said he was breaking in and
20 stealing crack from the house. He's put
21 himself out there, talking about Sergio
22 Quarles. Judge, I understand that he has now
23 changed his story but on that day he was very
24 reliable considering that he gave them his
25 name, he put himself out for some criminal

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1 liability.

2 Judge, I've got some other cases. I
3 am not going to go into them. It is *State v.*
4 *Rutledge*, which talks about the magistrate's
5 task in determining whether to issue search
6 warrant. He is "to make a practical
7 commonsense decision looking at all the
8 circumstances before him; that there is a fair
9 probability that contraband or evidence of a
10 crime will be found in a particular place."

11 I did mention the tipsters but besides
12 the tipsters, Mr. Ervin has a prior drug
13 offense, which I think is important here. He's
14 just gotten out of prison and they are getting
15 tips that he is dealing again.

16 Judge, I've got another case, *State v.*
17 *Creed* (phonetic) where they found marijuana
18 seeds in the trash can outside the house and
19 the informant said 'yeah, I've never seen in
20 the house but I've heard they deal out of
21 there.' In that case it was upheld that there
22 was no probable cause. That's a lot less than
23 we have here today.

24 Obviously, Judge, our position is that
25 not only was there probable cause on December

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1 2nd when the magistrate signed the search
2 warrant -- even if Mr. Quarles' statements were
3 not true, the officer was acting in good faith.
4 He followed it up. He did not lie or tell Mr.
5 Quarles or anybody else to lie. Thank you.

6 MS. TAYLOR: Your Honor, just one
7 quick follow up. The solicitor in this case
8 has quoted *State v. Bellamy*. I think it is
9 relevant to note that in that case they talk
10 about the specificity of the informant's
11 statement coupled with the acts of ulterior
12 motives was held, uh, to uphold reliability.
13 I think the exact opposite is true in this
14 case. I think that at the time that he was
15 being questioned that he had been arrested for
16 at least two other drug-related robberies. I
17 think he had an extreme motive to lie here.
18 Again, if Jarvis Reeder had taken any kind of
19 audio statement or had another witness to
20 testify to the things that he told, we might be
21 looking at a different situation.

22 But when looking at the totality of
23 the circumstances, we have informants that
24 provided little to no specific articulable
25 facts. We have my client's record alone, which

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1 is not enough. Now we have the statements from
2 an admitted burglar.

3 In looking at the totality of the
4 circumstances, we have a very high threshold
5 that we need to try to protect here as to when
6 we can enter somebody's house legally. This
7 man entered my client's house illegally, and
8 now is trying to recant his story. He has a
9 lot of ulterior motives to lie, a lot of
10 criminal prosecutions hanging over his head at
11 the time that this happened. As you know, he
12 was only charged with one burglary. He was
13 never charged with the crack in this case, of
14 possession or trafficking in it. So he
15 definitely had a reason to lie and -- maybe he
16 is lying now, maybe he is not. It is the
17 reliability of him as a witness in general that
18 I am questioning.

19 SOLICITOR TAYLOR: Just one last
20 thing. He pled guilty to it. Told two
21 different officers, separately. Jeremy Adams
22 testified that he never spoke to Jarvis Reeder.
23 He told them, 'Yeah, I broke into the house,
24 stole the crack out of there. I showed them
25 where it was at.'

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1 Solicitor Stumbo asked him several
2 times today and even though he's changed the
3 rest of his story, he still said 'Yeah, I broke
4 in there, I had crack and I took them to
5 Promised Land.'

6 Judge, our argument remains the same
7 at this time.

8 THE COURT: All right. Well, I
9 appreciate everyone's position. I do. And I
10 have had a chance to review the law, many of
11 the cases that have been cited. I am very
12 familiar with *Illinois v. Gates*, I am familiar
13 with the *Bellamy* decision, as well as the
14 *Clifton* decision from the Court of Appeal,
15 1990 South Carolina Court of Appeals.

16 Of course, we're dealing with the
17 *Franks* hearing at this stage. As far as Mr.
18 Quarles' testimony here today, the record
19 should reflect that I actually handled his
20 guilty plea, his initial guilty plea in
21 December. The solicitor had agreed to a
22 delayed reporting. He reported, I believe,
23 on Tuesday or Wednesday of last week for
24 sentencing. He did receive a ten-year sentence
25 suspended on the service of five years,

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1 probation for two years. I checked my notes
2 while sitting here. That was the sentence that
3 had been agreed to, had been negotiated. I do
4 recall taking that plea wherein he admitted to
5 the burglary.

6 To the extent that he is backing away
7 from that now, I don't know that he necessarily
8 is, but there's been a little bit of
9 conflicting evidence. I've had a chance to
10 look at Mr. Quarrels. He is clearly not happy
11 about being in prison. I have genuine concerns
12 about his overall credibility, at least as far
13 as his testimony here today.

14 When he was arrested, I think that it
15 is more likely that he was trying to help
16 himself out, that he came clean with the
17 police, that he told the police where he stole
18 the drugs from, and basically that is what
19 forms the basis for the affidavit and the
20 warrant.

21 True, the warrant refers to tipsters.
22 The warrant is not clear whether these tipsters
23 were known or unknown. From testimony today,
24 it appears that some were known to the police.
25 Some were anonymous perhaps. The fact that the

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1 tipsters provided information however only
2 serves as background in the affidavit for why
3 law enforcement initially became interested in
4 the defendant. I don't see anything in the
5 affidavit. It's clear from the way that the
6 affidavit is written that the magistrate did
7 not rely on any information that was obtained
8 from anonymous sources or anonymous tipster
9 type information in passing on the affidavit.
10 Again, that information about tipsters simply
11 relates to why Mr. Reeder and law enforcement
12 became interested in Mr. Ervin.

13 The crux of the affidavit that deals
14 with what we have to decide today is what is
15 related in -- primarily what is related in the
16 third paragraph of the first page, which
17 continues over onto page two, concerning the
18 drugs stolen from [REDACTED]. It is
19 clear to me in my mind that there has been no
20 intentional omission from the affidavit of the
21 facts which are contrary to the State's
22 position. There was no intention to deceive
23 the magistrate by virtue of what was written in
24 the affidavit. I cannot say from everything
25 that has been presented here that there is any

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1 deliberate falsehood or reckless disregard for
2 the truth.

3 I've also reviewed the question of
4 staleness. I know that that question has not
5 been risen or has not been raised, but under
6 the *Clifton* case the affidavit is not stale,
7 the warrant is not stale based on what has
8 been presented here. We have a continuous
9 protracted nature of illegal activity, so
10 clearly the affidavit citing the fact that this
11 is an ongoing enterprise, I do not believe that
12 this would be a stale affidavit.

13 So for those reasons I am going to
14 deny the defendant's Motion to suppress
15 pursuant to *Franks v. Delaware*. We will
16 proceed.

17 SOLICITOR TAYLOR: Your Honor,
18 just briefly, I think we ought to argue the
19 *Jackson v. Denno*. I don't think that it will
20 take long.

21 THE COURT: The *Jackson v. Denno* --
22 I'll be happy to hear from y'all but it is
23 clear that the rights have been read and -- I
24 mean, ---

25 SOLICITOR TAYLOR: Correct, I just

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1 want to get that on the record.

2 THE COURT: Do you want to speak to
3 that?

4 MS. TAYLOR: I think that we have
5 already dealt with that.

6 THE COURT: Yeah. I think clearly
7 that the rights were read. If there is any
8 assertion that his will was overborne, or that
9 there was some statement given at the house was
10 the product of coercion or his will was
11 overborne, that is an issue that we can cross
12 at a later point in time pursuant to *Jackson v.*
13 *Denno*. But it is clear that the rights were
14 read, clear that the rights were given to him
15 and that Mr. Ervin, based on what's been
16 presented thus far understood his rights,
17 unless there is some other indication from
18 anyone.

19 SOLICITOR TAYLOR: Thank you.

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1 CERTIFICATE OF REPORTER

2

3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the hearing
8 held before The Honorable Frank Addy on January
9 31, 2013 before the Honorable Frank Addy, as
10 prepared from the audio notes of Vivian Cross,
11 Court Reporter;

12 I further certify that I am neither kin nor
13 counsel to any of the parties and have no
14 interest in the outcome of this action.

15

16



17

Deborah Garrison

18

Circuit Court Reporter

19

9th Judicial Circuit

20

21

22

23 Charleston, South Carolina

24 September 11, 2013

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
 PLAINTIFF,)
)
 -VS-)
)
 MAUNWELL J. ERVIN,)
)
 DEFENDANT.)
 _____)

2011-GS-24-785

TRANSCRIPT OF RECORD

 ORIGINAL

JULY 23-24, 2013
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE FRANK R. ADDY, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

AARON TAYLOR, ASSISTANT SOLICITOR
DAVID STUMBO, SOLICITOR

ATTORNEY FOR DEFENDANT:

LAUREN TAYLOR, ESQUIRE

TARA T. SCOTT
CIRCUIT COURT REPORTER

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1 TRIAL DAY 1- 7/22/2013

2 (Whereupon, the proceedings were commenced at 2:45
3 p.m.)

4 THE COURT: At this point, Solicitor, call your first
5 case.

6 SOLICITOR STUMBO: Thank you, Your Honor. If it please
7 the court, the state calls indictment 2011-GS-24-785. Your
8 Honor, that's an indictment for trafficking in crack
9 cocaine. Indictment 2011-GS-24-786, that's an indictment
10 for trafficking cocaine within the proximity of a school or
11 park. Your Honor, 2011-GS-24-783, that's an indictment for
12 possession of marijuana with intent to distribute.
13 Indictment 2011-GS-24-784, that's an indictment for
14 possession with intent to distribute marijuana within the
15 proximity of a school or park. Your Honor, the last
16 indictment is 2013-GS-24-293, that's an indictment for
17 possession of a controlled substance. Your Honor, all five
18 of these indictments have been true billed by the grand jury
19 of Greenwood County and the state is ready for trial. If I
20 may approach, Your Honor?

21 (Whereupon, Solicitor Stumbo handed up the indictments
22 to Judge Addy.)

23 THE COURT: Ms. Taylor, are you ready to proceed?

24 MS. TAYLOR: Yes, sir, Your Honor.

25 THE COURT: Ladies and gentlemen, we are about to

1 begin the trial of the case of the *State of South Carolina*
2 *versus Maunwell Javar Ervin*. The Solicitor has handed up
3 five indictments. They charge Mr. Ervin with various
4 offenses, namely trafficking in crack cocaine, trafficking
5 cocaine within proximity to a school, possession of
6 marijuana with intent to distribute, and possession of
7 marijuana within proximity to a school, park, or playground,
8 and possession of a controlled substance.

9 I will tell you at the beginning, ladies and gentlemen,
10 that the fact that an individual has been charged or
11 indicted in a case is, of course, not evidence in any way,
12 shape, or form of any of the allegations contained in an
13 indictment. An indictment, ladies and gentlemen, is nothing
14 more than a piece of paper. It's a piece of paper that
15 contains the charges made against Mr. Ervin. In this case,
16 Mr. Ervin has pled not guilty to these charges and that plea
17 puts the burden on the state of South Carolina to prove his
18 guilt beyond a reasonable doubt.

19 Now, Ladies and gentlemen, in this case the state of
20 South Carolina will be represented by Deputy Solicitor Aaron
21 Taylor and Mr. Stumbo. Gentlemen, if you would care to
22 stand and introduce yourselves to the jury panel, as well as
23 anyone seated with you.

24 SOLICITOR STUMBO: I'm David Stumbo. I'm your elected
25 Solicitor here in the Eighth Circuit. That's not just

1 Greenwood County -- which, obviously y'all are residents of
2 Greenwood -- but that's Laurens, Newberry, and Abbeville.
3 We handle all of the general sessions-level prosecutions for
4 those counties. To my right is one of our deputy
5 solicitors, Aaron Taylor, who runs our Greenwood docket and
6 who will be trying this case with me this week. Thank you
7 for being here.

8 THE COURT: The defendant in this case, Mr. Ervin, is
9 being represented by Ms. Lauren Taylor and Ms. Jenny
10 Barwick. Am I correct, Ladies?

11 MS. TAYLOR: Yes.

12 THE COURT: Ms. Taylor, if you would care to introduce
13 yourself, your client, and certainly anyone else seated at
14 counsel table with you.

15 MS. TAYLOR: Thank you, Your Honor. Ladies and
16 gentlemen, my name is Lauren Taylor. I represent Maunwell
17 Ervin seated right here. This is my associate, Jenny
18 Barwick, who will be assisting me throughout the course of
19 the trial.

20 THE COURT: Ladies and gentlemen, I now have some
21 questions I'm going to need to ask you to determine your
22 qualification and eligibility to serve on this particular
23 case. First of all, is there any member of the jury panel
24 who has previously been represented or is currently being
25 represented by any of the attorneys involved in the case,

1 either Mr. Aaron Taylor, Solicitor David Stumbo, Ms. Lauren
2 Taylor, or Ms. Jenny Barwick? If so, please stand.

3 (No response)

4 THE COURT: Is there any member of the jury panel who
5 is related by blood or marriage or has any close business,
6 social, or familial relationship with the defendant in this
7 case, Mr. Maunwell Ervin? Anyone who is related by blood or
8 marriage to the defendant or has any close business or
9 social relationship with Mr. Ervin? If so, please stand.

10 (Whereupon, a potential juror stands.)

11 THE COURT: Yes, ma'am. We already covered you when we
12 were questioning down front, so we're good with you. Thank
13 you, ma'am. Anyone else?

14 (Whereupon, a potential juror stands.)

15 THE COURT: Yes, sir.

16 MR. LEVERETE: I'm not related. I just know him from
17 past...

18 THE COURT: And you're Mr. Leverete, correct?

19 MR. LEVERETE: Yes. Yes.

20 THE COURT: You just know him from passing?

21 MR. LEVERETE: Yes.

22 THE COURT: So you don't have any close relationship
23 with him?

24 MR. LEVERETE: No relationship.

25 THE COURT: Mr. LEVERETE, if you were picked as a juror

1 on Mr. Ervin's case would you be able to be fair and
2 impartial to both the state and the defense or are you
3 uncomfortable?

4 MR. LEVERETE: I couldn't.

5 THE COURT: Say again, sir?

6 MR. LEVERETE: I couldn't do it.

7 THE COURT: You couldn't do it? You'd rather sit this
8 one out; is that what you're telling me?

9 MR. LEVERETE: Yes.

10 THE COURT: Very good. Mr. LEVERETE won't serve on
11 this case then. Thank you, sir. You can have a seat.

12 (Potential juror, Floyd Rapp, a black male, stands.)

13 THE COURT: Forgive me, sir. What is your name?

14 MR. RAPP: My name is Floyd Rapp.

15 THE COURT: Mr. Rapp? You know Mr. Ervin?

16 MR. RAPP: From high school.

17 THE COURT: From high school. Okay. If you were
18 picked on this jury, Mr. Rapp, would you be able to give
19 both Mr. Ervin and the State of South Carolina a fair and
20 impartial trial?

21 MR. RAPP: I'd feel uncomfortable.

22 THE COURT: You'd feel uncomfortable? All right.

23 Thank you, Mr. Rapp. You can have a seat, please. He won't
24 be used.

25 (Potential juror, Nya LEVERETE, a black female, stands)

26 THE COURT: Yes, ma'am. What's your name, please?

1 MS. LEVERETE: Nya LEVERETE.

2 THE COURT: Ms. LEVERETE, do you know Mr. Ervin?

3 MS. LEVERETE: I just know him in passing.

4 THE COURT: Just from passing? But you don't have any
5 close relationship with him and you're not related to him?

6 MS. LEVERETE: No, sir.

7 THE COURT: If you were picked as a juror on his case
8 would you be able to be fair and impartial to everybody
9 concerned?

10 MS. LEVERETE: I wouldn't.

11 THE COURT: You would not feel comfortable either, Ms.
12 LEVERETE?

13 MS. LEVERETE: No, sir.

14 THE COURT: Very good. Thank you. You will not serve.
15 Do we have all of those? Rapp, LEVERETE, and LEVERETE.
16 Anyone else? No one is standing.

17 Ladies and gentlemen, the state alleges that this
18 incident took place on or about December 9, 2010. Mr.
19 Taylor, what is the location where the state alleges this
20 took place?

21 MR. TAYLOR: Judge, [REDACTED].

22 THE COURT: Is there any landmark close to that, that
23 you know of?

24 MR. TAYLOR: Yes, sir. Lander University.

25 THE COURT: Ladies and gentlemen, the state alleges
26 that this incident took place on or about December 9, 2010

1 at [REDACTED], which is sort of close -- I'm told
2 it's sort of close to Lander University. Is there any
3 member of the jury panel who has formed or expressed any
4 opinion, or thinks that they may know anything about the
5 facts alleged in this particular case? If so, please stand.
6 No one is standing.

7 The following, Ladies and gentlemen, is a list of
8 potential witnesses in this case. I'm going to read the
9 list and when I'm done reading I'm going to ask you whether
10 or not there is any member of the jury panel who is related
11 by blood or marriage or has any close business or social
12 relationships with any of these witnesses, okay? So please
13 pay close attention to these names. The following are
14 individuals who might be witnesses in this case: Jarvis
15 Reeder with the Greenwood Sheriff's Office, Chad Cox with
16 the Greenwood Sheriff's Office, John Long with the Sheriff's
17 Office, Jason Budreau with the Greenwood Police Department,
18 Scott Russ with the Sheriff's Department, Dyar Archibald
19 with the Police Department, Tim Stumbo, who is formerly with
20 the Sheriff's Department, Wesley Love with the Sheriff's
21 Department, Kenya Griffin with the Police Department, Mary
22 Beth Coleman who works at SLED, the State Law Enforcement
23 Division, Courtney Smith who works at the Sheriff's
24 Department, and Mike Young who works at Town and Country
25 Real Estate. So those are the possible witnesses in this
26 case. Again, Ladies and gentlemen, is there any member of

1 the jury panel who is related by blood or marriage to any of
2 those witnesses or has any close business or social
3 relationship with any of those witnesses. If so, please
4 stand.

5 (Whereupon, Phillip Walker, a white male, stands)

6 THE COURT: Yes, sir. What is your name, please?

7 MR. WALKER: Brad Walker. Phillip Walker.

8 THE COURT: Mr. Walker, yes, sir. Sorry about that.

9 MR. WALKER: That's okay. I worked with Tim Stumbo
10 about seven years ago.

11 THE COURT: Okay. Did you work at the Sheriff's
12 Department?

13 MR. WALKER: No, sir. This was in another business
14 prior to him going to the Sheriff's Department.

15 THE COURT: Okay. If Mr. Stumbo was called as a
16 witness in this case, would that affect your ability to be
17 fair and impartial to both sides?

18 MR. WALKER: It would not affect it, sir.

19 THE COURT: You're sure?

20 MR. WALKER: I'm positive. I just didn't want any
21 problems.

22 THE COURT: Very good. Thank you very much, Mr.
23 Walker. Anyone else?

24 (Potential juror, number 53, Kelly Harrison, a white
25 female, stands)

26 THE COURT: Ms. Harrison, yes, ma'am.

1 MS. HARRISON: I don't have a problem if he does become
2 a witness, but Mike Young -- I've known him since I was
3 twelve and I cut his hair for about two years. I just
4 wanted to put down that I knew him.

5 THE COURT: Sure. You know him, but it wouldn't affect
6 you one way or another? All right. Very good, Ms.
7 Harrison. Anyone else? All right. No one is standing. Is
8 there any member of the jury panel who has had a close
9 family member or close friend who has been convicted of a
10 drug offense? If so, please stand. Close family member or
11 friend who has been convicted of a narcotics offense.

12 (Potential juror, number 53, Kelly Harrison, a white
13 female, stands)

14 THE COURT: If you want to come down forward and talk
15 to me about this, that's perfectly fine. If you're
16 comfortable telling me from the well there, that's fine too.
17 Come down, Ms. Harrison.

18 MS. HARRISON: Martin has been in prison before.

19 THE COURT: That was your husband?

20 MS. HARRISON: Yeah.

21 THE COURT: I knew that.

22 MS. HARRISON: I didn't know if that was...

23 THE COURT: The fact that happened to him some years
24 ago -- that was, what, twenty years ago?

25 MS. HARRISON: Yeah. At least. Maybe more than that.

26 THE COURT: Would that affect your ability to be fair

1 and impartial in this case?

2 MS. HARRISON: No.

3 THE COURT: You're fine. Thanks, Ms. Harrison.

4 (Phillip Walker, a white male, comes forward)

5 THE COURT: Yes, sir.

6 MR. WALKER: I've got two first cousins that were
7 arrested dealing with drug charges before and my sister.
8 Honestly, it doesn't affect me. I more just want to be
9 honest if somebody asks me. They made their bed. They've
10 got to lie on it.

11 THE COURT: I understand, sir. So that wouldn't affect
12 you?

13 MR. WALKER: I just -- I wouldn't recognize him if I
14 saw him, but I'd rather it be out there in the open.

15 THE COURT: Thank you, Mr. Walker. You're fine to
16 serve.

17 (Juror number 69, Mary Knieriem, a white female, comes
18 forward)

19 THE COURT: What is your name? I'm sorry.

20 MS. KNIERIEM: Mary Knieriem, number 69. My
21 boyfriend's brother has got in trouble a couple of times
22 with drugs, shoplifting, things like that. Drunk driving.
23 But I don't think that would really affect me if I got
24 picked. I just want to let everybody know.

25 THE COURT: Thank you very much, ma'am.

26 (Whereupon, potential juror number 108, Tim Pridgen, a

1 white male, comes forward)

2 MR. PRIDGEN: Tim Pridgen, 108. My brother has been in
3 and out of jail for the past probably three or four months.
4 He had some priors.

5 THE COURT: Would that affect your ability to be fair
6 to everybody involved here?

7 MR. PRIDGEN: No, sir. It wouldn't affect me at all.

8 THE COURT: Thank you.

9 (Whereupon, potential juror, Daniel Landers, a white
10 male, came forward)

11 MR. LANDERS: Daniel Landers. My cousin, my mom's
12 sister's son. He's been to jail for possession of
13 marijuana.

14 THE COURT: Is that Cory Landers?

15 MR. LANDERS: That's my dad's brother's son. But
16 that's actually a different one. Still family, but...

17 THE COURT: Is this going to affect you in this case,
18 the fact that you've got that family member that's had these
19 problems? I mean, would you be able to be fair to both the
20 state and the defense?

21 MR. LANDERS: Just -- after being around my cousin he's
22 had time to get on track after the fact. He's doing better.

23 THE COURT: So the fact that you had a family member
24 involved with this kind of a thing, that's not going to
25 affect your ability to be fair and judge solely on the

1 facts?

2 MR. LANDERS: I can do that.

3 THE COURT: Thank you, Mr. Landers. Next question, is
4 there any member of the jury panel who advocates for the
5 legalization of narcotics or is philosophically opposed to
6 the enforcement of the narcotics laws? If so, please stand.
7 No one is standing.

8 Is there any member of the jury panel who has been a
9 victim of a drug crime or has any close family member or
10 close friend that's been a victim of a crime involving
11 narcotics or drugs? Again, if you want to come down or you
12 need to come down and talk to me privately about this one,
13 that's perfectly fine. If there is any member of the jury
14 panel that that question would apply to, please stand now.

15 (Whereupon, Mary Knieriem, a white female, stands)

16 THE COURT: Do you want to come down, ma'am.

17 MS. KNIERIEM: My boyfriend's brother. He was -- I
18 don't think that would affect me, no.

19 THE COURT: Just for the record, give her your name.

20 MS. KNIERIEM: My name is Mary Knieriem.

21 THE COURT: Thank you, Ms. Knieriem, 69.

22 (Whereupon, Sally Evans, a white female, comes forward)

23 MS. EVANS: Sally Evans.

24 THE COURT: Ms. Evans, yes, ma'am.

25 MS. EVANS: My former husband was a pharmacist who got

1 addicted to drugs and gave up his pharmacy license.

2 THE COURT: That experience, is that going to affect
3 your ability to be fair in this case?

4 MS. EVANS: No.

5 THE COURT: So you can judge this on the facts and the
6 facts alone?

7 MS. EVANS: Yes.

8 THE COURT: Thanks, Ms. Evans. You're fine. Yes,
9 ma'am?

10 (Whereupon, Darlene Coffman, a white female, comes
11 forward)

12 MS. COFFMAN: Darlene Coffman. Number 32. In 1980 I
13 was around a bunch of people that were involved in a lot of
14 drug dealings and stuff. I was working with the undercover
15 cops as kind of like a narc in McKinney, Texas. But I need
16 to let you know.

17 THE COURT: I appreciate the fact that you had that
18 experience in the '80s, would that affect your -

19 MS. COFFMAN: No.

20 THE COURT: You can judge this solely on the facts
21 today?

22 MS. COFFMAN: Yes.

23 THE COURT: You're sure?

24 MS. COFFMAN: Yes.

25 THE COURT: You're good. Thank you very much, Ms.

1 Coffman. Is there any member of the jury panel who knows of
2 any reason what so ever that they feel like they cannot give
3 both the State of South Carolina and the defendant in this
4 case, Mr. Ervin, a fair and impartial trial? Any reason
5 what so ever that you have any concerns about your
6 impartiality? If so, please stand. No one is standing.

7 Is there any member of the jury panel who has deeply
8 held moral or religious convictions that would prevent you
9 from sitting in judgement of a fellow citizen? Any member
10 of the jury panel who has any deeply held religious or moral
11 convictions that would prevent you from rendering your
12 verdict or sitting in judgement of a person accused of a
13 crime? If so, please stand. No one is standing.

14 Additional voir dire from the State?

15 MR. TAYLOR: Judge, I believe you've already read it.
16 None in addition.

17 THE COURT: From the Defense?

18 MS. TAYLOR: None from the Defense, Your Honor.

19 THE COURT: Strikes are five and five?

20 SOLICITOR STUMBO: That's correct, Your Honor.

21 THE COURT: Ladies and gentlemen, while the computer is
22 booting back up, the way that we proceed with jury selection
23 in criminal cases is a little bit different. If you've ever
24 served as a juror on civil cases they don't call your name.
25 The strikes are just done from where the lawyers are

1 sitting. In a criminal case, what I'll need you to do is if
2 your name is called just come down forward with whatever.
3 Bring with you whatever you brought to the courthouse, a
4 purse or pocketbook, whatever the case may be. Just come
5 forward and stand right where that microphone is just in
6 front of me right down here and turn around and face towards
7 the back of the courtroom.

8 The procedure that we'll use is the State will have the
9 opportunity to either seat you or to excuse you. The
10 Defense will have a similar opportunity. I'll tell you what
11 I tell every jury. If you happen to be excused from serving
12 on this case don't take it personally. Every lawyer has a
13 different way of picking a jury. If they ask you not to sit
14 on this jury don't go taking it personal. It's not
15 personal, all right?

16 When I first started practicing, Ladies and Gentlemen,
17 we actually used a tumbler. You put the names of the jurors
18 in small capsules and you'd rotate it around a few times and
19 then one by one you would pick out the capsules and you
20 would read the juror's names. We've gone high tech and
21 technology is a wonderful thing when it works and sometimes
22 it doesn't. The system is booting back up. It locked out
23 the Clerk for a few moments there. Now we pick jurors by
24 random selection on the computer instead of by a tumbler.
25 It's usually more efficient. We still do have the tumbler.

1 Do we need to use the tumbler?

2 While they're working on that I'll let you know another
3 little piece of South Carolina legal trivia. It used to be
4 the law that a jury had to be selected -- the person who
5 actually picked out the canisters after they had been
6 rotated in the tumbler -- the person who picked out the
7 names either had to be a blind individual or a child under
8 the age of ten. My mother-in-law was actually the assistant
9 clerk of court here back in the 70's.

10 My sister-in-law, Carla, was the only person -- well,
11 my mother-in-law was the only person in the clerk's office
12 at that time who had a child under the age of ten. So every
13 time the judge had to pick a jury, Carla got to get out of
14 school. So she loved that as a kid growing up because she
15 could get out of school for a few hours and the judge would
16 write a note saying please excuse Carla Sprouse from missing
17 school because she had to select a jury this morning.
18 That's a little bit of legal trivia. It might be a Jeopardy
19 answer one day that you can give. It's working.

20 MADAME CLERK: Yes.

21 THE COURT: Yes? Good. Give me one and then you'll
22 call. Again, Ladies and gentlemen, we are about to pick a
23 jury. If your name is called what I need you to do is just
24 bring with you any property that you brought to the
25 courthouse today. Come forward and stand just in front of

1 the Clerk of Court who will be calling out the names, okay?
2 Madame Clerk, if you will give me a jury please.

3 JURY SELECTION

4 MADAME CLERK: The first juror will be Mr. Phillip B.
5 Walker, juror number 133. What say you the State?

6 SOLICITOR STUMBO: Please present Mr. Walker.

7 THE COURT: What say the Defense?

8 MS. TAYLOR: Please seat Mr. Walker.

9 MADAME CLERK: Juror number 126, Hal S. Stockman.

10 SOLICITOR STUMBO: Please present Mr. Stockman.

11 MS. TAYLOR: Please seat Mr. Stockman.

12 MADAME CLERK: Juror number 46, Georgette M. Garbutt.

13 SOLICITOR STUMBO: Please present Ms. Garbutt.

14 MS. TAYLOR: Please present Ms. Garbutt.

15 MADAME CLERK: Juror number 96, Mr. James A. Moore, Jr.

16 SOLICITOR STUMBO: Please present Pastor Moore.

17 MS. TAYLOR: Please excuse Pastor Moore.

18 MADAME CLERK: Juror number 128, Ms. Kristin A.

19 Sullivan.

20 SOLICITOR STUMBO: Please present Ms. Sullivan.

21 MS. TAYLOR: Please present Ms. Sullivan.

22 MADAME CLERK: Juror number 34, Lonnie D. Daniels.

23 SOLICITOR STUMBO: Please present Mr. Daniels.

24 MS. TAYLOR: Please excuse Mr. Daniels.

25 MADAME CLERK: Juror number 129, Mr. Jason C. Teague.

1 SOLICITOR STUMBO: Please present Mr. Teague.

2 MS. TAYLOR: Please present Mr. Teague.

3 MADAME CLERK: Juror number 42, Ms. Kathryn K. Bulus.

4 SOLICITOR STUMBO: Please present Ms. Bulus.

5 MS. TAYLOR: Please seat Ms. Bulus.

6 MADAME CLERK: Juror number 114, Ms. Tami Richey.

7 SOLICITOR STUMBO: Please present Ms. Richey.

8 MS. TAYLOR: Please excuse Ms. Richey.

9 MADAME CLERK: Juror number 26, Ronald M. Cheshire.

10 SOLICITOR STUMBO: Please present Mr. Cheshire.

11 MS. TAYLOR: Please seat Mr. Cheshire.

12 MADAME CLERK: Juror number 71, Daniel R. Landers, Jr.

13 SOLICITOR STUMBO: Please excuse Mr. Landers from the
14 trial of this case.

15 MADAME CLERK: Juror number 70, Ms. Elizabeth Koeppen.

16 SOLICITOR STUMBO: Please present Ms. Koeppen.

17 MS. TAYLOR: Can you tell me her last name again,
18 please?

19 MADAME CLERK: It's Koeppen. It's on there as
20 "administrative". I do not know why.

21 MS. TAYLOR: I just did not want to call her Ms.
22 Administrative. Please seat Ms. Koeppen.

23 MADAME CLERK: Juror number 135, Lesa J. Warren.

24 SOLICITOR STUMBO: Please present Ms. Warren.

25 MS. TAYLOR: Please seat Ms. Warren.

1 MADAME CLERK: Juror number eight, Mr. Danny M.
2 Balentine.

3 SOLICITOR STUMBO: Please present Mr. Balentine.

4 MS. TAYLOR: Please excuse Mr. Balentine.

5 MADAME CLERK: Juror number 75, Ms. Becky A. Lay.

6 SOLICITOR STUMBO: Please present Ms. Lay.

7 MS. TAYLOR: Please present Ms. Lay.

8 MADAME CLERK: Juror number 85, Robert D. Mason.

9 SOLICITOR STUMBO: Please present Mr. Mason.

10 MS. TAYLOR: Please seat Mr. Mason.

11 MADAME CLERK: Ms. Annie M. Anderson, Juror number
12 five.

13 SOLICITOR STUMBO: What was the juror number?

14 MADAME CLERK: Juror number five.

15 SOLICITOR STUMBO: Please present Ms. Anderson.

16 MS. TAYLOR: Please seat Ms. Anderson.

17 THE COURT: We're going to pick one alternate. The
18 strikes will be one and two.

19 MADAME CLERK: Juror number 140, Bobby P. Weeks.

20 SOLICITOR STUMBO: Excuse Mr. Weeks for the trial of
21 this case.

22 MADAME CLERK: Juror number 69, Ms. Mary K. Knieriem.

23 SOLICITOR STUMBO: Please present Ms. Knieriem.

24 THE COURT: Request to excuse for cause from the State?

25 SOLICITOR STUMBO: None from the State, Your Honor.

1 MS. TAYLOR: None from the Defense, Your Honor.

2 THE COURT: Any issues concerning composition or
3 selection of the jury from the State?

4 SOLICITOR STUMBO: None from the State.

5 THE COURT: From the Defense?

6 MS. TAYLOR: None from the Defense, Your Honor.

7 THE COURT: Ladies and gentlemen who were picked on
8 this jury, what I'm going to ask you do is adjourn to the
9 jury room for just a few moments. I won't keep you more
10 than, hopefully, five or ten minutes, but I need to excuse
11 the rest of the jury panel and speak to the lawyers briefly
12 about scheduling on this case and moving forward. Please
13 don't talk about the case yet. You haven't been
14 administered your oath as jurors. I'll tell you when you'll
15 be able to discuss the case, but until such time as I tell
16 you you can start talking about the case don't talk about
17 the case. With that, adjourn to the jury room. There
18 should be some refreshments back there. Make yourselves
19 comfortable and I'll have you back out here as soon as
20 possible.

21 (Whereupon the jury exited the courtroom at 4:05 p.m.)

22 THE COURT: Solicitor, I know that this was the primary
23 case y'all were looking at for this week. What would you
24 like for me to do with the jury? Have them call back?

25 SOLICITOR STUMBO: Your Honor, if we could have them

1 call back. There is one other case that we may be able to
2 call after Wednesday. It's a small chance, but I'd hate to
3 release them at this time.

4 THE COURT: Ladies and gentlemen, in all likelihood you
5 will not have to come back up here, but if this case moves
6 faster than expected we may pick another jury. I might ask
7 you to come back up here. I know that many of you have
8 obligations. I know at least two of you have obligations
9 for Friday Morning. You are protected for Friday morning,
10 okay? One person who had a vacation and one person who had
11 a doctor. You don't need to worry about serving on that
12 jury Friday, but if when you call back in tomorrow night if
13 the message is I need you to show up Wednesday morning I
14 still need you to show up but I will still protect you
15 Friday morning is what I'm telling you, okay? Call the
16 number tomorrow evening after six o'clock, the number on
17 your card, and follow whatever those instructions are. In
18 all likelihood it's going to say thanks very much but we
19 don't need you or something like that, but there's a slim
20 possibility that we may. Okay? With that, if I don't see
21 you again, which is very likely -- but if I don't see you
22 again, remember you get a three year get out of jury service
23 free card. So if you get summoned for jury service again
24 for Circuit Court, you don't have to show up on the first
25 day. You can simply call the Clerk of Court's office or

1 come down and explain that in July of 2013 you were summoned
2 for jury duty in this court. They'll check their records
3 and they'll say you don't even need to come that first
4 Monday, okay? With that, I hope you have a pleasant day and
5 a pleasant rest of the week. Maybe I'll see you. Probably
6 I won't. Y'all take care and thank you very much for
7 coming. Have a good day. If you need an excuse for work
8 come on down and we'll take care of it.

9 (Whereupon the remaining jury pool exited the
10 courtroom)

11 THE COURT: We'll be at ease for a few moments.

12 (Whereupon the court was briefly in recess at 4:10
13 p.m.)

14 (Whereupon the court resumed at 4:17 p.m.)

15 THE COURT: We're back on the record in the case of the
16 State vs. Mr. Ervin. In speaking with counsel in chambers,
17 I think that the more prudent thing to do this evening would
18 be to go ahead and release the jury. We can put on the
19 record those matters that we need to put on the record
20 pre-trial, and then we'll proceed with the trial in earnest
21 tomorrow morning. I was anticipating starting around 9:30.
22 Ms. Taylor, you're the one that has to travel. Is that okay
23 with y'all?

24 MS. TAYLOR: That works, Your Honor. Thank you.

25 THE COURT: Anything before I bring the jury out and

1 release them for the day?

2 SOLICITOR STUMBO: You said after you release them
3 we'll put those other matters on the record?

4 THE COURT: Correct. Right. Right. I just don't see
5 any reason to keep them waiting. Let's have them out,
6 please.

7 (Whereupon the jury entered the courtroom at 4:25 p.m.)

8 THE COURT: Ladies and gentlemen, I've conferred with
9 the attorneys involved in this case and I think that the
10 more prudent thing to do would be to go ahead and release
11 you for the evening and ask you to be back here tomorrow
12 morning at 9:30. That's because by the time we start
13 testimony in this trial if we went with the opening
14 instructions from the court and the opening arguments from
15 counsel we would probably be somewhere around 5:15 and then
16 take testimony we'd be putting you around six o'clock.

17 I know how people have things to do, so it would be
18 easier and probably a lot more efficient if we just started
19 fresh tomorrow morning. So what I'm going to ask you to do
20 if you would, please, be in the jury room tomorrow morning
21 at 9:30 and we'll begin at that time with the trial of this
22 particular case. If you happen to come through here and I'm
23 working or doing other matters involving other business of
24 the court just don't pay attention to what I'm doing. Go
25 straight to the jury room. There will be some coffee in

1 there for you, maybe some light snacks or something like
2 that for tomorrow morning.

3 I will tell you that when you go home tonight it's
4 going to be natural that your husband, your wife,
5 significant other, brother, sister, whoever it is you share
6 a room with - they know you have jury duty this week and
7 they're naturally going to be curious as to whether you were
8 picked on a jury. It's perfectly fine to tell them that you
9 were selected on a jury, Ladies and gentlemen. Perfectly
10 fine to tell them, "Yes, I got picked on a jury."

11 The next question they're going to ask you is, "Well,
12 what kind of case is it about?" Tomorrow, Ladies and
13 gentlemen, you're going to be given an oath that you will
14 well and truly try and a true deliverance make in this
15 particular case. That will be the oath that you take. I
16 will tell that it would be a violation of that oath that you
17 take if you were to discuss this case with anyone.

18 So tonight when they start asking you questions say,
19 "Look, I'd love to talk about the case but I can't, because
20 the judge told me I cannot talk about it." The reason for
21 this is very simple, ladies and gentlemen. It will be your
22 responsibility to rule or to decide whether or not the State
23 has met its burden of proving the defendant's guilt beyond a
24 reasonable doubt and it would not be fair for anything that
25 someone says to you, no matter how well intentioned it may

1 be - it would not be fair for those comments to have an
2 effect on you or to influence your decision. Because it's
3 your decision to make.

4 It will ultimately be your decision, not that of your
5 husband, your wife, your friends, your family members. So
6 don't talk to anyone about the case. Along those same
7 lines, ladies and gentlemen, anytime that we're on break
8 please do not undertake any sort of independent research of
9 this case. Don't go Googling people's names. Don't do any
10 sort of internet word search of anyone's names or any of the
11 allegations involved in this case. The reason for this,
12 ladies and gentlemen, is very simple. The rules of evidence
13 are designed to make sure that you get the absolute best and
14 most trustworthy information possible. The same cannot - -
15 simply is not true for stuff that you see on the internet.
16 Somebody can put something on the internet and it can be a
17 complete, total, one hundred percent bald-faced lie. All
18 right? So the same guarantees of trustworthiness simply
19 don't apply to things that you see in the media. So, I'm
20 telling you it will be a violation of your oath to conduct
21 any kind of word search or any sort of independent
22 investigation. These kinds of problems have arisen in other
23 parts of the state. As a trial judge I have never had to
24 deal with a juror who disobeyed my instructions along those
25 lines and went ahead and did an independent investigation.

1 I don't ever want to be put in that kind of a position, so
2 please, please, please don't put me in that kind of a
3 position. Judges who have been put in that kind of position
4 have come down pretty hard on jurors who have disobeyed or
5 not followed their instructions. So again, don't put me in
6 that position. Have a pleasant evening because it's not
7 supposed to rain tonight I don't think. Just enjoy the
8 evening with your friends and your family. With that, I'll
9 ask that you be back in the jury room tomorrow morning at
10 9:30. Wear those badges that you have on. Wear those home
11 and wear them back tomorrow morning. It will help the
12 bailiffs downstairs identify you as jurors and help get
13 y'all up here quicker rather than slower. With that, have a
14 great evening. I'll see you tomorrow morning at 9:30 and
15 we'll start the case in earnest. You are excused.

16 (Whereupon, the jury was excused at 4:29 p.m. for the
17 evening.)

18 (Whereupon, Mr. Phillip Walker, a juror, approached The
19 Court and was asked to remain in the jury room.)

20 THE COURT: I've never had this happen before. We are
21 still, of course, on the record. The gentleman in the green
22 shirt who just approached me a moment ago, one of the
23 jurors, told me that something was said in the jury room
24 that may be of importance. I am asking him to write down
25 what was said by one of the jurors and I'm going to see what

1 he tells me and then we're going to take it from there. So
2 we'll be at ease until he comes back out.

3 (Brief recess)

4 THE COURT: Would counsel approach briefly?

5 (Whereupon, a bench conference was held.)

6 THE COURT: What's your name again?

7 JUROR: Phillip Walker.

8 THE COURT: Mr. Walker, I appreciate the note and the
9 information that you've provided to me. The question that I
10 have is was this discussed in the jury room at all?

11 JUROR: It's a very small town. In fact, I don't even
12 know if he knows Phillip Walker. He may know Brad Walker,
13 but it's not likely.

14 THE COURT: So this was not discussed in the jury room?

15 JUROR: We're the only two from Ware Shoals, so we're
16 the only two. At that time, in the early 90's, it was
17 pretty scandalous.

18 THE COURT: I understand. You note here it says,
19 "thought it may have been hearsay."

20 JUROR: Here's what I know. I can give the court the
21 details. The event happened. She came to school after it.
22 There were some racial slurs thrown at her and then she was
23 sent away to private school. From talking to her brother,
24 the dad was pretty upset about the event. Plus, I knew the
25 next year. I knew there was some ill feelings in the school

1 about it. That particular population in Ware Shoals is a
2 smaller population. I guess you had to be there at that
3 time to understand it. I stick by the statement at the very
4 top. I do believe him to be a fair and honest man, but
5 given that situation - - as I told you earlier I am all
6 about disclosure.

7 THE COURT: I appreciate you making us aware of what it
8 is that you know or your concerns. Aside from this
9 incident, do you know the individual about whom you're
10 speaking in the note? Your fellow juror, do you know him?

11 JUROR: I know him through the family. I know where he
12 lives. I know he coached baseball on some teams that I
13 played against in town. It's a town of 2,500 people. Me
14 and his daughter were in the same grade. His son was in the
15 grade with my sister. There's not many secrets in the town,
16 being quite honest, sir.

17 THE COURT: I understand.

18 JUROR: Right.

19 THE COURT: I appreciate the information. You're good
20 to go and you're free to leave. Thank you, sir.

21 (Whereupon, the juror, Phillip Walker, exited the
22 courtroom.)

23 THE COURT: The note that I spoke to - - which I showed
24 to counsel before I spoke to the juror who brought this to
25 the court's attention. The note speaks for itself. The

1 note relates an incident - is he gone? He's still there?
2 Is he in the jury room or did he leave?

3 BAILIFF: He left.

4 THE COURT: The note relates an incident apparently in
5 '91 or '92 wherein juror number 26, who was I think the
6 sixth or seventh person sat on the jury. Apparently juror
7 number 26, that juror's daughter had an intimate
8 relationship with an African American athlete. This juror
9 raised some concerns that juror number 26 took it pretty
10 hard at the time. That's a direct quote from the note,
11 which will be made an exhibit, Court's number 2. The juror
12 who brought this to my attention also states, "As I state
13 above, I believe him to be hones, but given the
14 circumstances, I believe the defense should be aware." This
15 was not discussed in the jury room. That's what the juror
16 stated a moment ago. So we're not dealing with - - let's
17 handle it like this. How does the counsel for the state and
18 defense feel I should address this? Does it need
19 addressing, and if so, what is the appropriate action? This
20 is not a situation where you have animus displayed in the
21 jury room, which would go to the fundamental fairness of the
22 trial. This is more along the lines of background '91 or
23 '92, concern from one juror concerning another juror. I am
24 unaware of any precedent that deals with this kind of thing
25 coming up.

1 SOLICITOR STUMBO: I'm not either, Your Honor. I
2 haven't seen it in any trial I've ever tried. Judge, my
3 position on this is pretty simple. Mr. Cheshire, the juror
4 in question, answered Your Honor's questions. He didn't
5 come up and say he had a problem with the race of the
6 defendant here. Nothing involved with any way he interacted
7 with the court during voir dire would suggest that he is
8 racist in any way. So, Your Honor, my first preference
9 would be for it not to even be addressed at this point.
10 Now, that being said, if Your Honor feels like out an
11 abundance of caution that it needs to be addressed with Mr.
12 Cheshire, I think that we can do that tomorrow morning when
13 they get here. You can bring him out from the jury room. I
14 guess say there's been something brought to the court's
15 attention of an incident that happened that might affect
16 your ability to be fair and impartial in this case and just
17 re-ask him the questions specifically and directly. Can you
18 be fair and impartial to both the state and the defense. If
19 he says yes I think we move on. If he says no, I guess we
20 seek the alternate. But I don't believe that there is good
21 cause at this point to question his impartiality based on
22 what the other juror has disclosed.

23 MS. TAYLOR: Your Honor, I think we have two problems
24 now at this point. Obviously this is exactly the reason we
25 pick an alternate, first of all, and second, if we bring him

1 out here and re-question him, he is going to know that
2 another juror said something about some sort of impropriety.
3 I think that the fact that he did not bring this to our
4 attention and proceeded throughout the entire jury
5 qualification without mentioning it - - I don't see any way
6 that I am okay with him remaining on this jury. I think at
7 the very least the alternate needs to be put in place. And
8 if anyone else has been informed or told about the
9 situation, we might have a situation with tampering. But I
10 don't think there's any way we can - - I mean, if we had
11 known this information, clearly we would have stricken him.

12 MR. TAYLOR: Judge, if I may. We don't even know if
13 this is reality. This is a guy saying I think this is the
14 case. He sent her off to school, so he hates black people.
15 We don't know that. We don't know what's in his mind or
16 heart. I don't know the man and the juror that brought this
17 to our attention, I don't think, could tell us that either.
18 Saying he mentioned the word hearsay. We have know clue if
19 this is true. Everybody has got a past. Everybody has got
20 an experience in life.

21 MS. TAYLOR: Right, but my client's future is on trial
22 here, so...

23 MR. TAYLOR: But we don't know if that's true or not.

24 SOLICITOR STUMBO: We understand that. That's not
25 relevant here. I mean, the point is -

1 THE COURT: What I'm struggling with, okay - - I don't
2 know I necessarily feel comfortable asking juror number 26
3 to come out and then ask him the same questions over again
4 that I've already asked him during voir dire. I would
5 expect him to give the same answers. What's related to the
6 court in this letter - - there are several possible ways to
7 read it. Either the father was upset that his daughter
8 engaged in a intimate relationship with someone, regardless
9 of race, or that there is a racial tint to it. I'm very
10 uncomfortable anytime matters of race are injected into
11 cases, regardless of what the ethnicity of any of the
12 parties may be. It's just not something that gives the
13 court a great deal of comfort. There is a reason that we
14 pick alternates. I'm not saying that juror number 26 - I'm
15 not saying that he necessarily does harbor any sort of
16 inappropriate stereotypical attitudes. At the same time
17 there's the concern that maybe he does because this one
18 juror felt strongly enough about it to bring it to my
19 attention. I've never had a juror bring something to my
20 attention before like this about a fellow juror, so my
21 default setting is to, out of an abundance of caution, use
22 the alternate. That's what alternates are for. But in so
23 far as this letter is concerned I will be making it a
24 court's exhibit and I think I'll be asking juror number 69
25 to take the place of juror number 26. I'd feel more

1 comfortable with that.

2 SOLICITOR STUMBO: Just for the record, Your Honor, we
3 object to that.

4 THE COURT: I understand your position.

5 SOLICITOR STUMBO: But we respect Your Honor's decision.

6 THE COURT: Your objection is noted.

7 MS. TAYLOR: Thank you, Your Honor.

8 MR. TAYLOR: Judge, just to clarify. I think that needs
9 to be marked as Court's Exhibit 2.

10 (Whereupon, a note from juror to the court was marked
11 as Court's Exhibit number 2.)

12 THE COURT: It will be Court's 2 in the record. Should
13 counsel for the state and the defense need a copy, certainly
14 they will be at liberty to have a copy. It may be that
15 juror number 133 misunderstood how everything went down,
16 what happened, et cetera, but at the same time there is
17 enough in there to cause me some concerns. I don't like
18 doing it this way, but I don't know how I can bring juror
19 number 26 in here and go into the details of this without
20 stepping over some very inappropriate lines and perhaps
21 prejudicing that juror against all concerned. I don't know.
22 So that might be the best way to deal with it. We have some
23 motions concerning - I know that the previous trial took
24 place in January of this year. In speaking with the
25 attorneys via email, I know that there was a suppression

1 hearing held in that trial. Basically, I know that the
2 defense wants to renew the same motions that were made, but
3 you anticipated that the testimony would not be different.
4 So everyone has agreed to essentially receive that portion
5 of the prior transcript into the record in this case. I
6 guess it's already marked as State's 1?

7 MR. TAYLOR: It is, Your Honor. Just to clarify, it
8 went from January 28th to February 1st, 2013 was when we had
9 this first trial. Not only was there a suppression hearing
10 in terms of the search warrant, there was also a Jackson v.
11 Denno based on an admission that the defendant made. I
12 spoke to Ms. Taylor. I showed her what I pulled out of the
13 actual full transcript. I've got the pretrial motions, the
14 cover sheet on the front, and where the court reporter,
15 Deborah Garrison, certified that she did this transcript.
16 I've got her signature on the back. At this time, Judge,
17 I'd move to put this in as Court's Exhibit 1.

18 (Whereupon, a portion of the first trial transcript was
19 marked and entered into evidence as Court's Exhibit 1.)

20 THE COURT: That will be Court's 1. Ms. Taylor, you do
21 renew all motions that were made back in January?

22 MS. TAYLOR: Yes, Your Honor. I would like to renew all
23 motions and previous objections.

24 THE COURT: Are you satisfied with the testimony in the
25 transcript, or do you wish to have additional witnesses

1 called, or are we okay with what's in the transcript?

2 MS. TAYLOR: As Your Honor said, I don't anticipate
3 there to be any change in testimony, so I'm satisfied with
4 the way it is.

5 THE COURT: Very good. Just remember to renew all
6 objections at that appropriate time when they seek the
7 introduction of the evidence and the record will be
8 protected along those lines.

9 MS. TAYLOR: Yes, sir.

10 THE COURT: I felt like there was something else. Did
11 y'all pre-mark exhibits at this point, Solicitor?

12 MR. TAYLOR: No, sir. We have not. I believe Solicitor
13 Stumbo did want to put something on the record about one of
14 those indictments.

15 SOLICITOR STUMBO: And we do plan to mark them tonight,
16 Judge. We'll get together with Ms. Taylor and have them
17 pre-marked tonight so we don't have that delay in the
18 morning. But the indictment that we discussed in chambers,
19 Your Honor, just to put it on the record. We move to alter
20 or amend the caption of the indictment which stated - we
21 talked about this in chambers, that it was possession of
22 controlled substance with intent to distribute. We agree
23 with Your Honor that at this point we have called the trial
24 and will present it as the lesser included offense, which
25 would just be possession of controlled substance. I believe

1 the substance was benzo...

2 MR. TAYLOR: It's a controlled substance, schedule I,
3 Judge.

4 SOLICITOR STUMBO: I'm going to have to have the SLED
5 agent pronounce it for us, Your Honor.

6 THE COURT: The indictment the Solicitor is referring to
7 is 13-GS-24-293. In chambers we were informed that the
8 state was intending to go forward with the charge of
9 possession with intent to distribute a controlled substance.
10 The controlled substance is spelled B-e-n-z-y-l-p-I-p-e-r-s-
11 z-i-n-e. It is a scheduled I controlled substance. Ms.
12 Taylor explained that she, if the state went forward with
13 that charge, with the intent charge, that she would be
14 moving to not try to that charge. To have that indictment
15 quashed because she did not receive notice that that was
16 going to be indicted. At this point, Ms. Taylor, are you
17 comfortable going forward on the possession charge?

18 MS. TAYLOR: Yes, sir, Your Honor.

19 THE COURT: Obviously, double jeopardy would attach
20 since the possession would be a lesser included offense of
21 the PWID. I think it would be a one year charge or a one
22 year offense, assuming that the jury were to convict Mr.
23 Ervin of that charge. So you're comfortable with that?

24 MS. TAYLOR: Yes, sir.

25 THE COURT: All right. Anything further before we go

1 off the record?

2 SOLICITOR STUMBO: I believe that's all from the state,
3 Your Honor.

4 THE COURT: Anything else, Ms. Taylor?

5 MS. TAYLOR: Nothing from the defense, Your Honor.

6 THE COURT: Just like last time, Mr. Ervin has appeared
7 so he'll need to stay with us this evening. If he needs a
8 change of clothes, just have his family bring them over to
9 the jail by tomorrow morning and we'll get that square.

10 MS. TAYLOR: Your Honor, just to clarify. I believe
11 last time you revoked my client's bond based on the
12 continuance hearing. He was free to go during the trial.

13 THE COURT: Oh, okay. Is that what I did last time, Mr.
14 Taylor?

15 MR. TAYLOR: Judge, I remember him being in jail the
16 whole time and then once the trial ended he was out.

17 THE COURT: I think that's correct, because there was
18 some question that came up after the trial ended about his
19 bond and getting his bond re-instated. My understanding,
20 Ms. Taylor, is that by - - I know it's my discretion as to
21 whether or not to leave him out. In cases of this nature I
22 tend to err on the side of caution. He's shown up. He's
23 satisfied the conditions of his bond. I'd rather he stay
24 with us.

25 MS. TAYLOR: Okay. Thank you, Your Honor.

1 THE COURT: Okay. Anything else? Y'all mark the
2 exhibits and I'll see you tomorrow morning around 9:30.

3 (Whereupon, the court was in recess until 10:15 a.m.
4 the next day.)

5 TRIAL DAY 2- 7/23/2013

6 THE COURT: Let's go back on the record in the *State*
7 *vs. Manuel Ervin*. I am told that all the jurors are now
8 present. The first order of business, I think, is to
9 address the situation with juror order number 26, Mr.
10 Cheshire. The way, thinking through this this morning - - I
11 am assuming that had the defense known the information that
12 was conveyed to us yesterday, there may have been some
13 concerns. I noted that the defense only used four of its
14 five strikes so I will be treating this, at the very least,
15 as an excused juror by the defense or a strike for cause.

16 I do want the record to reflect, however, that the
17 state's point is very well taken and there's been no
18 demonstration -- there's been no showing that juror number
19 26, in fact, harbors any sort of racial animus. I do feel
20 that it's appropriate, however, in light of recent events
21 namely in the state of Florida. It's important that this
22 court not only be fair but that the system of justice appear
23 fair.

24 So for those reasons and out of fairness to all
25 concerned I am just going to explain to juror number 26 that

1 there was an error in selection yesterday and he's free to
2 go for the rest of the day. That's kind of how I'm going to
3 leave it with him. We'll put on juror number 69, Knieriem.
4 She'll serve as a full juror. I also do want the record to
5 reflect that Court's number 1, which is the transcript, the
6 way we had decided to handle that is with regard to those
7 motions that had been made back in January when the trial
8 initially happened. It's understood that the same motions
9 are made, the same testimony would have been taken, and the
10 same rulings by the court would stand. I was not confident
11 that the record reflected that in yesterday's proceedings.
12 If we could, let's have out Juror number 26, please.

13 (Whereupon Juror number 26 entered the courtroom)

14 THE COURT: Hi. I've got good news for you. There was
15 an error yesterday in terms of jury selection, and so you
16 are free to go for the rest of the day. I need you to call
17 back tonight is when I've got the rest of the jurors calling
18 back. We don't anticipate this case being finished today.
19 It will probably finish up some time tomorrow. There is a
20 slight chance that we might try something else, so I need
21 you to call back and just follow whatever those instructions
22 are. Okay, sir?

23 MR. CHESHIRE: Sure. Thank you.

24 THE COURT: Thank you. You're free to go.

25 (Whereupon the juror exited the courtroom)

1 THE COURT: Who will be doing the opening for the
2 state, Mr. Taylor?

3 MR. TAYLOR: I will.

4 THE COURT: Ms. Taylor, I assume you'll be opening for
5 the defense?

6 MS. TAYLOR: Yes.

7 THE COURT: At this point let's go ahead and have the
8 jury out.

9 (Whereupon the jury entered the courtroom at 10:20
10 a.m.)

11 THE COURT: The record should reflect that all jurors
12 are now present and seated. The first order of business
13 ladies and gentlemen -- who is Jason Teague?

14 (Whereupon, Mr. Teague raised his hand)

15 THE COURT: Mr. Teague, I'm going to appoint you as the
16 foreperson of the jury if that's all right with you. I'll
17 tell you that your vote counts no more no less than any
18 other juror. Your position is basically to be first among
19 equals. You'll preside over the deliberations in the jury
20 room. Your primary responsibilities will be to make sure
21 that everybody has their fair say once you start more
22 deliberations. You'll also be the jury spokesperson here in
23 court if there is anything you need to bring to my attention
24 or when the verdict is rendered, okay? So when you come back
25 out after we take a break, if you would, just have a seat

1 right here in this corner seat. The rest of you can feel
2 free to move about as you choose to do so. Ms. Knieriem, you
3 were the alternate. You are now a full member of the jury.
4 If you need to move around, usually the best seats for
5 hearing are the ones on the first row.

6 If it comes to your attention that anybody is having
7 trouble hearing, then you might want to suggest that they
8 sit up front. If anyone does have trouble hearing the
9 testimony or anything that's said in court just raise your
10 hand. That will be my cue to ask the lawyers for the
11 witnesses to speak up. It's very important that you pay
12 very close attention to the witnesses, and to the attorneys,
13 and to the court. Ladies and gentlemen, we are about to
14 begin the trial of the case of the *State of South Carolina*
15 *vs. Manuel Ervin*.

16 Before we begin this trial I want to explain to you
17 that this trial is probably a little bit different than what
18 you have come to expect from staying trials depicted on TV
19 or in the movies or reading about them in books. From what
20 you see on TV or read about in books, you may think that
21 trials are filled with intense drama, riveting
22 circumstances, and certainly sometimes that's true. More
23 often than not though, a trial is somewhat of a laborious
24 process. That's because our basic job here is to search for
25 the truth and searching for the truth can be a very time

1 consuming and laborious process.

2 I want to thank you at the outset for your contribution
3 to the criminal justice system and the system of justice of
4 our state today. I can tell you we cannot function as a
5 court without the willingness of people to come in here and
6 do their civic duty, sit as impartial jurors, and render a
7 verdict in cases such as this and others. So again, thank
8 you very much. With that I'm going to ask that you stand
9 where you are and just raise your right hand so that the
10 Clerk of Court can administer your oath to you as jurors.
11 Madame Clerk.

12 MADAME CLERK: Raise your right hands. Do you solemnly
13 swear or affirm that you will well and truly try the issues
14 before this court, a true deliverance make and a true
15 verdict render, according to the evidence and law presented
16 so help you God?

17 (All jurors affirmed oath.)

18 THE COURT: Thank you. You can have a seat. Ladies and
19 gentlemen, what I now say to you is intended to serve as an
20 introduction to the trial of this case and these remarks are
21 not a charge on the law that applies in this case. I'll
22 instruct you on the law that applies at the conclusion of
23 the trial before you retire to deliberate your verdict.
24 Again, these comments are merely an introduction so that you
25 can understand the process that we will use as the trial

1 progresses.

2 The defendant is charged in four indictments filed with
3 this court with the various offenses, the elements of which
4 I will explain to you at a later point in time. I instruct
5 you that the indictments in this case are simply the formal
6 written instruments by which charges are brought into this
7 court and they are not, in any sense of the word, evidence
8 of any of the allegations contained in the indictments. The
9 defendant, Mr. Ervin, has pled not guilty to these
10 indictments and that plea puts the burden of proof on the
11 state to prove each and every element beyond a reasonable
12 doubt. It will be your duty, ladies and gentlemen, to
13 determine whether the state has met this burden. Your
14 purpose as jurors is to find and determine the facts. You
15 are the sole judges of the facts of this case. If at any
16 time I make any comments regarding the facts please
17 disregard it because the law does not permit me to have any
18 opinion concerning the facts in this case.

19 You'll determine the facts from the testimony you hear
20 and the other evidence which is introduced during the course
21 of the trial. It's up to you to determine the inferences
22 which you feel may be properly drawn from the evidence which
23 is presented. It is especially important that you perform
24 your duty of determining the facts diligently and
25 conscientiously because ordinarily there is no way to

1 correct an erroneous determination of facts by a trial jury.
2 On the other hand and with equal emphasis, the same law that
3 makes you the judge of the facts in this case makes me the
4 judge of the law.

5 The law as given by the court is the only law which you
6 may consider. You have to accept it and apply it even though
7 you may disagree with it. Ladies and gentlemen, I cannot
8 tell you what the facts are in this case and legally you're
9 not permitted to disagree with me about what the law is or
10 what the law ought to be. Again, it will be your job to take
11 the law as I give it to you, apply it to the facts as you
12 find them to be, and render a true and just verdict under
13 the oath that you have just taken as jurors. Until I advise
14 you to begin your deliberations, please don't talk about
15 this case with anyone not even your fellow jurors, friends,
16 family members, or anyone else while the case is going on.
17 Once the case is submitted to you your to discuss this case
18 only in the jury room in the presence of all twelve of your
19 fellow jurors.

20 The parties in this case have been instructed by the
21 court not to have any contact with you so if you happen to
22 see some of the lawyers or some of the parties coming or
23 going from the court and they don't even say hello please
24 understand. They're not being rude. They're not being
25 unfriendly. They are simply following my instructions. The

1 reason for this is very simple. It's very easy if somebody
2 sees a lawyer saying hello to you just in passing - it's
3 very easy for the other side to misinterpret that as an
4 effort at jury tampering. So the easiest way to prevent that
5 perception or easiest way to prevent that kind of problem
6 from arising is to simply give a blanket instruction that no
7 one is to have any contact with any juror while the case is
8 going on.

9 During the trial, ladies and gentlemen, please don't
10 listen to any reports about this case, read any reports
11 about this case. There may or may not be something in
12 tomorrow's paper about this case. I don't know, but if there
13 is, just avoid reading the paper tomorrow morning. Don't
14 read the actual story. If you happened to glance at the
15 headline or the caption of the story if there is something
16 in the paper. Again, my admonition of last night still goes
17 for today. Please don't perform any independent
18 investigation, any word search, any Google search of any of
19 the parties names involved in this case, okay? That is
20 clearly improper.

21 Ladies and gentlemen, it will be important that you
22 keep an open mind and not decide any issue in this case
23 until all of the evidence has been presented, the parties
24 have made their closing arguments to you, and you've
25 received my instructions on the law. It will be your solemn

1 responsibility to determine the guilt or innocence of Mr.
 2 Ervin, and your verdict must be based solely on the evidence
 3 presented and the law as I instruct you at the close of the
 4 trial.

5 Ladies and gentlemen, in just a minute the solicitor,
 6 Mr. Taylor, will make what's known as his opening statement
 7 to you in which he will explain to you what he believes the
 8 issues are in this case. The attorney for the defendant, Ms.
 9 Taylor, will also be able to make an opening statement,
 10 although she's not required to do so. I instruct you that
 11 what the lawyers say during their opening statement is not
 12 evidence. It's merely their contention as to what will be
 13 proven or will not be proven. Again, the evidence in the
 14 case will be presented by the testimony of sworn witnesses
 15 from the witness stand as well as any exhibits which are
 16 introduced into the record.

17 Ladies and gentlemen, from time to time during this
 18 trial you might hear one of the lawyers say, "Your Honor, we
 19 have a matter of law for the court," or "Your Honor, we need
 20 to take up an issue with you," and I might find it necessary
 21 to ask you to leave the courtroom while I take up that issue
 22 of law. The reason that I'm asking you to leave the
 23 courtroom during those times is that sometimes in ruling on
 24 an issue of law I have to comment on what facts have been
 25 presented or have not been presented and I don't want any

1 comment that I make concerning those facts to have any
2 influence or any effect on what you ultimately find those
3 facts to be.

4 So for that reason, during those times I will ask you
5 to leave the courtroom so that I can discuss those issues
6 with the lawyers on the record without having any worried
7 that you might be influenced by something I say. Please,
8 during those times don't speculate as to what I am saying or
9 what going on out here, because obviously it will be your
10 job ultimately to determine the facts in this particular
11 case. Now, in determining what the true facts are in this
12 case, ladies and gentlemen, you must decide whether the
13 testimony of witnesses is believable or not. It will be my
14 responsibility to rule as a matter of law on whether certain
15 testimony is admissible, but once that testimony is
16 admitted, whether or not you believe it is solely for you to
17 determine.

18 In deciding whether to believe a witness, you have the
19 right to consider the interest of any witness, the bias of
20 any witness, the prejudice of any witness, the opportunity
21 for the witness to have seen the matters and things about
22 which the witness testifies, and the way the witness acts on
23 the witness stand. You have the right to consider anything
24 which is in the record in this case which will help you
25 evaluate the testimony of the witnesses. That means it is

1 your duty to please pay close attention to the witnesses.
2 Listen to them. Pay close attention to the lawyers in the
3 court. And try to keep your thoughts from wandering.

4 At the end of the case if you do this you will be in a
5 position to determine what the true facts are and thus
6 render a true and just verdict under the oath that you have
7 just taken a moment ago. Ladies and gentlemen, in order to
8 preserve everyone's rights I'll give the lawyers and
9 opportunity to object to anything I've said to you during
10 these opening comments and then will proceed with the
11 beginning of the trial. Any objection from the state,
12 solicitor?

13 SOLICITOR STUMBO: None from the state.

14 THE COURT: Ms. Taylor?

15 MS. TAYLOR: None from the defense, Your Honor.

16 THE COURT: Very good. We'll now start the trial. Mr.
17 Taylor, you're recognized for your opening, Sir.

18 MR. TAYLOR: Thank you, Your Honor. May it please the
19 court. My name is Aaron Taylor. Sitting with me today is
20 David Stumbo, the Solicitor of this circuit. We're the
21 prosecutors. Our job is to seek justice, to treat everybody
22 fairly, and to protect the citizens of this county. I only
23 work in Greenwood, so I only handle Greenwood cases.
24 Besides the fact that we've got a trial going today, why are
25 we here?

1 Why are we here? Maunwell Ervin is a drug dealer.
2 Period. He's a drug dealer. And he got caught red-handed.
3 This happened back in December 2010, so it's been a while
4 ago. But having said that, we're going to have people
5 testify. We'll have the narcotics agents and other
6 witnesses testify about what happened. When I say he got
7 caught red-handed - - when they went into his house at [REDACTED]
8 [REDACTED], there were drugs hidden all over the place.
9 So you're going to hear about where the drugs were hidden,
10 and you'll be amazed at some of the creative places he had
11 them. Also, he admitted to the officers while they were
12 talking to him at his house that they were his drugs. So
13 you've got those two things right off the bat.

14 Now, what are you going to hear about during this
15 trial? You're going to hear about, like I said, from the
16 narcotics agents who are members of the Greenwood Drug
17 Enforcement Unit, who were at this search warrant. Who
18 executed the search warrant, went to the house and searched
19 the place. You'll hear from them. You're going to hear
20 from analysts who tested all the drugs that were found.
21 Now, Mr. Ervin is charged with a couple of different things,
22 and it's all drug related. Trafficking crack cocaine.
23 That's the first one he's charged with.

24 Secondly, is Trafficking crack cocaine within a half
25 mile of a school, park, or playground. You'll hear about

1 how close his house where he was living is to Lander
2 University. Very close. Possession with intent to
3 distribute marijuana and possession with intent to
4 distribute marijuana within a half mile of a school, park,
5 or playground. So you've got those first four. The fifth
6 one is possession of a controlled substance. So again, he
7 had this all over his house.

8 Now, Judge Addy kind of stole my thunder a little bit
9 talking about this isn't t.v. I was going to tell you the
10 same thing. This isn't CSI. This isn't Law and Order. I'm
11 not going to have some witness on the stand and I start
12 yelling at them and they break down and cry and say, "I was
13 lying." You're not going to be having DNA done. There's no
14 DNA testing, blood testing, fingerprints. This is a drug
15 case. They found the drugs in his house. There's no reason
16 to do that. And you're going to hear the defense during
17 this trial - and their job is to protect their client. I
18 understand that, and everybody has the right to an attorney.
19 But at the same time, they're going to poke holes. They're
20 going to create doubt. That's going to be their job.
21 They're going to tell you, "Listen, if you have any doubt,
22 if you think just a little bit that he's not guilty then
23 you've got to find him not guilty." That's not true.

24 At the end of the trial when we wrap it all up and kind
25 of summarize everything we've talked about, Judge Addy is

1 going to tell you and we've all heard these words, you have
2 to find him guilty beyond a reasonable doubt., We all have
3 heard it, but simply means are y'all all firmly convinced.
4 So if you haven't listened to anything I've told you in the
5 last couple of minutes, this is the most important thing.
6 Are you firmly convinced he is guilty of what we say he's
7 guilty of. That's it. So nothing in life is a hundred
8 percent.

9 You may have a little bit of doubt about something but
10 you can still be firmly convinced he's guilty. So having
11 said all that, I appreciate your service and your time. I
12 know it's a hassle. The great thing is it's a quick trial.
13 We're not going to be here until Friday afternoon. We
14 should be done, I think, in a day hopefully. But at this
15 time I'm going to turn it over to Ms. Taylor. We are not
16 related. We just have the same last name. Just listen up
17 to her and we'll get started with the trial very shortly.
18 Thank you.

19 THE COURT: Thank you, Solicitor. All right, Ms.
20 Taylor. You're recognized, ma'am.

21 MS. TAYLOR: Good morning, y'all. Thank you for being
22 here today. My client and I definitely appreciate it. Just
23 to kind of go over some things that you heard from Solicitor
24 Taylor. What we're doing here today is we have a case. At
25 this point, I'm not allowed to tell you every piece of

1 evidence that you're going to hear, everything that these
2 witnesses are going to testify to. We can't quite get there
3 yet. We've got to let it happen first, okay.

4 What I can tell you, is that my client is cloaked with
5 the presumption of innocence. Now, what does that mean?
6 That means that he is presumed innocent until the state
7 proves him guilty beyond all reasonable doubt.

8 Now, reasonable doubt, that's kind of a touchy subject.
9 It's hard for even us lawyers to wrap our heads around
10 sometimes. The best way I like to explain it to you is to
11 imagine a window. A clear window that you just cleaned. On
12 a clear, sunny day, you should be able to look out that
13 window and see trees, flowers, children playing. Whatever
14 is on the other side should be clear and crisp. If there's
15 any dirt, clouds, any mugginess that clouds your clear view
16 of what's out there, that's reasonable doubt. So how do we
17 determine if there's reasonable doubt?

18 You're going to listen to what these witnesses tell
19 you. You're going to look at the evidence and the lack of
20 evidence. Evidence can be what you hear and what you don't
21 hear. People that don't come into this courtroom. People
22 that aren't here today to ask questions to. I want you to
23 take a lot of things into consideration.

24 Just like Judge Addy instructed you, I want you to
25 determine based on each and every one of your personal

MIKE YOUNG-DIRECT EXAMINATION

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1 experiences and opinions whether you believe these witnesses
2 are credible. That means simply are they telling the truth.
3 In that determination I want you to look at their
4 mannerisms. Are they being evasive? Are they answering the
5 questions that are asked simply and directly? Look at all
6 these things, but be patient.

7 Listen to all the evidence, because there is something
8 wrong with this case. At the conclusion of this trial I
9 will stand here before you again and I will ask you to
10 render a verdict of not guilty. So please be patient and I
11 thank you very much for your time and your service.

12 THE COURT: Thank you very much, Ms. Taylor. Ladies and
13 gentlemen, one quick point of clarification. I made a
14 mistake in my opening comments. There are actually five
15 charges in this case, five indictments, not four. So I will
16 explain again the elements of the charges to you at a later
17 point in time. I just wanted that noted. I missed one of
18 the indictments. Solicitor, call your first witness,
19 please.

20 MR. TAYLOR: Thank you, Your Honor. The state calls
21 Mike Young.

22 MIKE YOUNG, having first been duly
23 sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. TAYLOR: Good morning. How are you doing?

MIKE YOUNG-DIRECT EXAMINATION

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1 A. I'm fine, sir.

2 Q. Can you tell everybody what your name is?

3 A. My name is Mike Young.

4 Q. Where do you work, Mr. Young?

5 A. Town & Country Property Management.

6 Q. What does Town & Country do?

7 A. Town & Country they do property management, like rentals
8 and licensed real estate agents.

9 Q. Now, do y'all own all the properties you manage?

10 A. No, sir. We don't own all of the properties.

11 Q. How long have you worked there?

12 A. Since November 30, 2009.

13 Q. Okay. Judge, may I approach the witness?

14 THE COURT: Yes.

15 Q. I'm going to hand up some documents here and see if you
16 can tell us. Just take your time and look through them.
17 Make sure you recognize them, and tell us what I've handed
18 you.

19 (Witness complies.)

20 A. I've looked at them, sir.

21 Q. Are you familiar with those documents?

22 A. Yes, sir.

23 Q. What is it that you've seen there? What's going on in
24 those different pieces of paper?

25 A. The first one on the top, sir, is a rental application

MIKE YOUNG-DIRECT EXAMINATION

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- 1 where someone applied for an apartment.
- 2 Q. We'll stop there. Who is it that applied for that
- 3 apartment or house?
- 4 A. On the application, sir, it says Manuel - - I can't read
- 5 that. I think it's an "S". Ervin, or "J" Ervin.
- 6 Q. When did he apply to be allowed to move into that
- 7 location?
- 8 A. On the application it looks like it reads 3/10/10.
- 9 Q. What address is it?
- 10 A. [REDACTED], sir.
- 11 Q. As you've - -
- 12 A. I'm sorry.
- 13 Q. No, that's okay. What about the second page? What is
- 14 that?
- 15 A. It looks like the Social Security card and a driver's
- 16 license, sir.
- 17 Q. Whose Social Security and driver's license is it?
- 18 A. Manuel Javar Ervin. Both of them are his, sir.
- 19 Q. You can flip on over to the next page. What is the rest
- 20 of those documents saying?
- 21 A. The next document looks like it came from CPW, and
- 22 that's what we typically do at Town & Country when we ask
- 23 someone to get the utilities put in their name. They'll
- 24 bring this document back.
- 25 Q. Okay. How about the next page?

MIKE YOUNG-DIRECT EXAMINATION

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1 A. The next document is a rental agreement and it looks
2 like it was done on the 12th of March, 2010.

3 Q. Whose rental agreement?

4 A. Manuel Ervin, sir.

5 Q. So, I'm asking was he approved? You said he applied.
6 Does that mean he was approved?

7 A. Yes, sir.

8 Q. What day is that supposed to start, his rental
9 agreement, and how long did it last according to that
10 document?

11 A. According to the document, the rental agreement started
12 the 12th of March, 2010 and it was for twelve months
13 and 20 days. At the end of the twelve months and 20
14 days would've been the 31st of March, 2011, sir.

15 Q. After reviewing those documents, are those typical
16 documents that are produced in the ordinary course of
17 business at Town & Country?

18 A. Yes, sir.

19 Q. Have any of those been altered or changed? Has anybody
20 forged anything or messed with it at all?

21 A. It doesn't appear that way, sir. No, sir.

22 MR. TAYLOR: Judge, at this time the state moves to
23 admit what's marked as State's 1.

24 MS. TAYLOR: Without objection, Your Honor.

25 THE COURT: Without objection, State's 1 is in evidence.

MIKE YOUNG-DIRECT EXAMINATION

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1 (Whereupon, state's Exhibit 1, Town & Country rental
2 agreement, was placed into evidence.)

3 DIRECT EXAMINATION RESUMED BY MR. TAYLOR:

4 Q. Mr. Young, do you mind if I take that back from you?

5 A. No, sir.

6 Q. Now, the incident we're talking about today - - which
7 I'm not asking you about any knowledge you have of it, but
8 it was December 9, 2010. According to what you just told
9 us, was Mr. Ervin living at [REDACTED] ?

10 A. What date was it again, sir?

11 Q. December 9, 2010.

12 A. Based on the lease agreement, yes, sir. I would have
13 to say yes.

14 MR. TAYLOR: Judge, may I publish the top page for the
15 jury?

16 THE COURT: Without objection. It's here on the screen.
17 It's behind some of you if you need to...

18 Q. At the bottom of this page. Can you see the screen,
19 Mr. Young?

20 A. No, sir. Not really.

21 Q. Come around here. I want to let the jury see this as
22 well is why I'm doing this. The bottom two names
23 there. What is that about? Why are those two names
24 listed there? It has their name and age and
25 relationship.

MIKE YOUNG-DIRECT EXAMINATION

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1 A. That would be the occupants that would be staying at
2 the property, sir.

3 Q. You're talking about right here? It's not showing up
4 on the screen, but you see what I'm talking about.

5 A. Yes.

6 Q. Can you read those two names for me?

7 A. Manuel Ervin and Javarious (as spoken) Ervin. That's
8 the best I can read that one.

9 Q. Who is - - we know Mr. Ervin - - you mentioned earlier
10 that he was the one that was going to be living there.
11 What's the bottom person? Who is that?

12 A. That would be his son.

13 Q. According to these documents, was anybody else supposed
14 to be living at that house?

15 A. No, sir.

16 Q. So just the two of them?

17 A. That's correct.

18 Q. You can go back up there. Thank you, Mr. Young.

19 (Witness complied.)

20 I also wanted to publish this for the jury. You talked
21 about that. You read off the ID and Social Security number.
22 Did you ever meet Mr. Ervin? Did you handle the application
23 process at all?

24 A. I met him very briefly, sir. I mean, I saw him in the
25 lobby.

MIKE YOUNG-CROSS-EXAMINATION

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- 1 Q. Do you recognize him today?
- 2 A. It's been a long time since I saw him, sir.
- 3 Q. Based on your knowledge of Greenwood and you probably
4 know - - do you know Greenwood very well just based on
5 your job?
- 6 A. Yes.
- 7 Q. Is [REDACTED] in Greenwood County?
- 8 A. [REDACTED]?
- 9 Q. Yes, sir.
- 10 A. Yes, sir.
- 11 Q. It is in Greenwood County?
- 12 A. Yes.
- 13 Q. Okay. I have no further questions.
- 14 CROSS EXAMINATION BY MS. TAYLOR:
- 15 Q. Good morning, Mr. Young. Thank you for being here.
- 16 A. Good morning, ma'am.
- 17 Q. I just have real quick a couple of questions for you.
18 I'm going to hand this back to you. If you can look
19 right around this area in particular. Could you tell
20 the jury what address is listed as Manuel Ervin's
21 current address on that rental application?
- 22 A. Yes, ma'am. [REDACTED], [REDACTED], [REDACTED]
23 [REDACTED], [REDACTED].
- 24 Q. Okay. Thank you. Creswell. If you could just hold on
25 to that for one second. Okay. In your experience, how

MIKE YOUNG-CROSS-EXAMINATION

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1 long have you been handling rental properties?

2 A. Eight years, ma'am.

3 Q. Eight years, okay. In that eight year time period,

4 have you ever had any kind of experience where one

5 individual comes and puts his name on the lease for

6 another individual that may be living in that house?

7 Like maybe a parent/child situation?

8 A. If it ever happens, ma'am, we've had to know about it.

9 We would know about it.

10 Q. You would know about it because you periodically drop

11 by and see whose living there, or...

12 A. Well, that's not the case, ma'am. If someone was to

13 come to our office and say, "Well, I'm not going to be

14 living there, but my son or daughter is going to live

15 there." We would have all - - everyone would be on the

16 application and everyone would be on the rental

17 agreement.

18 Q. Okay. So they would have to tell if they were having

19 another person live there. If they didn't tell you,

20 you probably wouldn't have a way to know.

21 A. No, ma'am.

22 Q. Okay. Do you have personal knowledge that Manuel Ervin

23 was actually residing in that house? Like, did you

24 drive by at any point and see him in the yard or see

25 him moving in? Anything like that?

MIKE YOUNG-REDIRECT EXAMINATION

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1 A. Well, personal knowledge that - - yes, ma'am. I've
2 talked to him on his cell phone a couple of times while
3 he was there because he was late on his rent. I've
4 talked to him about his rent.

5 Q. Okay. Okay. No further questions. Thank you, Mr.
6 Young.

7 A. Yes, ma'am.

8 RE-DIRECT EXAMINATION BY MR. TAYLOR:

9 Q. I had just one follow up, Judge. Ms. Taylor asked you
10 about the Creswell address.

11 A. Yes, sir.

12 Q. According, again, to those documents, was he living at
13 Creswell in December 2010 or was that before he applied
14 to live at [REDACTED]?

15 A. Based on the documents, sir, this application -- when
16 someone fills out an application we always ask them to
17 put their current address where they're living at at
18 that time. At that time, which is dated 3/10/10, so at
19 that time he would've been living at [REDACTED].

20 Q. Okay. That was just his current address when he
21 applied?

22 A. That's correct, sir.

23 Q. I have no further question.

24 THE COURT: Thank you, sir. You can step down. No
25 objection to excusing the witness?

COURTNEY SMITH-DIRECT EXAMINATION

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1 MS. TAYLOR: No objection, Your Honor.

2 THE COURT: Mr. Young, you are free to go. Thank you
3 for coming sir.

4 (Whereupon, the witness exited the witness stand.)

5 THE COURT: Mr. Taylor, call your next witness, please.

6 MR. TAYLOR: Your Honor, the state calls Courtney Smith
7 COURTNEY SMITH, being duly sworn, testified
8 as follows:

9 DIRECT EXAMINATION BY MR. TAYLOR:

10 Q. Good morning.

11 A. Good morning, sir.

12 Q. How are you doing?

13 A. All right.

14 Q. Could you tell everybody your name, please?

15 A. Courtney Smith.

16 Q. Where do you work, Mr. Smith?

17 A. The Greenwood County Sheriff's Office.

18 Q. What do you do there?

19 A. I am currently assigned to the Greenwood Drug
20 Enforcement Unit.

21 Q. So I should be addressing you as Agent?

22 A. Agent Smith.

23 Q. How long have you worked there?

24 A. As far as the drug unit?

25 Q. Actually, I take that back. How long have you been in

COURTNEY SMITH-DIRECT EXAMINATION

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- 1 law enforcement?
- 2 A. A total of approximately seven years.
- 3 Q. Could you tell us just briefly where you've worked and
4 what type of experience you have?
- 5 A. Yes, sir. I started at the City of Abbeville Police
6 Department in '06-'07. I worked there a year and a
7 half. In '08 I came here to the Greenwood County
8 Sheriff's Office. I was first assigned to the Uniform
9 Patrol Division and then a while later I was assigned
10 to the Community Services Division, then after that I
11 was assigned back to Uniform Patrol Division. Then I
12 was assigned to the Drug Enforcement Unit where I
13 currently am now.
- 14 Q. How long have you been with the Greenwood Drug
15 Enforcement Unit?
- 16 A. Approximately three years.
- 17 Q. Could you tell us what is the Greenwood Drug
18 Enforcement Unit?
- 19 A. The Greenwood Drug E
- 20 Q. Could you tell us about - what is the Greenwood Drug
21 Enforcement Unit?
- 22 A. The Greenwood Drug Enforcement Unit, that is combined
23 of the city and county officers, which is tasked to fight
24 the illegal narcotics of the city and county of Greenwood.
- 25 Q. So you don't investigate any other crimes?

COURTNEY SMITH-DIRECT EXAMINATION

1 A. No, sir.

2 Q. I may have to ask you to step down in a minute, Agent
3 Smith. Agent Smith, if you could look at this for me.
4 Could you tell us what is going on in this map or picture,
5 or whatever you want to call it?

6 A. Yes, sir. Down at the bottom left is a picture of [REDACTED]
7 [REDACTED] that is here in the city and county of
8 Greenwood. Here you see the campus of the Lander
9 University, our local college campus here. Down here you
10 see the President's home. Right here, where you see the
11 arrow, that is the home of [REDACTED].

12 Q. Let me hand you a - if you could just put an X on [REDACTED]
13 [REDACTED] on that map, please, so we know where it's at.
14 (Witness complied.) Okay. Thank you. I didn't mean to
15 interrupt you. You mentioned the bottom left where it
16 actually has a picture of the house.

17 A. Yes, sir.

18 Q. Is that a duplex? Is that [REDACTED] and [REDACTED]?

19 A. No, sir. [REDACTED] is solely one residence.

20 Q. There's no way to get the two confused?

21 A. No, sir.

22 Q. I can, just looking at the map and based on your
23 recollection of the crime scene - - -

24 THE COURT: Mr. Taylor, hold on one second. If y'all
25 can't see, feel free to move about as necessary in order to

COURTNEY SMITH-DIRECT EXAMINATION

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1 see.

2 MR. TAYLOR: Let me move this up. I'm sorry. Does that
3 help at all?

4 THE COURT: If you need to move to see, feel free to do
5 so if you're on the jury.

6 Q. Just back to your experience of that area and the crime
7 scene and what you're looking at. How far is [REDACTED]
8 [REDACTED] to Lander?

9 A. Approximately 100 yards to the Lander campus.

10 Q. So if you're standing with your back to [REDACTED]
11 Street and you're walking out the front door.

12 A. You'll find directly into the President's home and
13 slightly to your right you'll see the Jackson Library.

14 Q. Does this look to be accurate? Has anybody doctored
15 this at all, or altered it, or forged it, or anything like
16 that?

17 A. No, sir.

18 MR. TAYLOR: Judge, at this time the State moves what's
19 marked as State's Exhibit 2 into evidence.

20 MS. TAYLOR: Without objection, Your Honor.

21 THE COURT: Without objection, State's 2 is entered into
22 evidence.

23 (Whereupon, State's Exhibit 2 was moved into evidence.)

24 Q. Now, back to [REDACTED]. What County is that
25 located in?

COURTNEY SMITH-DIRECT EXAMINATION

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1 A. Greenwood County.

2 Q. Let's start at the beginning here. Go back to 2010.

3 Did y'all search [REDACTED]?

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

5 Q. How does that work? Do you just show up to houses and
6 say we want to search it?

7 A. No, sir.

8 Q. What's the process of legally being allowed to search
9 someone's house?

10 A. [REDACTED] - - we had received information that
11 there were illegal narcotics within the residence and we
12 also received information that the owner of the home at the
13 time was Mr. Manuel Ervin. That information was taken to a
14 judge and a search warrant was issued.

15 Q. So you have to do that before you go search?

16 A. Yes, sir.

17 Q. Is there any preparation? I mean, do you just say I
18 have information and you get a search warrant? What type of
19 - do you have to do an investigation of some sort?

20 A. Yes, sir. Some agent will go out and do what we call
21 surveillance the property, making sure that the information
22 that we have received is accurate and that there's enough
23 information to take to the judge for a search warrant.

24 Q. So were you there when y'all executed the search
25 warrant on [REDACTED]?

COURTNEY SMITH-DIRECT EXAMINATION

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- 1 A. Yes, sir. I was.
- 2 Q. Who was involved with that?
- 3 A. The entire drug unit.
- 4 Q. How many people were in the drug unit? Or at the time
5 were in the drug unit?
- 6 A. Approximately seven people, along with the SWAT team,
7 which is compiled of city and county officers.
- 8 Q. I want to draw your attention to December 9, 2010. You
9 did go on the search warrant?
- 10 A. Yes, sir, I did.
- 11 Q. Could you describe the layout of the house? I know
12 it's kind of hard to do without pictures, but just kind of
13 give the jury an idea about what type of house we're talking
14 about here.
- 15 A. Yes, sir. It's a two-bedroom home. Once you enter the
16 front door you have the living room to your left. You have
17 a bedroom to your right. A hallway, you go down the hallway
18 and there is a kitchen, which a wall separates the front
19 room and the kitchen. Straight ahead is another bedroom.
- 20 Q. Now, when you walk in the front door can you see the
21 back bedroom you're talking about?
- 22 A. Yes, sir. You can.
- 23 Q. So did you actually go in the house?
- 24 A. Yes, sir, I did.
- 25 Q. You mentioned it was two bedrooms.

COURTNEY SMITH-DIRECT EXAMINATION

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- 1 A. Yes, sir.
- 2 Q. Let's talk about that first bedroom you mentioned on
3 the right.
- 4 A. Yes, sir.
- 5 Q. What was inside that room?
- 6 A. Just clothes thrown all over the floor and inside the
7 closet.
- 8 Q. Was there a bed?
- 9 A. No, sir. It wasn't.
- 10 Q. Was there a mattress?
- 11 A. No, sir. It wasn't.
- 12 Q. Was there a sleeping bag?
- 13 A. No, sir.
- 14 Q. Was there any sign of - just a blanket, some pillow or
15 anything?
- 16 A. No, sir.
- 17 Q. I know you just said it - you said there were clothes?
- 18 A. Just clothes, yes.
- 19 Q. Nothing else really?
- 20 A. No, sir.
- 21 Q. So once you exit that first bedroom - you said bedroom,
22 but nobody was living in there - you go back to where?
- 23 A. You go out to the second bedroom which is straight
24 ahead.
- 25 Q. But, I mean, you've got to go through -

COURTNEY SMITH-DIRECT EXAMINATION

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1 A. You go through the kitchen. The kitchen is on your
2 left.

3 Q. Let's go back to the kitchen. Were any narcotics,
4 illegal narcotics, found in the kitchen?

5 A. Yes, sir, it was.

6 MS. TAYLOR: Objection, Your Honor.

7 THE COURT: Subject to your earlier objection?

8 MS. TAYLOR: No, a matter of law.

9 THE COURT: All right. Approach please.

10 (Whereupon, a bench conference was held out of the
11 hearing of the jury.)

12 THE COURT: Objection is noted. We'll put that on the
13 record at a later point in time. It's overruled. Mr.
14 Taylor, you may want to repeat the question.

15 MR. TAYLOR: Thank you, Your Honor. Yes, sir.

16 Q. Before I ask you that question again - how long were
17 you at the search warrant?

18 A. From start to finish.

19 Q. Did you observe everything?

20 A. Yes, sir.

21 Q. Did you see every time drugs were found?

22 A. Yes, sir.

23 Q. Did you see the actual drugs?

24 A. Yes, sir.

25 Q. Not just someone shouting out I found drugs?

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- 1 A. No, sir.
- 2 Q. Let's go back to the kitchen. But before we do that --
- 3 MR. TAYLOR: Judge, may I approach the witness?
- 4 THE COURT: Yes.
- 5 Q. I'm going to hand you a stack of photos. If you just
- 6 want to look through those. I'll give you a minute to look
- 7 at those. I'll let you hold onto those for a second. What
- 8 are those pictures depicting?
- 9 A. These pictures were taken from the crime scene of [REDACTED]
- 10 [REDACTED].
- 11 A. Do you recognize everything in those pictures?
- 12 A. Yes, sir, I do.
- 13 Q. Did you see all that stuff at the actual crime scene
- 14 before the pictures were taken?
- 15 A. Yes, sir, I did.
- 16 Q. Are those fair and accurate representations of the
- 17 crime scene?
- 18 A. Yes, sir.
- 19 Q. Has anything been altered or changed?
- 20 A. No, sir.
- 21 MR. TAYLOR: Judge, at this time we move to mark what's
- 22 been marked as States Exhibits 3 - 17.
- 23 THE COURT: Have you had a chance to look at these, Ms.
- 24 Taylor?
- 25 MS. TAYLOR: I haven't - as long as the one picture that

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1 ---

2 MR. TAYLOR: I did. It's right there.

3 MS. TAYLOR: Okay. There are no objections.

4 THE COURT: 3 - 17 are in evidence without objection.

5 (Whereupon, photographs marked as State's Exhibits 3
6 through 17 were entered into evidence.)

7 MR. TAYLOR: I'm sorry, Agent Smith. I've got these out
8 of order now. I'm trying to get them back here.

9 MR. TAYLOR: Your Honor, if we may approach briefly.

10 THE COURT: Sure, come on up.

11 (Whereupon, a bench conference was held out of the
12 hearing of the jury.)

13 THE COURT: Ladies and gentlemen, I need to take up an
14 issue of law with the attorneys involved in this particular
15 case. I apologize for having to ask you to do this, but if
16 you would step out for a moment please and don't discuss the
17 case. We'll have you back about 10 or 15 minutes. Thank
18 you.

19 (Whereupon, the jury exited the courtroom)

20 THE COURT: The record should reflect that the jury is
21 out. Ms. Taylor, if you would, go ahead and state your
22 objection for the record please.

23 MR. TAYLOR: Yes, Your Honor. My objection is that this
24 witness has no personal knowledge. While he may have been a
25 member of the SWAT team and present at the address while the

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1 search was occurring, his name is not mentioned not even one
2 time in this incident report. He found absolutely no
3 evidence independent of his own. The witness that they have
4 on the witness list, the lead investigator in this case,
5 Jarvis Reeder, that they do not intend to call, was the
6 officer that found the drugs in the bedroom and also
7 Mirandized my client to the alleged admission that was made.
8 It is my position that they have not laid the proper
9 foundation. He could not have possibly been in every room
10 at every time all of these drugs were found in different
11 parts of the house. It's just not probable. To allow him
12 to testify to drugs that he has no personal knowledge to is
13 just inappropriate at this time. Like I said, his name is
14 not mentioned one time in this entire incident report which
15 was drafted by Lieutenant Reeder.

16 MR. TAYLOR: Judge, just to clarify, Lieutenant Reeder,
17 who is Captain Reeder now, did not bag any of the drugs. We
18 have the person that starts the chain. He's sitting out here
19 in the gallery, Dyer Archibald. Agent Smith just testified
20 he had personal knowledge. He's saying he saw all of it. I
21 understand what Ms. Taylor is saying. She can cross-examine
22 and say well, where is the lead investigator. She can
23 cross-examine and bring all of that up, but he does have
24 personal knowledge. I think we've already laid the
25 foundation. Unless she's saying he's lying. He saying he

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1 saw all of it.

2 MS. TAYLOR: I'm saying it's impossible for one person
3 to be in five different rooms of the house at the same time.
4 To quote the investigative report, which was drafted by now
5 Captain Reeder, it clearly says, "Lieutenant Reeder found in
6 a bedpost to clear plastic bags containing an off-white like
7 substance and a whole bunch of marijuana." That's drafted
8 by him. He starts the chain of custody. Without him, they
9 have no personal knowledge. These drugs can't be admitted
10 as evidence. He can't possibly have been in five rooms at
11 one time. It's just not humanly possible.

12 MR. TAYLOR: Judge, I can ask a few more questions.
13 Again, Agent Smith is saying he saw when people - they are
14 finding drugs. They're not pulling them out and touching
15 them and doing all this stuff to them. They have a
16 protocol, which we'll talk about later, about who touches it
17 to start the chain to make sure it's not tampered with.

18 MS. TAYLOR: Lieutenant Reeder admits in his report he
19 started the chain. He touched it. He found it. And
20 there's pictures of them touching the drugs.

21 MR. TAYLOR: Right, he found it. Which could be, I see
22 it --

23 MS. TAYLOR: That starts the chain.

24 MR. TAYLOR: Judge, we could proffer a few more
25 questions about Agent Smith seeing when drugs were found.

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1 Again, he's saying he witnessed it all.

2 MS. TAYLOR: Your Honor, I don't think that's going to
3 be enough. Like I said, he can't possibly have been in all
4 these rooms to witness all these things. And he didn't
5 offer that testimony as to what he saw in the first trial,
6 and I am by no means calling Mr. Smith a liar. I'm just
7 saying it's just not humanly possible. And to bring this
8 now in an attempt to not call Reeder for advantageous
9 benefits to their side is just - they're missing a crucial
10 point in the case.

11 MR. TAYLOR: Judge, we can call the case however we
12 want. We didn't choose to call Agent Reeder. He's not a
13 necessary witness anymore. The pre-trial stuff is in
14 evidence-

15 MS. TAYLOR: He's the lead investigator that drafted the
16 investigative report that found the crucial evidence.

17 THE COURT: Let's be careful about talking over each
18 other.

19 MS. TAYLOR: I apologize, Your Honor.

20 THE COURT: We'll have a tough time taking stuff down
21 that way.

22 MR. TAYLOR: As always, Judge, she can cross-examine on
23 that make a big show out of it to the jury. I don't think
24 it changes anything.

25 MS. TAYLOR: Your Honor, respectfully, I believe that

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1 the chain of custody has not been preserved. They don't
2 have the first person to touch the drugs here. Your Honor,
3 just to clarify, there is also the issue of Mirandizing.
4 Lieutenant Reeder also states in his report that he was the
5 one to advise both subjects of their Miranda. He indicates
6 they both understood, so I anticipate we're going to get
7 down into that road later on into the trial as well. Again,
8 I would argue we're starting with the person that took the
9 statement. If we're going to have the best evidence, let's
10 get that person up here to testify to it.

11 MR. TAYLOR: Judge, Agent Smith testified in the first
12 trial, the pretrial and during the case in chief, about
13 Miranda, so I don't think that's as much of an issue.

14 THE COURT: I've been reviewing my notes from the first
15 trial, and my notes reflect that when Mr. Smith, this
16 witness was called on January 31st he was called at 10:35 in
17 the morning. He stated that he went in with the search.
18 The defendant was detained while the warrant was executed.
19 And that Reeder read the rights. Jarvis Reeder also
20 testified when he was called -- I have it noted here that
21 the bedpost with drugs contained inside that we are dealing
22 with State's 9, 10, and 11, at that particular point in time
23 which I presume were photographs. Reeder also stated that
24 he read the Miranda rights to Mr. Ervin. I agree with the
25 Solicitor that you can try this case in any way you feel is

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1 appropriate. We're dealing with a number of different
2 issues. With regard to the Miranda rights, my opinion is
3 that you would need the person who actually read the rights
4 if you intend to introduce the statement. If you do not
5 intend to introduce the statement or any statements by the
6 defendant it will not be necessary to call the person who
7 met the rights, but I think it's pretty black letter that if
8 you're going to admit a statement you need the person who
9 read the rights to testify as to what they said to the -- or
10 how they advised the defendant. Secondly, concerning the
11 chain, I don't know that at this time I can make a ruling on
12 that because we don't have the testimony of all the
13 witnesses necessary. The state is not seeking introduction
14 of the evidence at this particular point in time, so that
15 issue is not something I have to address at this particular
16 point in time. The witness can testify as to what he
17 observed. The witness can testify if he testifies that he
18 saw the drugs being found as they were being found. That is
19 perfectly fine. If that was physically impossible, as Ms.
20 Taylor suggests, then certainly that is ripe room or ripe
21 material for cross examination and she can address that on
22 cross. Just so that the record is clear, Ms. Taylor, may I
23 suggest that a copy of the investigative report that you
24 referenced a moment ago that perhaps should be made a
25 court's exhibit, Court's 3. Just for purposes of any

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1 subsequent appeal this matter and that way the appellate
2 courts can know what you're talking about when you say the
3 incident report. Obviously I haven't seen the incident
4 report. I take you at your word that it reflects what you
5 say it reflects so let's make a copy of that Court's 3 if we
6 could.

7 MS. TAYLOR: Your Honor, just briefly, I know that the
8 prosecution has already referenced in their opening
9 statement an admission of guilt on behalf of my client which
10 they are alluding to the statement that this other person
11 didn't do it let him go. I don't know if there's any
12 remedial measures that can be taken at this point since now
13 that statement, if I'm reading Your Honor's ruling
14 correctly, is now going to be inadmissible unless they
15 introduce Jarvis Reeder to testify to his reading of
16 Miranda.

17 MR. TAYLOR: Judge, I have one thing just to add to that
18 about the Miranda thing. Yeah, his Miranda rights were
19 given. Whether they were given or not, he said it. I
20 remember the testimony and I can get into it-with them that
21 he just said it out loud, "Listen, that guy doesn't know
22 anything about it." I think it's an excited utterance. It
23 an admission. There are hearsay exceptions regardless of
24 Miranda, and he heard it, and he was standing there, Judge.

25 THE COURT: I understand it's a statement made post-

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1 arrest, post-Miranda.

2 MR. TAYLOR: And he heard Miranda given.

3 THE COURT: But the posture in the first case was that
4 it was a focused custodial interrogation. At that time
5 Miranda has to apply. Miranda has to be given. That was
6 the posture in the first case. I have not heard anything
7 that changes that at this point in time. My understanding
8 is that you're not going to be seeking admission of that
9 testimony from this witness because as I've already ruled if
10 you're going to introduce a statement, the officer who gave
11 the Miranda rights has to testify as to the rights that were
12 given. That has not been done at this particular point in
13 time. If it was a -- Solicitor, were not dealing with a
14 unavailable witness exception. Wherein I might be inclined
15 to let this officer testify about the Miranda rights been
16 given, but I've never had this issue arise. In every case
17 that I've tried involving a *Jackson v. Denno* or a statement
18 being given by the defendant post-arrest, which is
19 incriminating, the officer who administered the Miranda
20 rights has always testified as to the rights that they
21 administered. If you can point me to some law to the
22 contrary I'm happy to look at it, but my understanding of
23 the law, or at least the practice of this court, has always
24 been to require that person to testify as to what they said
25 to the defendant by way of the Miranda rights. If you can

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1 find something else I'll be all ears, but that's my ruling.

2 MR. TAYLOR: Judge, could we also -- she mentioned
3 something about I made reference to it in the opening
4 statement. It was a good faith belief. I'm not just
5 throwing out --

6 THE COURT: No, I don't --- I don't know how the case is
7 going to progress. Mr. Reeder was listed as a witness. You
8 may decide that you ultimately do want to call him or you
9 need to call him. If that's the case, the problem is cured.
10 I think your motion would be appropriate perhaps at the
11 close of the state's case and I'm sure, at the very least,
12 it's something that you would jump all over in closing
13 argument if that evidence is not presented. So, this is a
14 trial de novo. We're proceeding along those lines. The
15 state does not have to try the same case as they did the
16 last time. That's where we are. Thank you.

17 MS. TAYLOR: Thank you, Your Honor.

18 THE COURT: We'll go ahead and take about five minutes
19 for ourselves so that we don't have to take another break
20 when the jury comes back out. So we'll be at ease for about
21 five minutes. You can step down, Mr. Smith, but don't talk
22 to anybody about your testimony, please. Thanks.

23 (Whereupon the court was in recess at 10:48 a.m. and
24 resumed at 11:00 a.m.)

25 THE COURT: All right, if we could let's go ahead and

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1 have the jury back in here please.

2 (Whereupon, the jury entered the courtroom at 11:01
3 a.m.)

4 THE COURT: Let the record reflect that the jury is
5 back. Mr. Taylor, you may continue with your direct, sir.

6 MR. TAYLOR: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. TAYLOR

8 Q. Agent Smith, we were in the kitchen of the house. I
9 was asking you about -- you just looked through these
10 pictures, correct?

11 A. Yes, sir.

12 Q. If you need to step down, that's okay. Can you see the
13 screen?

14 A. Yes.

15 Q. Tell us what that is in that picture.

16 A. Yes, sir. That is the digital scale on the kitchen
17 table.

18 Q. How is that significant? How does that involve drugs
19 at all?

20 A. Those who are dealing narcotics usually have scales to
21 weigh narcotics before selling.

22 Q. Is there any other reason to have scales?

23 A. No, sir. Not to my knowledge.

24 Q. So as you are going through -- do you remember where --
25 who and where different drugs were found?

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- 1 A. Yes, sir.
- 2 Q. Let's talk about -- based on what you remember and saw,
3 were any drugs found in the kitchen?
- 4 A. Yes, sir.
- 5 Q. Tell us who and where. Just don't just say all of
6 them, but kind of one step at a time.
- 7 A. It was the marijuana found in the cabinet. To my
8 recollection that was found by Sergeant Scott Russ.
9 Also, in the drawer some marijuana and pills was found
10 by Sergeant Scott Russ.
- 11 Q. I'll stop you there. You mentioned the cabinet.
- 12 A. Yes, sir.
- 13 Q. Those look like just boxes in a cabinet to me.
- 14 A. Yes, sir. If you direct your attention behind the
15 black box in the far left corner there's a clear
16 plastic bag with marijuana inside.
- 17 Q. This is State's Exhibit 5 I'm showing you now. Does
18 that appear to be anything different there?
- 19 A. No, sir.
- 20 Q. Where is that located?
- 21 A. In the top cabinet.
- 22 Q. You kind of got on a roll there. You mentioned
23 something about a drawer with narcotics in there.
- 24 A. Yes, sir.
- 25 Q. Can you repeat that again?

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- 1 A. It was a kitchen drawer. The drawers that contained
2 marijuana and also with multicolored pills inside the
3 drawer.
- 4 Q. Did you personally witness those in the actual drawer?
- 5 A. Yes, sir. I did.
- 6 Q. Does this look familiar?
- 7 A. Yes, sir.
- 8 Q. What is that?
- 9 A. On your right you have a clear bag with marijuana and
10 on your left you have a clear bag with multi-colored
11 pills.
- 12 Q. Are you sure that's not candy?
- 13 A. No, sir. That's not candy.
- 14 Q. So, anything else that was found in the kitchen?
- 15 A. No, sir. Not to my knowledge.
- 16 Q. Let me refresh your memory with this picture marked
17 State's Exhibit 7.
- 18 A. Yes, sir.
- 19 Q. Why is that? So those look like just a bunch of
20 regular items, household items.
- 21 A. Well, and you also see in the pictures the potato chip
22 can had a false bottom. Inside that had crack cocaine
23 in a clear plastic bag.
- 24 Q. Which one? You said something about a false -- which
25 one of those pictures?

COURTNEY SMITH-DIRECT EXAMINATION

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- 1 A. The potato chip can.
- 2 Q. Is that the middle one?
- 3 A. Yes, sir. In the middle between the starch and the
4 cleaning supplies.
- 5 Q. And you saw that found?
- 6 A. Yes, sir.
- 7 Q. Saw it with your own eyes?
- 8 A. Yes, sir.
- 9 Q. Lets stay on that. What's going on there?
- 10 A. That's the potato chip can out of the cabinet with the
11 false bottom. Inside you can see the clear plastic bag
12 with crack cocaine wrapped inside.
- 13 Q. Is that anything different there?
- 14 A. No, sir.
- 15 Q. What's --
- 16 A. That's the same can with the false bottom, also with
17 the -- you can see a better photo of the crack cocaine
18 in a clear plastic bag.
- 19 Q. That's very interesting looking crack cocaine. Can you
20 tell us how that's packaged and set up there?
- 21 A. We refer to that as a cookie. Crack cocaine cookie.
22 Also on the top you see some of it is broken into
23 little pieces. Normally when we see it like that it's
24 ready for distribution.
- 25 Q. Okay. How is a crack cookie produced? How is that

COURTNEY SMITH-DIRECT EXAMINATION

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- 1 made?
- 2 A. To my knowledge you take baking soda, baking powder,
3 you gather utensils and ingredients to add and then you
4 cook it on the stove and in several hours you have
5 crack cocaine.
- 6 Q. I mean what do you mix? What type of drug do you mix
7 with the baking soda and all that?
- 8 A. Cocaine.
- 9 Q. Just regular cocaine?
- 10 A. Yes, sir.
- 11 Q. Let's move on. After the kitchen, where was the next
12 location searched?
- 13 A. The bedroom with the bed. On the right bedpost it was
14 hollow. The top unscrewed and inside the bedpost was
15 crack cocaine along with marijuana.
- 16 Q. Which bedroom was this?
- 17 A. The back far bedroom.
- 18 Q. Could you, before we go into what was found in there,
19 kind of describe how the room was set up?
- 20 A. There was a bed facing -- the headboard was up against
21 the wall with the bed facing out toward the door as you
22 walk in. So once you walk into the room, you see the
23 mattress and the covers laying on the bed. You have a
24 dresser to the left. Like I said, the bedpost was
25 hollow.

COURTNEY SMITH-DIRECT EXAMINATION

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- 1 Q. So based on what you saw, somebody was living in that
2 room?
- 3 A. Yes, sir.
- 4 Q. You mentioned just a second ago something about a
5 bedpost. Do you recognize that?
- 6 A. Yes, sir.
- 7 Q. Can you tell the jury what that is?
- 8 A. That's the bedpost to what we believe to be Mr. Ervin's
9 bed and the post is hollow.
- 10 Q. You said it was hollow? Is this what you're talking
11 about, Agent Smith?
- 12 A. Yes, sir.
- 13 Q. Okay. Now, who found the drugs in this?
- 14 A. Lieutenant Reeder at the time, now Captain Reeder.
- 15 Q. You watched him? You saw him find it?
- 16 A. Yes, sir. I did.
- 17 Q. Okay. What's inside? What is that?
- 18 A. That's a black bag and inside that black bag is several
19 packages of marijuana.
- 20 Q. Any other type of drugs?
- 21 A. Yes, sir. Once the bag was gone, crack cocaine was
22 also inside the bedpost.
- 23 Q. So there's what inside the black bag?
- 24 A. Marijuana.
- 25 Q. No other type of drug inside there?

COURTNEY SMITH-DIRECT EXAMINATION

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1 A. No, sir.

2 Q. What's going on here?

3 A. That's what we refer to as an eight ball. Those were
4 found by Captain Reeder inside the bedpost. Crack
5 cocaine.

6 Q. Where was that? Inside? Was that under --

7 A. Inside the bedpost.

8 Q. Was it in the black bag?

9 A. No, sir.

10 THE COURT: Mr. Taylor, just for the record if you
11 could refer to the exhibits as you show them to him so that
12 he ---

13 MR. TAYLOR: I'm sorry. Yes, sir.

14 THE COURT: The last exhibit was State's 13.

15 MR. TAYLOR: Yes, sir.

16 THE COURT: Now you're showing State's 14.

17 MR. TAYLOR: This is State's 14. I apologize, Judge.

18 THE COURT: Go ahead.

19 Q. Could you tell us what that is, Agent Smith?

20 A. Yes, sir. That's a half a cookie that was also found
21 inside the bedpost by Captain Reeder.

22 Q. I'm going to show you State's 15. Let me see if I can
23 zoom in. Tell us what that is.

24 A. Yes, sir. That's a CPW electric bill bearing the name
25 of Mr. Manuel Ervin at [REDACTED] here in the

COURTNEY SMITH-DIRECT EXAMINATION

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- 1 County of Greenwood.
- 2 Q. Where was this found?
- 3 A. That was found inside the residence.
- 4 Q. Do you remember which room?
- 5 A. I believe the kitchen area. If I'm not mistaken.
- 6 Q. This is marked as State's Exhibit 16. Anything
- 7 different here?
- 8 A. No, sir.
- 9 Q. What is it, though, just for the record?
- 10 A. That is the same CPW electric bill bearing the name of
- 11 Mr. Manuel Ervin, [REDACTED], here in Greenwood.
- 12 Q. Our final picture, State's Exhibit 17.
- 13 A. That is a Direct TV bill with the name -- bearing the
- 14 name of Mr. Manuel Ervin, at the same address, [REDACTED]
- 15 [REDACTED], again in Greenwood, South Carolina.
- 16 Q. Let's go back to -- we talked about all the drugs.
- 17 Different types of drugs that were found. Who was in
- 18 the house, not law enforcement related. Who was in the
- 19 house when you executed the search warrant?
- 20 A. Mr. Ervin and a gentleman, Mr. Bush.
- 21 Q. Was Mr. Bush charged at all?
- 22 A. No, sir. He wasn't.
- 23 Q. Was he a resident, based on your knowledge?
- 24 A. No, sir. He wasn't.
- 25 Q. Do you remember what Mr. Ervin looked like?

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- 1 A. Yes, sir.
- 2 Q. Could you point him out if he was here today?
- 3 A. Yes, sir. Mr. Ervin is to my left in a black shirt
4 sitting beside his counsel.
- 5 MR. TAYLOR: Judge, may the record reflect he pointed to
6 the defendant?
- 7 THE COURT: The record shall so reflect.
- 8 Q. Now, we don't need to get into any statements or
9 anything like that, but did you witness anybody or hear
10 anybody give Mr. Ervin his Miranda rights?
- 11 A. Yes, sir. I did.
- 12 Q. Who was that?
- 13 A. Captain Reeder.
- 14 Q. Now, this is just kind of a general question. All
15 these types of drugs we talked about, is it common for
16 just a drug addict or a user to have this much drugs?
- 17 A. No, sir.
- 18 Q. Are you sure it wasn't like, he went to Sam's, like a
19 lot of people do with regular food? He went and
20 stocked up to get a better deal on it and use it for
21 the whole year?
- 22 A. No, sir.
- 23 Q. So based on your experience and training, what type of
24 person would possess these type drugs and these
25 amounts?

COURTNEY SMITH-DIRECT EXAMINATION

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1 A. A narcotics user and dealer. Based on the pictures it
2 was ready to sell.

3 Q. Just a couple more things Agent Smith. It inside of a
4 bag. I'm going to hand this up --

5 MR. TAYLOR: May I approach the witness, Judge?

6 THE COURT: Please.

7 Q. See if you can tell the jury what that is. You can
8 take it out of the bag and just look at it.

9 A. Yes, sir. This is the potato chip canister that was
10 found in the cabinet with the false bottom.

11 Q. Could you show us? (Witness complied.) Now, based on
12 what you remember has that been changed or altered in
13 any way? Is that accurate to what was found at the
14 crime scene?

15 A. Yes, sir. It is.

16 MR. TAYLOR: Judge, at this time the State moves to Mark
17 what's been marked as Exhibit 22 into evidence

18 MS. TAYLOR: Without objection, Your Honor.

19 THE COURT: Without objection, State's 22 is in
20 evidence.

21 (Whereupon, State's Exhibit 22 was moved into
22 evidence.)

23 Q. One last thing, Agent Smith. Thank you for your
24 patience. I'll hand up another bag to you.

25 MR. TAYLOR: May I approach, Your Honor?

COURTNEY SMITH-DIRECT EXAMINATION

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- 1 THE COURT: Yes.
- 2 Q. Can you tell us -- you can take it out and look at it.
3 Can you tell the jury after you review it what that is.
- 4 A. Yes. This was actually seen on photo on the kitchen
5 table, the black digital scale that has been placed in
6 an evidence bag.
- 7 Q. If you are a drug dealer, based on your experience and
8 training, would you -- could you get away with not
9 having a set of scales?
- 10 A. No, sir.
- 11 Q. What's the purpose of having scales as a drug dealer?
- 12 A. Narcotics users and drug dealers, as I said, have
13 scales as I said to -- once they're ready to package
14 and sell they will weigh their narcotics for the
15 correct amount for distribution. For correct money to
16 be exchanged.
- 17 Q. Based on your recollection of what you saw at the crime
18 scene, was any cash found at the scene?
- 19 A. Yes, sir. It was.
- 20 Q. Do you remember exactly what amount it was?
- 21 A. No, sir. Not to my recollection without looking at the
22 report.
- 23 Q. I mean was it -- do you remember though kind of -- I
24 mean, was it pocket money? Was it --
- 25 A. No, sir.

COURTNEY SMITH-CROSS-EXAMINATION

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1 Q. How would you characterize the amount of money found?

2 A. More than a normal person would have on their person.

3 MR. TAYLOR: I have no further questions. Let me grab
4 that from you. Answer any questions Ms. Taylor may have.

5 THE COURT: Ms. Taylor, cross.

6 CROSS EXAMINATION BY MS. TAYLOR:

7 MS. TAYLOR: Thank you, Your Honor.

8 Q. Mr. Smith, bear with me for just one second while I try
9 to keep myself semi-organized here.

10 (Whereupon the attorneys conferred)

11 All right, Mr. Smith. Let's take it all the way back,
12 all right? Did you personally surveil this address of [REDACTED]
13 [REDACTED] before the search warrant was issued?

14 A. No, ma'am.

15 Q. To your knowledge did anybody surveil the property?

16 A. No, ma'am. Not to my knowledge.

17 Q. Not to your knowledge.

18 A. Not to my knowledge. That I know of.

19 Q. But it's possible?

20 A. It's possible one did, but I don't know which one.

21 Q. Would it surprise you to know that Captain Reeder, the
22 lead investigator in this case, did surveil the
23 property for two weeks?

24 A. No, ma'am. It wouldn't.

25 Q. Okay. And during that surveillance he was able to

COURTNEY SMITH-CROSS-EXAMINATION

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- 1 conclude that two individuals were residing in that
2 house. Would that surprise you?
- 3 A. No, ma'am.
- 4 Q. Have you ever heard of the name Brent Ervin before?
- 5 A. Yes, ma'am. I have.
- 6 Q. Would it surprise you to know that the other
7 individual, aside from Manuel Ervin, that Captain
8 Reeder observed to be living in that house was Brent
9 Ervin?
- 10 A. No, ma'am.
- 11 Q. What is your personal knowledge and experience with
12 Brent Ervin.
- 13 A. I have none.
- 14 Q. Would it surprise you if he was known to be a drug
15 dealer in the community?
- 16 A. That's about all I know of him that he is a drug
17 dealer.
- 18 Q. So you know Brent Ervin is a drug dealer?
- 19 A. Yes. Yes, ma'am.
- 20 Q. Let's go back. How many people were in the house at
21 the time the search warrant was executed? You can just
22 ballpark it. I don't need an exact number.
- 23 A. Ten plus.
- 24 Q. Some more than 10?
- 25 A. Yes, ma'am.

COURTNEY SMITH-CROSS-EXAMINATION

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- 1 Q. Okay. And how many rooms total did you say were in the
2 house?
- 3 A. Two bedrooms.
- 4 Q. Two bedrooms, but then there is a kitchen, a living
5 room --
- 6 A. Yes.
- 7 Q. So five about?
- 8 A. Yes. An estimate.
- 9 Q. Okay five rooms. And how long did it take for y'all to
10 -- for all these people to come in and accurately and
11 correctly, you know, categorize all the evidence found?
- 12 A. Such as?
- 13 Q. How long were y'all there the whole day?
- 14 A. How long were we there?
- 15 Q. Yeah.
- 16 A. Approximately an hour or more.
- 17 Q. So only about an hour?
- 18 A. Yes.
- 19 Q. To go through everything.
- 20 A. Yes, ma'am.
- 21 Q. Okay. Like I said, who was the lead investigator in
22 this case?
- 23 A. At the time of the search warrant it was Lieutenant
24 Reeder, but Captain Reeder now.
- 25 Q. So he's been promoted since?

COURTNEY SMITH-CROSS-EXAMINATION

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- 1 A. Yes, ma'am.
- 2 Q. Okay. And who drafted the incident report?
- 3 A. Captain Reeder.
- 4 Q. And an incident report is just a brief -- that's like a
5 timeline of what happens when y'all are conducting or
6 executing the search warrant; correct?
- 7 A. Yes, ma'am.
- 8 Q. Okay. Is that person currently in the courtroom today?
- 9 A. No, ma'am. He's not.
- 10 Q. So the person that was the lead investigator and
11 drafted the incident report is not here anywhere in the
12 courtroom?
- 13 A. No, ma'am.
- 14 Q. Okay. Let's go back just a little bit. What exactly
15 were you doing as this was -- as everything was taking
16 place? Did you personally find any drugs yourself?
- 17 A. No, ma'am. I did not find -- I took the pictures of
18 the things that was found.
- 19 Q. You took the pictures of what was found?
- 20 A. Yes, ma'am.
- 21 Q. Okay. So are you telling me that you were in every
22 room while drugs were being found?
- 23 A. No. What the protocol we have when an agent finds
24 drugs they alert the guy that's doing the evidence and
25 along with me I go take the pictures then that's when

COURTNEY SMITH-CROSS-EXAMINATION

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1 the evidence technician takes control of the narcotics
2 that has been found by the individual agent.

3 Q. Okay. So you didn't personally find any drugs in that
4 house?

5 A. No, ma'am.

6 Q. Do you know who did?

7 A. Not without looking at the incident report. Like I
8 just stated earlier, like the bedpost, Lieutenant
9 Reeder found that. In the cabinet, Sergeant Scott Russ
10 found that.

11 Q. Right. That's what I was getting to the next. You
12 stated just a minute ago that Russ was the officer that
13 found the candy looking pills; is that correct?

14 A. To my knowledge, yes.

15 Q. I'm going to hand you something just real quick and I
16 want you to take a look over it. I think I can get you
17 to the exact place you need to be right here on the
18 back highlighted in orange.

19 A. Officer the Budreau.

20 Q. Okay so just to be clear, who found the pills?

21 A. Officer Budreau.

22 Q. Not Sergeant Russ?

23 A. Yeah to my knowledge. Being honest. To my knowledge.

24 Q. No, I understand. You didn't draft the incident report
25 and you weren't the lead investigator, but Sergeant

COURTNEY SMITH-CROSS-EXAMINATION

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- 1 Russ did not find those pills? Correct?
- 2 A. No, ma'am. That's correct.
- 3 Q. It was the K-9 officer with his canine?
- 4 A. That's correct.
- 5 Q. And to your knowledge, how did he find those pills?
- 6 A. How did he --
- 7 Q. Did the drug dog alert?
- 8 A. To my knowledge -- I'm not trained in --
- 9 Q. No, no, no. I'm not going to ask you anything specific
10 about that, don't worry. But the dog alerted and
11 that's how they found the pills; correct?
- 12 A. To my knowledge. Yes, ma'am.
- 13 Q. Isn't it true that the dog did a cursory sweep of the
14 entire house and did not alert to any drugs in the
15 bedroom?
- 16 A. According to the incident report. Yes, ma'am.
- 17 Q. So Lieutenant Reeder comes in and is able to find these
18 drugs despite the fact that a drug trained dog did not?
- 19 A. I can't -- he found it in the bedpost. I cannot speak
20 of his experience.
- 21 Q. Okay, but he found it after the drug dog came in, did a
22 sweep, and didn't alert?
- 23 A. Yes, to my knowledge.
- 24 Q. That's all I'm asking you to testify to is to your
25 knowledge. I'm going to show you a couple of pictures

COURTNEY SMITH-CROSS-EXAMINATION

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- 1 and, like I said, I apologize. I'm trying to keep
2 everything straight here. Isn't it true that while
3 y'all were conducting a search of this residence you
4 found documents that had both Manuel Ervin as well as
5 Brent Ervin's name on it; correct?
- 6 A. The documents that I took pictures of just only beared
7 the name of Maunwell.
- 8 Q. But your investigation -- they found documents that had
9 both Brent Ervin and Maunwell Ervin's name on them?
- 10 A. Yes, ma'am.
- 11 Q. Okay. I'm going to show you a picture that's in
12 State's evidence. Just look at it and tell me what you
13 take that to be. Did you take that picture?
- 14 A. No, ma'am. According to this picture it's a State
15 Farm, maybe a insurance bill, bearing the names of
16 Maunwell Ervin and ---
- 17 Q. And what's the address that is addressed to?
- 18 A. [REDACTED] here in Greenwood, South
19 Carolina.
- 20 Q. Okay, so that is not [REDACTED], correct?
- 21 A. No, ma'am.
- 22 Q. I'm going to show you a couple more things and these
23 are just -- you can look right here. You can look
24 through all of them if you want.
- 25 MR. TAYLOR: Just for ID purposes?

COURTNEY SMITH-CROSS-EXAMINATION

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- 1 MS. TAYLOR: Yeah.
- 2 Q. What is the address listed on all four of those arrest
3 warrants?
- 4 A. [REDACTED].
- 5 Q. Again, not [REDACTED]; correct?
- 6 A. No, ma'am.
- 7 Q. Okay. Give me just one second. Okay, let's go to the
8 bedroom. Okay. You said that there were a bunch of
9 clothes in the bedroom.
- 10 A. Which bedroom?
- 11 Q. Okay, were there clothes in both bedrooms?
- 12 A. It was clothes in both bedrooms.
- 13 Q. Okay. Let's go to the bedroom you found the drugs in.
14 You said there were clothes on the floor. How did
15 y'all know that that was Maunwell's bedroom?
- 16 A. After he was Mirandized, Captain Reeder, after he found
17 drugs, asked whose room it was and Mr. Ervin ---
- 18 Q. I'm going to stop you right there.
- 19 THE COURT: We can't get into that quite yet. Go
20 ahead.
- 21 MS. TAYLOR: Okay. Your Honor, may we have a moment to
22 approach?
- 23 THE COURT: Sure. Come on up.
- 24 (Whereupon a bench conference was held out of the
25 hearing of the jury)

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1 THE COURT: Ladies and gentlemen, I'm going to have to
2 ask you to step back for a second into the jury room. Don't
3 talk about the case. I'll let you know when you can come
4 back out. Thank you very much.

5 (Whereupon the jury exited the courtroom.)

6 THE COURT: The record should reflect that the jury is
7 out. Ms. Taylor basically had interposed an objection at
8 the bench that the testimony that was just elicited about it
9 being Maunwell Ervin's bedroom that was not part of the
10 incident report and she had not been informed of that in
11 discovery prior to this or the subsequent trial. I'm trying
12 to recall exactly what did the -- Ms. Taylor, why don't you
13 ask the witness a few more questions just so that I can get
14 clear on what statement is that he says Mr. Ervin made
15 because I tried to cut him off when he started talking about
16 Mr. Ervin taking responsibility for the drugs as opposed to
17 his brother and then you asked him a question about the
18 bedroom.

19 MS. TAYLOR: Right, and I could go back to that. I, of
20 course, was not expecting that his response would be --
21 because in the previous trial I had to get into the DNA
22 questions. Did you DNA test anything? Did you fingerprint
23 anything? So how did you know it was his bedroom? At no
24 point did they ever say, "Because he told me so." So that
25 is essentially -- I was asking -- going to the road of did

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1 you DNA test anything. Did you fingerprint anything? How
2 do you know? And I actually even have a picture that was
3 found in that room, a dry-cleaning receipt, that has Brent
4 Ervin's name on it. So I had absolutely no intention -- and
5 Your Honor, under Rule five of disclosure in criminal cases,
6 the state is required to disclose all statements made by the
7 defendant, written or recorded, and not doing so is grounds
8 for a mistrial.

9 THE COURT: Let me get clarification on this real quick.
10 Mr. Smith, you said that the question was related to the
11 bedroom --

12 WITNESS: Yes, sir.

13 THE COURT: Again, how did law enforcement determine
14 that that was the defendant's bedroom?

15 WITNESS: After Capt. Reeder found the drugs in the
16 bedpost, he asked Mr. Ervin - just ask - - he asked the
17 question whose bedroom -- again it was two gentlemen in the
18 home at the time and Mr. Ervin said that was his bedroom.

19 THE COURT: All right. Solicitor, do you want to speak
20 to this?

21 MR. TAYLOR: Judge, I did know about it. We didn't open
22 the door, the defense did. I don't know if it even
23 exculpatory at this point. We don't have control of it. Of
24 course we would've turned out over. We weren't going to
25 introduce it. I didn't even know that happened. It's not

COURTNEY SMITH-CROSS-EXAMINATION

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1 in the report. He's basing this on his personal knowledge.
2 Again, the defense asked the question, "Well, how do you
3 know it's his room." Well, he said it was his room.

4 MS. TAYLOR: Your Honor, if law enforcement had
5 knowledge, they have a duty to disclose that statement to
6 me. It is exculpatory evidence clearly.

7 MR. TAYLOR: I guess the bottom line is, Judge, it's not
8 in the report which we know. He's got documents all over
9 the house. The rental agreement is in his name. I don't
10 know if they thought that wasn't a big deal because in their
11 mind there thinking it's definitely his room. That's all I
12 can -- I mean, I don't know what else to say, Judge. I
13 think they opened the door.

14 MS. TAYLOR: There's also documents with Brent Ervin's
15 name throughout the room. I mean, just saying that he made
16 a statement that I've never even remotely come close to
17 getting any kind of discovery regarding is grounds for a
18 mistrial on that.

19 THE COURT: With regard to the two separate issues that
20 we've got first it's alleged that it is a Rule five Brady
21 violation or a Rule five violation rather. In that the
22 defense was not informed of the statement. Based upon the
23 previous trial, I do not recall anyone stating that the
24 defendant took responsibility, or took -- what I do recall
25 from the previous trial is that the defendant said that the

COURTNEY SMITH-CROSS-EXAMINATION

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1 drugs belonged to him and not his brother.

2 MS. TAYLOR: No, Your Honor. Sorry, just to correct
3 you. He said ---

4 THE COURT: Or words to that effect.

5 MS. TAYLOR: Benoit Bush, not his brother, was there
6 when they executed the search warrant.

7 THE COURT: He's got nothing to do with it.

8 MS. TAYLOR: And he said he had nothing to do with it
9 which they are taking as an admission.

10 THE COURT: correct. Which you dispute. I understand.
11 At the previous trial there was no testimony, however, about
12 the defendant affirmatively stating that that was in fact
13 his bedroom. Now, I have to consider that in light of the
14 fact that admittedly, Ms. Taylor, you asked somewhat of an
15 open-ended question and I cannot recall at the first trial
16 if that question was posed, so naturally it would not be
17 unusual for a witness in the subsequent trial to answer a
18 question that wasn't asked of them in the first trial. And
19 that answer would certainly come as a surprise.

20 At the same time, if law enforcement was aware that the
21 defendant claimed responsibility, or claimed ownership, or
22 dominion and control over that back bedroom, affirmatively
23 stating that it was his back bedroom, I feel like that's
24 something that should've been turned over to the defense.
25 This witness obviously did not author the incident report

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1 Mr. Reeded did. Mr. Reeder is the one that gave the Miranda
2 rights. He's the one that took the Statement from the
3 defendant, and of course he has yet to testify.

4 MS. TAYLOR: Your Honor, if it helps, I have that
5 portion of the transcript from the previous trial where
6 Reeder was asked specifically how he knew this was Maunwell
7 Ervin's room and he responded, "Yes, I assumed that it was."

8 THE COURT: Okay, what page on the transcript?

9 MS. TAYLOR: It's page 141 is where it begins. On line
10 22. It goes over to 142. The questions sequentially
11 follow.

12 THE COURT: May I see that portion of the transcript
13 please?

14 MS. TAYLOR: Yes.

15 THE COURT: Ms. Taylor is correct in that the transcript
16 reflects what she says it reflects. With regard to the
17 motion for a mistrial there are basically four elements that
18 the court has to consider. First, the character of the
19 testimony involved in this case. In this case the witness
20 has testified that Mr. Ervin said that that was his bedroom.
21 Again, we are referring to the bedroom presumably where the
22 cocaine was found in the bedpost.

23 I also have to consider the circumstances under which
24 that testimony was elicited. And again, this was testimony
25 elicited by an open question from the defense and certainly

COURTNEY SMITH-CROSS-EXAMINATION

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1 I would not be faulting her because she had no reason to
2 expect this witness to say what he said. She was expecting
3 it to go down the road like we did in the first trial
4 talking about fingerprinting or DNA testing of the items
5 that were actually in the room. But at the same time it
6 was. The circumstances are different in that the defendant
7 was the one that elicited this testimony.

8 The nature of the case is also something I have to
9 consider. This is, based upon which side you believe,
10 either an actual or constructive possession type of a case.
11 We have testimony that two people were at the house, so I
12 would argue that it's probably more of a constructive
13 possession type of the case. And I have to take into
14 account other testimony in the case. Those are the four
15 things that I have to consider in ruling on a motion for a
16 mistrial. The other testimony in the case, I am familiar
17 with it from the first trial, and the defendant in that
18 trial supposedly told Mr. Reeder, "My brother has got
19 nothing to do with the drugs that you found." Or words to
20 that effect. I can certainly see how somebody might take
21 that as the defendant taking primary responsibility for the
22 drugs or taking sole responsibility for the drugs. It is a
23 statement, however, that is open to a number of different
24 interpretations.

25 Based on everything considered I think that a mistrial

COURTNEY SMITH-CROSS-EXAMINATION

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1 is unnecessary, however. I believe that I can offer a
2 curative instruction to the jury instructing them to
3 disregard that last portion of the witness's testimony as
4 simply being improper. It is, of course, improper at this
5 junction because we are dealing with a focused custodial
6 interrogation of the defendant. Miranda rights were read
7 and we have not had testimony about that at this juncture by
8 the person who read those rights so I'll be offering a
9 curative instruction to the jury instructing them to
10 disregard that last response from the witness. That's my
11 ruling.

12 MR. TAYLOR: Thank you judge. Just one ---

13 THE COURT: Yes, sir.

14 MR. TAYLOR: Would you leave it open to the state to
15 recall Agent Smith after Agent Reeder testifies just to
16 clear up some of this?

17 THE COURT: I refuse to interfere in any way whatsoever
18 in the manner in which any lawyer tries their case.

19 MR. TAYLOR: Thank you, Your Honor.

20 THE COURT: Let's have the jury back out, please.

21 (Whereupon the jury entered the courtroom.)

22 THE COURT: Let the record reflect that the jury is
23 back and seated. Ladies and gentlemen of the jury, the last
24 question that was asked of the witness that is testifying
25 right now, Mr. Smith, elicited an answer which was improper

COURTNEY SMITH-CROSS-EXAMINATION

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1 under the rules of evidence. The answer related to the
2 defendant supposedly saying that the bedroom was his, and
3 because that answer was improper, you need to strike that
4 from your memory. You must expunge any recollection of that
5 answer from your memory and you cannot discuss it in any way
6 in the jury room when you are deliberating this case because
7 it wasn't improper question under the law. It was an
8 improper response to the question that was answered (sic)
9 and it's no one's fault but I'm just saying to you that you
10 cannot consider that in any way in your deliberations in
11 this particular case. Ms. Taylor, you may continue, ma'am.

12 MS. TAYLOR: Thank you, Your Honor.

13 CROSS EXAMINATION BY MS. TAYLOR

14 Q. Okay, Sergeant Smith -- is it Sergeant? I apologize.

15 A. Agent.

16 Q. Agent Smith. Okay. Back to that back bedroom. You
17 found clothes and things that were there, correct?

18 A. Yes.

19 Q. And y'all didn't do any kind of DNA testing on those
20 clothes to determine who they belonged to?

21 A. No.

22 Q. Did you take any fingerprints of anything in that room?

23 A. No.

24 Q. I'm going to show you one other picture real quick.

25 This is for identification only.

COURTNEY SMITH-CROSS-EXAMINATION

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- 1 A. In the picture it appears to be a receipt from a dry
2 cleaning company.
- 3 Q. And whose name is on the receipt?
- 4 A. B. Ervin.
- 5 Q. That presumably would be Brent Ervin; correct?
- 6 A. Yes.
- 7 Q. And that was found in that same bedroom; correct?
- 8 A. To my knowledge.
- 9 Q. So did you ask Brent Ervin any questions regarding this
10 investigation?
- 11 A. Brent Ervin?
- 12 Q. Uh-huh, Brent Ervin.
- 13 A. No, ma'am.
- 14 Q. The dry cleaning receipt. No? You didn't ask him any?
- 15 A. No.
- 16 Q. Okay. Did anyone else, that you know of, question him
17 in any regards to this case?
- 18 A. Not that I know of.
- 19 Q. No. Is it typical that if you know someone is living
20 in that house and you know they are a drug dealer to
21 not ask them any questions?
- 22 A. No, it's not typical if they can be located. They'd be
23 questioned.
- 24 Q. So he couldn't be located?
- 25 A. To my -- I didn't -- to my knowledge I don't know where

COURTNEY SMITH-CROSS-EXAMINATION

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- 1 he was that evening.
- 2 Q. But you didn't look for him or do any kind of follow-up
3 to see where he is now?
- 4 A. No. I didn't.
- 5 Q. Okay. Would it surprise you to know that he's
6 currently residing in a Georgia penitentiary?
- 7 A. No, ma'am.
- 8 Q. Okay. All right. Let's get to -- All right. Mr.
9 Taylor asked you about the money that was found and you
10 stated that it was an abnormally large quantity.
- 11 A. I said it's not an amount that an ordinary person would
12 carry on their person.
- 13 Q. Okay, I'm sorry. Not an amount that, like, a normal
14 person would have walking around?
- 15 A. No.
- 16 Q. Okay. Do you recall how much money it was? Was it
17 1,000?
- 18 A. Not to my knowledge. No ma'am.
- 19 Q. Okay. I'm sorry to keep doing this, but I'm going to
20 show you something else.
- 21 A. \$200.
- 22 Q. \$200. And it's your testimony that that's an
23 unreasonable amount for one individual to be carrying
24 around?
- 25 A. Yes.

COURTNEY SMITH-CROSS-EXAMINATION

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- 1 Q. In your past experience, and you've dealt with a lot of
2 drug cases over the years, right?
- 3 A. Yes.
- 4 Q. Over your three years with the Greenwood unit?
- 5 A. Yes.
- 6 Q. How much money to drug dealers typically carry on them?
7 Is it more than \$200?
- 8 A. The ones I've come in contact with usually have at
9 least about a \$150 on their person.
- 10 Q. At least 150? What would you say the street value was
11 of the drugs y'all confiscated this day?
- 12 A. 1,000 or more.
- 13 Q. A thousand or more?
- 14 A. Way over 1,000.
- 15 Q. Way over a thousand. So 200 is it really outrageous
16 of an amount for a person to have on them if they've
17 got thousands of dollars in drug inventory that they're
18 doing.
- 19 A. No, ma'am.
- 20 Q. Okay. Let's go to those candy colored pills again. In
21 the incident report, it states that 21 pills were
22 seized from the residence; is that correct?
- 23 A. To my knowledge. I did not count them.
- 24 Q. Okay. I can -- we can do this all day. I'm just ---
- 25 A. Yes, ma'am. Twenty-one. Approximately 21 pills.

COURTNEY SMITH-CROSS-EXAMINATION

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1 Q. So of those 21 pills, isn't it correct that only 14
2 actually made their way back to the lab to be tested?

3 A. I have no knowledge of that.

4 MS. TAYLOR: Okay. Pardon me. I beg the Court's
5 indulgence for one second, Your Honor.

6 MR. TAYLOR: judge, this to me sounds more like a SLED
7 analyst question about how much he had and all that. He's
8 not the one who packaged them or anything like that.

9 MS. TAYLOR: We're going to chain.

10 THE COURT: I understand. She can ask him questions
11 related to what he observed, et cetera, and we'll deal with
12 issues involving chain at a later point. Go ahead, Ms.
13 Taylor.

14 Q. Now, what you have in your hand is a copy of the lab
15 results of all the drugs that were tested.

16 MR. TAYLOR: Judge, objection. That's hearsay at this
17 time. It's not into evidence.

18 MS. TAYLOR: I'm not going to ask him to testify -

19 MR. TAYLOR: Even for identification. Reading it off to
20 the ---

21 THE COURT: What question do you intend to ask?

22 MS. TAYLOR: I just want him to tell me how many pills
23 were on there.

24 THE COURT: I would sustain the State's objection with
25 regard to that question. You can ask him, according to his

COURTNEY SMITH-CROSS-EXAMINATION

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1 recollection, how many were seized from the house and then
2 you can address that with the analyst who will testify
3 later.

4 MS. TAYLOR: Thank you, Your Honor.

5 Q. Okay. So it would it surprise you to know that 14
6 pills made it?

7 A. Yes, it would surprise me.

8 Q. It would?

9 A. If 21 pills were taken so I'm assuming that 21 pills
10 were sent to SLED.

11 Q. And in the course of your three years with the
12 Greenwood County Sheriff's Office, has there ever been
13 an occasion where y'all may have lost evidence in the
14 past?

15 A. No, ma'am.

16 Q. Never?

17 A. Not to my knowledge. Not while I've been in the drug
18 unit.

19 Q. Right. Okay. All right thank you, Agent Smith. No
20 further questions at this time.

21 THE COURT: Redirect?

22 MR. TAYLOR: judge, before we go into that there's
23 something we need to talk to you about out of the presence
24 of the jury.

25 THE COURT: Approach real quick place.

COURTNEY SMITH-CROSS-EXAMINATION

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1 (Whereupon, a bench conference was held out of the
2 hearing of the jury)

3 THE COURT: I'm sorry. I've got to do this again to
4 y'all. Y'all go back there. Don't talk about the case yet.
5 We need to put this on the record. Thank you.

6 (Whereupon the jury exited the courtroom.)

7 THE COURT: The jury is out. Mr. Taylor, when he
8 approached the bench, and I think we touched on this during
9 the last trial there was testimony in this case about the
10 defendant's brother and how he is a known drug dealer or he
11 has been involved with narcotics before and he's currently
12 in prison in Georgia and essentially the state is seeking to
13 do what at this point Mr. Taylor?

14 MR. TAYLOR: Judge, it's the state's position that
15 third-party guilt has opened the door. They're talking all
16 about the other Mr. Ervin, Brent Ervin's reputation. A drug
17 dealer. He's in prison. He was living there and the state
18 believes it's open the door to talk about his character to
19 basically counter that argument.

20 THE COURT: My understanding is under the rules he would
21 have to have put his character in issue by taking the stand.
22 Am I incorrect? Can you point me to a case on point, sir?

23 MR. TAYLOR: Judge, not offhand, Judge. I don't know
24 one off the top of my head. I know kind of where you're
25 leaning towards in ruling. It would be the same as last

COURTNEY SMITH-CROSS-EXAMINATION

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1 time, but just something -- again I wanted to point that out
2 to the court. If it continues we would obviously renew this
3 motion.

4 THE COURT: Ms. Taylor, your position -

5 MS. TAYLOR: Your Honor ---

6 THE COURT: --- with regard to that?

7 MS. TAYLOR: Sorry to interrupt. Essentially it's the
8 same as last time. I see no assertion that these were Brent
9 Ervin's drugs. I'm attacking the credibility of the
10 investigation that took place. I believe what they're
11 trying to do is make a Lyle motion as they did last time
12 which Your Honor denied. Even if you find this to come
13 under the realm of lack of mistaken identity it still has to
14 pass 403 which is going to be incredibly prejudicial to my
15 client to have his past criminal history made present to the
16 jury when he doesn't even take a seat on the witness stand.
17 I'm not attacking -- I'm not saying these are his drugs. I
18 don't intend to introduce any kind of evidence for any
19 statement or any proof that they belong to Brent Ervin. I
20 just think it's fair that the jury understands that this
21 person was never questioned. I think that's a legitimate
22 thing to present to them. It definitely raises reasonable
23 doubt.

24 THE COURT: I see the Solicitor reviewing the law. I'll
25 give you a few more moments to look through that and see if

COURTNEY SMITH-CROSS-EXAMINATION

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1 you can locate anything, Solicitor, that would authorize the
2 court to do what you're suggesting.

3 SOLICITOR STUMBO: Your Honor, I don't want to step out
4 of turn. I didn't stand up before because I know Mr. Taylor
5 is examining this witness. Just as a matter of law here I
6 think Ms. Taylor is correct here, more less than offering
7 reputation evidence at this point. I think because of the
8 cross examination that under 404B this is more of a Lyle
9 situation now for lack of mistake or accident. In other
10 words, the mistake or accident that she is trying to assert
11 here through her cross examination is oh, you got the wrong
12 guy. This is a mistake. You arrested my guy but you really
13 made a mistake. It's the other guy. I think that what
14 we're doing is offering this under 404B to show a lack of
15 mistake on the part of law enforcement. So I think that's
16 the more appropriate argument under 404B. I'll site it for
17 the court, "Evidence of other crimes, wrongs, or acts is not
18 admissible to prove the character of a person in order to
19 show action in conformity therewith. It may, however, be
20 admissible to show -- and we're very familiar with the Lyle
21 exceptions here in 404B to show motive, identity, common
22 scheme of plan, the absence of mistake or accident or
23 intent. I think Ms. Taylor's line of questioning here as to
24 Brent Ervin, who was nowhere to be found the night of this
25 incident -- One, I do think we're going down a road of

COURTNEY SMITH-CROSS-EXAMINATION

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1 possibly a third-party guilt, inadmissible third-party guilt
2 evidence -- although at this point it's in. She's already
3 asked the question and we didn't object at the time, and I
4 understand that.

5 THE COURT: Correct.

6 SOLICITOR STUMBO: But under 404B I do think we have a
7 good faith argument here that based on her line of question
8 and opening the door to her client's prior history as a drug
9 dealer, in terms of to proving lack of mistake or acts of
10 the Drug Enforcement Unit. Your Honor, I do not have a case
11 on point. I don't know that this situation has ever been --
12 I think we kind of danced around this issue the last time we
13 tried this case, to some extent, and I made the same
14 argument. I believe Your Honor denied my argument. Which
15 is fine. I respect the court's ruling. But I think here
16 we're dealing with the same issue. Essentially, the jury is
17 left with an open question here. This guy that's not even
18 around on the night of the incident. And I think, there
19 again, they're asserting that there is a mistake or accident
20 here and who do they pin these drugs on. I think under 404B
21 that's -- I don't think there's many cases out there on lack
22 of or absence of mistake or accident. I can't remember
23 reading many, Your Honor. Most of the Lyle cases deal with
24 common scheme of plan, obviously. So there again I don't
25 know if we have a lot of guidance from our appellate courts

COURTNEY SMITH-CROSS-EXAMINATION

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1 on this issue, however, we do believe under the rules that
2 it would be admissable to ask questions about this
3 defendant's prior drug activity.

4 MS. TAYLOR: Your Honor, just very briefly.

5 THE COURT: Sure, if you want to. Go ahead.

6 MS. TAYLOR: I don't believe that at any point I've
7 actually opened the door to my client's or eluded to him
8 being a drug dealer. The only reason I have this evidence
9 that Brent Ervin was living there is from the affidavit that
10 was taken by Jarvis Reeder when he was drafting up his
11 affidavit to get the search warrant. So everything that I
12 have is police knowledge and was provided to me in their
13 reports. Secondly -- I just briefly lost my train of
14 thought. Give me one second.

15 SOLICITOR STUMBO: Your Honor, just in brief response.
16 She hasn't raised any question to her client's reputation as
17 being a drug dealer obviously. She's a fine lawyer. I
18 wouldn't expect her to do that. But she specifically asked
19 Agent Smith twice about this Brent Ervin who doesn't,
20 according to anything that we have here, reside in this
21 house. Wasn't present that night. Does he have a
22 reputation for being a drug dealer. For no other purpose
23 than to shift blame to him. There again, I don't know if
24 there's a sufficient basis to do that, one. But we didn't
25 object to it. It's in front of this jury now. I think that

COURTNEY SMITH-CROSS-EXAMINATION

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1 under 404B we can ---

2 MS. TAYLOR: Your Honor ---

3 SOLICITOR STUMBO: --- go down that road.

4 MS. TAYLOR: I apologize for interrupting you, Solicitor
5 Stumbo. Essentially, when they say he wasn't present that
6 night -- and it is in the search warrant affidavit by Jarvis
7 Reeder that both individuals appeared to be living there.
8 He got tips that both individuals were selling drugs.
9 That's also in the affidavit. So again, he wasn't present
10 at the time they executed the search warrant. I mean, as we
11 all know they don't call ahead and find out if all the drug
12 dealers are going to be in the house before they break in
13 and look for the drugs. But to their own testimony in
14 affidavits they submitted in support of getting a search
15 warrant it clearly states both individuals were living
16 there. Both individuals were suspected of doing drug
17 activity. The tipster gave an anonymous tip regarding both
18 individuals. So if Brent Ervin is in this case it's because
19 they put him here. Not me, Your Honor.

20 THE COURT: Ms. Taylor, I would tend to agree with your
21 assessment of the situation. Solicitor, as you're well
22 aware this is not an uncommon defense. It would be very
23 unusual, in fact, for the defense to fail to point out
24 problems or holes or issues with the state's case in chief.
25 Clearly that's Ms. Taylor's obligation to do. I am unaware

COURTNEY SMITH-CROSS-EXAMINATION

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1 of any authority that would allow me to do what you are
2 suggesting I do absent the defendant taking the stand or
3 some other circumstances. Even if he were to take the stand
4 and place his credibility into issue by taking the stand I
5 would still be very hesitant to allow the line of
6 questioning you're proposing at this juncture.

7 I understand your concerns. I don't know legally that
8 there's any way for the court to permit what you're
9 requesting, because under a 403 analysis and certainly 404B
10 is subject to 403 - but just even under rule 404 the reason
11 for it is you don't want testimony coming in that John Smith
12 is a bad guy and therefore he was a bad guy on this
13 occasion. That's what Lyle -- that's the principal holding
14 in Lyle. The exceptions to Lyle are exactly that, the
15 exceptions. But typically you don't want this type of
16 evidence admitted just because it is so prejudicial.

17 As this stage of the proceedings I can definitely say
18 that the prejudicial effect of this evidence would outweigh
19 the probative value of it. Ms. Taylor's points are well
20 taken about both individuals being suspects, both
21 individuals being referenced by the tipster, both
22 individuals being mentioned by Mr. Reeder. It is what it is
23 and the jury will have to do what they will do with it. I'm
24 not going to cause an automatic reversal in this case by
25 following the path you're suggesting.

COURTNEY SMITH-REDIRECT EXAMINATION

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1 SOLICITOR STUMBO: Your Honor, just to make clear, I
2 know we suggested Rule 405. That's not my argument.

3 THE COURT: I thought 404 was.

4 SOLICITOR STUMBO: It was under 404B, mistake or
5 accident. And then obviously, Your Honor, say under 403
6 it's more prejudicial and probative -

7 THE COURT: Correct.

8 SOLICITOR STUMBO: -- even if my argument under 404B
9 had legitimacy? Is that Your Honor's ruling under 403?

10 THE COURT: That is The Court's holding. If I mentioned
11 405 that was my error. I do understand that you're under
12 404.

13 SOLICITOR STUMBO: Because you mentioned him taking the
14 stand, and I think under 405 you're absolutely correct.

15 THE COURT: I didn't mean to conflate the two, but yeah.
16 That's a different animal. That hasn't happened yet. It
17 didn't happen in the first trial. I've got no idea if it
18 will happen in this trial. If it does, we'll revisit that
19 issue before you begin your cross. If it doesn't, we're
20 where we were last time. Let's have the jury back out,
21 please.

22 (Whereupon the jury entered the courtroom.)

23 MR. TAYLOR: Very briefly, Your Honor.

24 THE COURT: Yes, sir. Redirect.

25 RE-DIRECT EXAMINATION BY MR. TAYLOR:

COURTNEY SMITH-RE-CROSS-EXAMINATION

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1 Q. The name Brent or Brent Ervin keeps coming up. Are you
2 familiar with that person?

3 A. Yes, sir.

4 Q. Does he have any type of relationship to the defendant?

5 A. I believe they are cousins.

6 Q. Just to clarify, how many beds or even mattresses or
7 anything were set up in the house?

8 A. One.

9 Q. One? Okay. Based on what you saw and observed that
10 night when y'all did the search warrant, did you see
11 any officers or anybody else tamper with, add, or
12 subtract from the illegal narcotics that were found
13 that night?

14 A. No, sir.

15 Q. Have you ever heard of that? Do y'all tamper with
16 stuff?

17 A. No, sir.

18 MR. TAYLOR: I have no further questions.

19 MS. TAYLOR: Just one, Your Honor.

20 RE-CROSS EXAMINATION BY MS. TAYLOR:

21 Q. Agent Smith, just one follow up question. Isn't it
22 true that in the affidavit used to get the search
23 warrant it states that Brent Ervin resides in that
24 house -

25 MR. TAYLOR: Judge, objection. We didn't bring that up

COURTNEY SMITH-RECROSS-EXAMINATION

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1 in our redirect and that's going to the other stuff.

2 THE COURT: I think you've already touched on this in
3 your cross of the witness.

4 MS. TAYLOR: Okay.

5 THE COURT: I assume that this is in response to their
6 question, however, about Brent Ervin and his relationship?

7 MS. TAYLOR: Yes, sir, Your Honor.

8 THE COURT: Go ahead.

9 MS. TAYLOR:

10 Q. Isn't it true that in the affidavit used to obtain the
11 search warrant it states that both Brent Ervin and Manuel
12 Ervin lived in that house and Brent Ervin also had drug
13 connections or drug ties?

14 A. Yes, ma'am.

15 Q. Thank you. No further questions.

16 THE COURT: Re-redirect?

17 MR. TAYLOR: No further questions, Your Honor.

18 THE COURT: Mr. Smith, you may step down. No objection
19 to excusing the witness at this particular point in time
20 subject to recall? Hearing none, you're free to go but
21 you'll remain under subpoena. Okay, Mr. Smith?

22 WITNESS: Yes.

23 THE COURT: Thank you, sir. Solicitor, call your next
24 witness, please.

25 SOLICITOR STUMBO: Your Honor, the State calls Dyer

DYER ARCHIBALD-DIRECT EXAMINATION

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1 Archibald to the stand.

2 DYER ARCHIBALD, having first been duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION BY SOLICITOR STUMBO:

5 Q. Mr. Archibald, how are you doing this morning?

6 A. Good, and you?

7 Q. I'm assuming by that uniform you're wearing you work
8 with the City of Greenwood?

9 A. I do.

10 Q. For the Police Department?

11 A. Yes, sir.

12 Q. What's your rank there?

13 A. Senior Master Patrolman.

14 Q. So right now you're on the road?

15 A. Yes, sir.

16 Q. How long have you been back on the road?

17 A. Probably nine month. Eight months now.

18 Q. Before you did that, where were you assigned?

19 A. Narcotics division.

20 Q. You say the narcotics division. The Drug Enforcement
21 Unit; what is that?

22 A. It's a unit comprised of city and county officers that
23 enforce and investigate narcotics crimes.

24 Q. So would it be fair to say that it's a collaboration
25 between the city police department and the county

DYER ARCHIBALD-DIRECT EXAMINATION

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1 sheriff's department to investigate drug crime?

2 A. Yes, sir.

3 Q. As part of that agreement, does that convey you as a
4 city officer jurisdiction out in the county?

5 A. It does.

6 Q. So in other words you can go out of the city limits and
7 help the county officers investigate a drug case?

8 A. Yes, sir.

9 Q. How long were you with the Drug Enforcement Unit?

10 A. Approximately two years. Maybe just shy of two years.

11 Q. Were you in the courtroom when Agent Smith testified
12 here a little while ago?

13 A. I was.

14 Q. Did you work cases with him?

15 A. Yes, I did.

16 Q. How long have you been in law enforcement total?

17 A. A little over five years.

18 Q. Sergeant Archibald, in those five years how many cases
19 have you responded to or investigated?

20 A. Hundreds.

21 Q. One of those hundreds of cases when you were with the
22 Drug Enforcement Unit, was it involving Manuel Ervin?

23 A. It was.

24 Q. Where did that take place? Do you remember?

25 A. On Lawson Street near Lander University.

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 Q. I'm going to refer you to what's in evidence right now
2 as State's Exhibit number 1. Does that look familiar
3 to you in your training and experience with the city?
- 4 A. Yes.
- 5 Q. Lawson Street on this map is where in relation to
6 Lander?
- 7 A. It's right here. Lander is back this way. The
8 president's house. The library.
- 9 Q. If you could -- I'm sorry. I didn't mean to cut you
10 off.
- 11 A. Right over here is the new dorms that they built
12 recently. That's about it.
- 13 Q. Did y'all respond to a location that night on Lawson
14 Street?
- 15 A. We did.
- 16 Q. Where is that?
- 17 A. Right here.
- 18 Q. Right there where that "X" is across the street from
19 the president's house?
- 20 A. That's right.
- 21 Q. You're standing on the front porch of [REDACTED]
22 Street. How close are you to the president's house?
- 23 A. Fifty feet across the street.
- 24 Q. How about the library?
- 25 A. The same.

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 Q. Did you participate in the execution of a search
2 warrant at that residence that night?
- 3 A. I did.
- 4 Q. That was on December 9 of last year?
- 5 A. Yes, sir.
- 6 Q. Excuse me, not last year, 2010. I mis-stated the date
7 there. Now, what was your role the night that -- how
8 many people were involved that night? Did y'all have
9 multiple agents that night?
- 10 A. Yes. Seven to ten, not including the SWAT as entry
11 team.
- 12 Q. So SWAT goes in first for what purpose?
- 13 A. To secure the residence for personnel. Not for any
14 evidence. They just secure the residence. Once
15 everybody is secured inside they turn it over to us.
- 16 Q. Was that for officer safety?
- 17 A. Yes.
- 18 Q. Were you part of SWAT that night?
- 19 A. No, sir.
- 20 Q. Okay, what was your role with the DEU that night at [REDACTED]
21 [REDACTED]?
- 22 A. I was collecting evidence.
- 23 Q. Is there one person when y'all go on a search warrant
24 that handles all the evidence?
- 25 A. Not really. There's -

DYER ARCHIBALD-DIRECT EXAMINATION

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1 Q. Let me re-ask that question. Is there one person who
2 collects the evidence for submission?

3 A. Yes. Yes.

4 Q. Was that your role that night?

5 A. Yes.

6 Q. Now, during the execution of this search warrant, were
7 you in multiple rooms of this house?

8 A. I was not. I was in one room, the kitchen.

9 Q. Okay. When you got to the kitchen was there marijuana
10 in that kitchen?

11 A. It was.

12 Q. I'm going to hand you what's been marked for
13 identification purposes only at this point as State's
14 Exhibit number 25.

15 MS. TAYLOR: Without objection, Your Honor.

16 THE COURT: Without objection to State's 25, State's 25
17 is in evidence.

18 Q. Can you take a look at that bag, Sergeant Archibald?

19 If I may approach the witness, Your Honor.

20 THE COURT: Please.

21 Q. Now, on this bag is a sticker. Does that your name on
22 it anywhere?

23 A. It does. On the bottom.

24 Q. So is this bag what you bagged the evidence in that
25 night?

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 A. That's right.
- 2 Q. There's multiple bags on the inside of this larger bag
3 and there's some writing on the front of that.
- 4 A. That's right.
- 5 Q. Is that your writing?
- 6 A. That is.
- 7 Q. So your role that night was to take the evidence where
8 it lay in the house, bag it, and write on those bags
9 where it was found in the house; correct?
- 10 A. That's right.
- 11 Q. For example, on this first bag, what was your writing
12 on that first bag?
- 13 A. I can't really see it, but clear plastic bags with a
14 greenlike substance and was found by Scott Russ in the
15 kitchen cabinet.
- 16 Q. So after Agent Russ with the DEU or other agents in the
17 house here, this was Agent Russ, locates the evidence,
18 you're the one that goes and puts it in this bag here?
- 19 A. They bring it to me after its photographed where it
20 sits. They photograph it and then they bring it to me
21 and I document it on the search warrant.
- 22 Q. Okay. Now, did Agent Russ, who found some of this
23 marijuana in the kitchen, did he add anything to it to
24 your knowledge?
- 25 A. No.

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 Q. Did you observe him take anything out of these bags?
- 2 A. No, sir.
- 3 Q. So the bags stayed closed and were given to you to put
4 in this larger bag for evidence; correct?
- 5 A. That's right.
- 6 Q. Do you have any knowledge that these items were
7 tampered with in any way before you bagged it to put it
8 into evidence?
- 9 A. I do not.
- 10 Q. I'm going to hand you what's already in evidence as
11 State's Exhibit 25. Does that look like a couple of
12 the bags of marijuana that ended up in that larger bag
13 that night?
- 14 A. It is.
- 15 Q. So what we see in State's 5 is put by you into this
16 larger bag which is now marked as State's 25?
- 17 A. That's right.
- 18 Q. Did you tamper with it in any way before you put it in
19 there?
- 20 A. No.
- 21 Q. Add to it?
- 22 A. No. I did not.
- 23 Q. Did you take away anything from it?
- 24 A. No, sir.
- 25 Q. I'm going to hand you what's been marked for ID

DYER ARCHIBALD-DIRECT EXAMINATION

133

- 1 purposes only State's Exhibit number 23. If you could
2 look at that, Sergeant Archibald. State's 23, does
3 this look familiar to you?
- 4 A. Yes, it does.
- 5 Q. Did you write anything on the front of that package on
6 the inside of 23?
- 7 A. That's my handwriting, the agency, the date, and my
8 name and my signature.
- 9 Q. What's the date on this?
- 10 A. 12/9/2010.
- 11 Q. Is that your name?
- 12 A. That is.
- 13 Q. Is this your handwriting?
- 14 A. It is.
- 15 Q. On the inside of this sealed larger bag here, what is
16 this on the inside of that one? What kind of bag is
17 that on the inside?
- 18 A. It's called a BEST pack. It's basically a tamper proof
19 bag. Once we seal it, if you reopen it then it's
20 obvious it's been reopened.
- 21 Q. Okay. It has sticky on it and you put stuff down
22 inside it and when you seal it is it obvious if
23 somebody has cut it or torn it open in some way?
- 24 A. Yes, sir.
- 25 Q. What's the purpose of putting it in what's called a

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 BEST kit or a BEST bag?
- 2 A. Just to preserve the custody of the evidence to ensure
- 3 that nobody else has touched it or messed with it.
- 4 Q. Now, as far as this BEST bag - I'll hand it to you one
- 5 more time if I may approach the witness, Your Honor.
- 6 Do BEST kits bear a number?
- 7 A. They do.
- 8 Q. What's the number on that BEST kit?
- 9 A. B216441.
- 10 Q. Is that a unique number on each of these BEST kits?
- 11 A. Each one of them.
- 12 Q. What's the purpose of having a unique number on each
- 13 BEST kit?
- 14 A. So they don't get mixed up with other BEST kits.
- 15 Q. When they're logged into evidence at the police
- 16 department?
- 17 A. They're logged in with their number.
- 18 Q. They're logged in with that BEST kit?
- 19 A. Yes.
- 20 Q. Does that follow it through court?
- 21 A. Yes.
- 22 Q. Now, December 9, 2010 over there at [REDACTED],
- 23 did you see the defendant in that house that night?
- 24 A. I did.
- 25 Q. Okay. Was there anybody else in the house?

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 A. There was another subject. I can't recall his name.
2 Supposedly he was a friend of the defendant.
- 3 Q. He was a friend?
- 4 A. Uh-huh.
- 5 Q. Was it a family member? Was it Brent Ervin?
- 6 A. No, it was not.
- 7 Q. It was another individual?
- 8 A. Yes, it was.
- 9 Q. If you could, for the record, point out where the
10 defendant is sitting. Is that the individual in the
11 house that night?
- 12 A. Sitting right there in the defendant's seat next to his
13 counsel.
- 14 Q. What is he wearing?
- 15 A. A plaid shirt.
- 16 Q. Let the record reflect, Your Honor, that Sergeant
17 Archibald has pointed out the defendant.
- 18 THE COURT: The record will so reflect.
- 19 Q. Sergeant Archibald, this BEST kit - let's go back to
20 what's been marked for ID as State's 23. What did you put
21 into this BEST kit at the house that night?
- 22 A. Those items right there. They were a different color.
23 They were white and the reason for the discoloration is when
24 SLED tested it it changes it. The chemicals they use change
25 the color.

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 Q. Over time, what we believe to be crack cocaine could
2 turn from white to brown?
- 3 A. Yes.
- 4 Q. Now, as far as what was put into state's 23 in this
5 BEST kit number B216441, on the night of the incident,
6 what alleged substances did you put in this BEST kit?
- 7 A. Crack cocaine.
- 8 Q. I'm going to show you what is in evidence as State's
9 Exhibits number 8, 9, 13, and 14. If you could, look
10 at those for me, Sergeant Archibald.
- 11 A. All right.
- 12 Q. Do you recognize what's in those pictures?
- 13 A. I do.
- 14 Q. You saw these items that night?
- 15 A. I did.
- 16 Q. It's a fair and accurate representation of where these
17 items were found in the potato chip canister? Pulled
18 out of this bed post in the bedroom?
- 19 A. Yes, sir.
- 20 Q. And you were there when those items were found?
- 21 A. I was.
- 22 Q. And you were the one who took custody immediately as
23 they were found and put them in this BEST kit, what's
24 in State's 23?
- 25 A. Correct. Yes, sir.

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 Q. Any of the white cookies or rocks that were found that
2 night in that house in the potato chip canister and the
3 bedpost were put into State's 23?
- 4 A. Yes, sir.
- 5 Q. And you did that?
- 6 A. I did.
- 7 Q. And you observed these fair and accurate
8 representations of pictures of exactly where these
9 things were found and you observed that that night?
- 10 A. Yes.
- 11 Q. Okay. By the agents that actually stood over them and
12 pulled them out of the bedposts and out of the
13 canister?
- 14 A. Yes. Yes, sir.
- 15 Q. Did it appear that they added any alleged crack cocaine
16 to these packages?
- 17 A. No, sir.
- 18 Q. Did it appear that they put any of this evidence in the
19 bed post?
- 20 A. No, sir.
- 21 Q. Did they put any of this evidence in the canister?
- 22 A. No, sir.
- 23 Q. To your knowledge, nobody part of the Drug Enforcement
24 Unit, added any of this evidence to the house; did
25 they?

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 A. No, sir.
- 2 Q. After you sealed the BEST kit with this evidence -- let
3 me back up. Were there any pills or any other sort of
4 substances that were found in the house that were put
5 in this BEST kit?
- 6 A. There was.
- 7 Q. What were those?
- 8 A. As far as I know all I know is they're multi-colored
9 pills. I don't know what they tested positive for.
- 10 Q. They were suspected at that time by the unit of being
11 possible narcotics?
- 12 A. That's right.
- 13 Q. But from your observation they were just multi-colored
14 pills?
- 15 A. That's right
- 16 Q. And you added those to this BEST kit?
- 17 A. I did.
- 18 Q. Did you take anything away from it or add anything to
19 it?
- 20 A. No, sir.
- 21 Q. You put them in the bag as they were found in the
22 house?
- 23 A. Yes, sir.
- 24 Q. When you get everything into the BEST kit and into this
25 larger bag which was alleged marijuana, State's 23 and

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 State's 25, where did you take these items?
- 2 A. To the Greenwood County Sheriff's Office evidence
3 locker.
- 4 Q. At the Sheriff's Department not the Police Department;
5 right?
- 6 A. Right.
- 7 Q. As part of your roll with the Drug Enforcement Unit, is
8 that where y'all collected and stored your evidence?
- 9 A. That's right.
- 10 Q. And that's because your working with the county on
11 those cases; correct?
- 12 A. It's depending on if it's a county case or city case.
13 It goes in whichever evidence locker.
- 14 Q. And you place these in the evidence locker at Greenwood
15 County Sheriff's Office?
- 16 A. I did.
- 17 Q. When you placed them in that locker from the time you
18 packaged them up at [REDACTED] to the time they go in
19 that locker did you tamper with them in any way?
- 20 A. No.
- 21 Q. Did you see anybody tamper with them or add anything to
22 these packages?
- 23 A. I did not.
- 24 Q. Did you log them into the locker and lock it according
25 to protocal?

DYER ARCHIBALD-DIRECT EXAMINATION

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1 A. I did.

2 Q. How does that work? When you place it into a locker is
3 there a key on both sides?

4 A. There is. It's not really a key. We turn a knob and
5 hit a button and it basically locks it from there and
6 the only other way you can open it is from the inside,
7 which we don't have access to. Only the evidence
8 custodian would have access to it.

9 Q. At the point where you place it in that locker there's
10 no way you can get inside it and only the evidence
11 custodian could collect it?

12 A. Once it's inside and locked I can't touch it.

13 Q. And that's true of the BEST kit, which is State's 23
14 and of this big bag of green leafy substance which is
15 State's 25?

16 A. Yes, sir.

17 Q. How many individual bags of this green leafy substance
18 did you put into State's 25?

19 A. I'd have to look.

20 SOLICITOR STUMBO: If I may approach the witness, Your
21 Honor.

22 THE COURT: Yes, sir.

23 Q. I'm going to hand you an item to refresh your
24 recollection.

25 A. Twelve.

DYER ARCHIBALD-DIRECT EXAMINATION

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- 1 Q. Twelve individual bags that were found in different
2 parts of the house that were put in this bag?
- 3 A. Yes.
- 4 Q. Did you put the potato chip canister into evidence?
- 5 A. I did.
- 6 Q. I'm going to show you what's in evidence as State's 22.
7 If I may approach, Your Honor. Is that your writing on
8 the outside of that bag?
- 9 A. Yes.
- 10 Q. Does this appear to be the canister that was found with
11 the false bottom and the alleged crack cocaine inside?
- 12 A. Yes.
- 13 Q. Did you put that in evidence?
- 14 A. Yes.
- 15 Q. I'm going to hand you what's in evidence as State's
16 Exhibit 24. Whose writing is that on the front of
17 State's 24?
- 18 A. That's my writing.
- 19 Q. Did you bag what's inside here?
- 20 A. I did.
- 21 Q. What's inside of State's 24?
- 22 A. Digital scales used for weighing narcotics.
- 23 Q. Based on your training and experience as a narcotics
24 officer, do those who traffic and deal in narcotics use
25 digital scales?

DYER ARCHIBALD-DIRECT EXAMINATION

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1 A. Yes.

2 Q. And that was found in the kitchen of the house;
3 correct?

4 A. Yes, sir.

5 SOLICITOR STUMBO: Beg the court's indulgence, Your
6 Honor.

7 THE COURT: Yes, sir.

8 Q. Just one last question, Sergeant Archibald. You stated
9 that night that defendant Manuel Ervin was in that
10 house when y'all go in; correct?

11 A. Yes, sir.

12 Q. And there's this other friend that's there; correct?

13 A. Yes, sir.

14 Q. Is there anybody else in that house when y'all go in
15 there that night?

16 A. No, sir.

17 Q. Did it appear that anybody else was living in that
18 house other than these individuals?

19 A. No, sir. It had one bed in it. That's it.

20 Q. Okay. One bed? And that was in the back bedroom?

21 A. That's right.

22 Q. That's the same bedroom where those cookies were pulled
23 out of the bedpost?

24 A. Yes, sir.

25 SOLICITOR STUMBO: No further questions at this time,

DYER ARCHIBALD-CROSS-EXAMINATION

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1 Your Honor.

2 CROSS EXAMINATION BY MS. TAYLOR:

3 Q. Good afternoon, Sergeant Archibald. How are you?

4 A. Good and you?

5 Q. Good. Just a couple quick questions for you. All
6 right. So you were there on December 9, 2010 when the
7 search warrant was executed on [REDACTED];
8 correct?

9 A. Yes, ma'am.

10 Q. But you didn't search the house or find any drugs
11 yourself; correct?

12 A. No, ma'am.

13 Q. Were you there witnessing while other officers found
14 the stuff or were you just there strictly to categorize
15 everything?

16 A. I could see some of it, but not all of it.

17 Q. But not all of it? Okay. You said you've been with
18 the Greenwood County Sheriff's Department for
19 approximately five years?

20 A. I've been with the City Police Department.

21 Q. I apologize. The City Police Department. And you've
22 had hundreds of cases you said?

23 A. Yes, ma'am.

24 Q. And in your hundreds of cases has there ever been any
25 kind of problem with evidence disappearing after you

DYER ARCHIBALD-CROSS-EXAMINATION

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- 1 put it into that super secure double-sided locker?
- 2 A. Not that I know of.
- 3 Q. Not that you know of? Would it surprise you to know --
- 4 let me back up for a second. This and these two, I
- 5 believe -- take a look at these. Okay? Those are your
- 6 reports detailing what inventory you collected from the
- 7 search of [REDACTED]; correct?
- 8 A. That's right.
- 9 Q. How many multi-colored pills were collected by you?
- 10 A. Twenty-one.
- 11 Q. Twenty-one. Okay. And would it surprise you to know
- 12 that only 14 actually made it to the lab to be tested?
- 13 SOLICITOR STUMBO: Your Honor, objection. This is
- 14 calling for hearsay testimony.
- 15 THE COURT: This will be linked up later on, but you can
- 16 ask the question. We'll see where we are. Go ahead.
- 17 Q. Would it surprise you to know that only 14 of those
- 18 pills made it to the lab to be tested?
- 19 A. It would.
- 20 Q. It would?
- 21 A. Uh-huh.
- 22 Q. So that means seven pills are unaccounted for.
- 23 A. That's right.
- 24 Q. Just real quickly, down here at the bottom of your
- 25 investigative report there is a spot for a notary to

DYER ARCHIBALD-CROSS-EXAMINATION

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- 1 notarize that report; correct?
- 2 A. That's right.
- 3 Q. And both copies are blank; correct?
- 4 A. That's right.
- 5 Q. So no notary signed this; correct?
- 6 A. (No verbal response.)
- 7 Q. Is that correct?
- 8 A. That's right. Sorry.
- 9 Q. That's okay. So to back up real quick, the prosecution
- 10 just a few minutes ago said that these pills looked
- 11 like candy. They're multi-colored. Looks like candy
- 12 pills. Was that your observation or would you agree
- 13 with that?
- 14 A. Yes. They're multi-colored.
- 15 Q. They're multi-colored. So if seven pills were lost
- 16 somehow between the time you put it in the locker and
- 17 it made it to the testing site, they could've been lost
- 18 on the side of the road. Anywhere.
- 19 A. I don't have a clue where they would be lost at.
- 20 Q. Okay. But they look similar to candy, so if they're on
- 21 the side of the road somebody could've picked them up
- 22 and ingested them accidentally; right?
- 23 A. Yes.
- 24 Q. Okay. So your testifying today you put twenty-one
- 25 pills in that locker?

DYER ARCHIBALD-REDIRECT EXAMINATION

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1 A. That's right.

2 Q. Thank you. No further questions.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION BY SOLICITOR STUMBO:

5 Q. After you put the BEST kit inside of the evidence
6 locker -- let's just reiterate this -- you don't see
7 the packages after that; correct?

8 A. I'm done with them.

9 Q. Now, you stated earlier that you were there to observe
10 in these pictures where these alleged narcotics were
11 found in the house. In the kitchen, the bedpost, what
12 have you.

13 A. Uh-huh.

14 Q. And those are the items found in those areas in the
15 kitchen and the bedroom that ended up in these bags;
16 correct?

17 A. Yes, sir.

18 Q. Anybody in the Drug Enforcement Unit that night add
19 anything to it, to your knowledge, or take away from
20 this bag?

21 A. No, sir.

22 Q. This bag?

23 A. No, sir.

24 Q. Were you there when they were taken down to SLED to be
25 tested?

DYER ARCHIBALD-REDIRECT EXAMINATION

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- 1 A. No, sir. I was not.
- 2 Q. Is that something you would normally do is to go down
3 to SLED and watch them test the items in the bag?
- 4 A. No, sir. I do not.
- 5 Q. Now, according to protocol in law enforcement, who is
6 the first person that's supposed to open that BEST kit
7 after you put it in the evidence locker?
- 8 A. To my knowledge it would be SLED.
- 9 Q. It would be the ---
- 10 A. I'm not real sure
- 11 Q. --- analyst who tests; correct?
- 12 A. That's right.
- 13 Q. According to protocol in law enforcement, if that bag
14 was tampered with somehow, the BEST kit was tampered
15 with or it was clear that someone had tampered with it
16 at SLED, would they even test it at that point?
- 17 A. No.
- 18 Q. No further questions.
- 19 MS. TAYLOR: Nothing from the defense, Your Honor.
- 20 THE COURT: Thank you, sir. You may step down. Do you
21 have a brief witness, Soiicitor?
- 22 MR. TAYLOR: Judge, actually, yes we do. Very quickly.
23 Tim Stumbo, who was the evidence custodian. That won't take
24 very long, Judge.
- 25 THE COURT: Very good. Let's work through that.

TIM STUMBO-DIRECT EXAMINATION

1 MR. TAYLOR: The state calls Tim Stumbo.

2 TIM STUMBO, first being duly sworn, testified
3 as follows:

4 DIRECT EXAMINATION BY MR. TAYLOR:

5 Q. I was going to say good morning. I think we're getting
6 into the late afternoon, almost 1:00, so good
7 afternoon. Could you tell the jury what your name is?

8 A. Tim Stumbo.

9 Q. I don't see that you're in uniform. Do you not work in
10 law enforcement?

11 A. I don't. Not anymore. I work for Piedmont Health
12 Group.

13 Q. Okay. You said not anymore. When did you work as a
14 law enforcement officer?

15 A. I worked for the Greenwood County Sheriff's Office from
16 September 2007 to June 2012.

17 Q. So on December 9, 2010 you were working for the
18 Sheriff's Office?

19 A. That's correct.

20 Q. What was your job at the Sheriff's Office?

21 A. I was an evidence custodian.

22 Q. Could you tell us a little bit about what that means.

23 A. Pretty much what my job is is to log in the evidence,
24 to track the evidence, categorize it, store it,
25 maintain the chain of custody on it for the Sheriff's

TIM STUMBO-DIRECT EXAMINATION

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- 1 Office.
- 2 Q. That's any case? Not just drug cases?
- 3 A. That's correct. It's all cases.
- 4 Q. Judge, if I may approach. I have what's marked as
5 State's 23 and 25. They're both in evidence. Can you
6 tell us what these are? This one first, State's 25.
- 7 A. This one is a large plastic bag containing smaller
8 plastic bags that contain marijuana.
- 9 Q. Did you log that into evidence?
- 10 A. That's correct. I did.
- 11 Q. How do you know that?
- 12 A. We use a bar code system, computer system. I have
13 paperwork that one, shows it's an evidence submission
14 form. It has items listed on it. I sign off when I
15 log it in with my signature. I date these. These have
16 bar codes on them. I place the bar codes on there. I
17 log them into the system so the computer system can
18 track them.
- 19 Q. When somebody submits evidence into the evidence
20 locker, can they just say, "Well, I need to put
21 something else in there." and open the locker back up?
- 22 A. No. The way it works it's a secure pass through
23 system. Once it's locked from one side it can't be
24 opened from the outside. It has to be unlocked from
25 the inside or retrieved from the inside. So you can

TIM STUMBO-DIRECT EXAMINATION

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- 1 only access it from inside the evidence room, which is
2 secure.
- 3 Q. So you handled that package right there?
- 4 A. That's correct. I did.
- 5 Q. Was it tampered with or anything appear to be --
6 anybody mess with it?
- 7 A. Not to my knowledge.
- 8 Q. What did you do with that package once you logged it
9 in? Was anything else done to it?
- 10 A. This one, at the time I was there, was not -- nothing
11 was done with it. It was stored and put on the shelf
12 for the time being.
- 13 Q. So you did not take that to SLED?
- 14 A. That's correct.
- 15 Q. Why is it you wouldn't take it?
- 16 A. We don't do our testing of marijuana with SLED.
- 17 Q. Is there somebody in Greenwood that can do that?
- 18 A. Yes. Either at the time I was doing it myself. The
19 agencies themselves can get trained to do it, and at
20 the time I was trained to do it.
- 21 Q. But nobody was trained to test any controlled
22 substances, crack, cocaine?
- 23 A. That's correct. We only did marijuana.
- 24 Q. I'm going to switch with you here. Be careful. It's
25 leaking a little bit. See if you can tell me what this

TIM STUMBO-DIRECT EXAMINATION

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- 1 is. This is marked as State's Exhibit 23 in evidence.
- 2 A. It's a BEST kit which contains narcotics that were
- 3 transported down to SLED. According to the paperwork
- 4 that I was given on the submission form it says BEST
- 5 kit and the control number on it was B216441.
- 6 Q. Do they match up with your records?
- 7 A. That's correct. The same number that appears on the
- 8 BEST kit itself in the top right corner is the same
- 9 number that appears on the submission form.
- 10 Q. So what did you do with the BEST kit, the package
- 11 there?
- 12 A. What I do with BEST kits is we know they're going to be
- 13 transported down to SLED so what I do is first I log it
- 14 into our system. Then I have to go to SLED's website
- 15 and they have a secure online login for evidence that's
- 16 going to be transported down there. I log it in there,
- 17 print out a submission form for SLED, and I had a
- 18 location in the evidence room, a box that is materials
- 19 that are going to be transported to SLED.
- 20 Q. Did you take it to SLED yourself?
- 21 A. I did.
- 22 Q. Did you mail it down there?
- 23 A. No. We have to transport all evidence ourselves. So I
- 24 drove it down there.
- 25 Q. Hand delivered?

TIM STUMBO-DIRECT EXAMINATION

152

- 1 A. Correct. Hand delivered.
- 2 Q. Who do you give it to at SLED? Do you know?
- 3 A. At SLED they have four or five girls up front that do
4 the login of evidence.
- 5 Q. So you didn't just put it on a counter and walk off?
- 6 A. No. You wait to get called back by one of the girls
7 and they handle all your evidence that you bring down
8 there in a day and submit each piece of evidence
9 individually and it has to be signed off individually.
- 10 Q. When you received that BEST kit that's sitting next to
11 you, was it tampered with? Had anybody opened it or
12 tried to cut it open?
- 13 A. No. BEST kits, the way they're designed they're tamper
14 proof. Once they're sealed they can easily be detected
15 if they're opened. The way it was turned in to me is
16 the way it sits now.
- 17 Q. What were the two types of alleged substances that were
18 put into that BEST kit?
- 19 A. According to the submission form, the SLED drug
20 analysis form that is turned in with the BEST kit, item
21 A, four clear plastic bags containing off white
22 rocklike substance labeled D-1, D-2, G-9, and G-10.
23 Item B is clear plastic bag containing 21 multi-colored
24 pills.
- 25 Q. Okay. And you didn't take any of those out?

TIM STUMBO-CROSS-EXAMINATION

153

- 1 A. No.
- 2 Q. In your experience when you worked the Sheriff's office
3 or maybe you heard about it from the city, because I'm
4 sure you knew the other evidence custodian at the city?
- 5 A. That's correct.
- 6 Q. Did y'all routinely or did it ever even happen at all
7 where drugs were just missing out of a bag?
- 8 A. No. Especially not out of a BEST kit. I mean, once
9 they're sealed they're sealed.
- 10 Q. I have no further questions.
- 11 THE COURT: Ms. Taylor.
- 12 MS. TAYLOR: Just briefly.
- 13 CROSS EXAMINATION BY MS. TAYLOR:
- 14 Q. Good afternoon, Mr. Stumbo. Hopefully we won't keep
15 you here too much longer. It's right here. Okay. So
16 you said that the way -- what this is is a BEST kit.
17 So the way they put it all in here is the way it is
18 right now?
- 19 A. Correct.
- 20 Q. But didn't somebody have to open it to test it?
- 21 A. Yes.
- 22 Q. Okay. So then how does that work? Do they seal it
23 back in the exact same bag?
- 24 A. I can't comment on their protocol.
- 25 Q. Okay. That's fine.

TIM STUMBO-CROSS-EXAMINATION

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- 1 A. All I know is the way it leaves me, and I get it back
2 sealed in another envelope.
- 3 Q. Okay.
- 4 A. I cannot comment on how they test it and what their
5 protocol is.
- 6 Q. That's fine. I understand. It appears to be leaking a
7 lot in various areas. Was it like that when you
8 submitted it to SLED?
- 9 A. More than likely not. It usually changes over time.
- 10 Q. Okay. So just because it's been so long?
- 11 A. Yes. From my experience, the color does change,
12 especially when it comes to crack cocaine.
- 13 Q. Not just the color, but, like, the actual leaking out
14 of the bag. That changes too?
- 15 A. Yes, but I can't comment exactly on the way I remember
16 it being when I took it down there. I doubt it was
17 leaking at the time.
- 18 Q. And then, again, back to -- sorry to belabor the point.
19 You also submitted, along with that BEST kit, 21 multi-
20 colored pills.
- 21 A. According to my paperwork those pills were actually
22 included in the BEST kit.
- 23 Q. In the BEST kit. But they're not in there now;
24 correct?
- 25 A. They don't appear to be, no.

TIM STUMBO-REDIRECT EXAMINATION

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- 1 Q. Okay. Were they, to your knowledge, ever put in a
2 different bag and re-sent back up here for any reason?
- 3 A. Not to my knowledge.
- 4 Q. Not to your knowledge. To your knowledge, 21 pills
5 were sent down there?
- 6 A. Correct. According to the paperwork I had 21 pills ---
- 7 Q. Twenty-one pills.
- 8 A. --- were in the BEST kit when I submitted it.
- 9 Q. Okay. Thank you. No further questions.
- 10 MR. TAYLOR: I just have a few follow up.
- 11 REDIRECT EXAMINATION BY MR. TAYLOR:
- 12 Q. This bag is not the way it was when you sent it down
13 there.
- 14 A. No. It's got an outside bag on it.
- 15 Q. So it was opened at SLED?
- 16 A. Yes. Yes.
- 17 Q. Now, you said you don't see multi-colored pills. I
18 mean, you can't see what all is behind -- that looks
19 like they're stacked up. So they could be in there.
- 20 A. That's correct. They could be in there. As far as
21 when it's -- the paperwork I have says it's in there.
22 Sometimes it's very hard to see the full contents of
23 the bags.
- 24 Q. Based on your experience, drugs change after they've
25 been sitting there.

TIM STUMBO-REDIRECT EXAMINATION

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1 A. Oh, yeah. Definitely.

2 Q. So these drugs did not look like this when you
3 submitted them?

4 A. That's correct.

5 Q. No further questions.

6 MS. TAYLOR: No redirect, Your Honor.

7 THE COURT: Mr. Stumbo, thank you very much. You can
8 step down. No objection to excusing him, Ms. Taylor?

9 MS. TAYLOR: No objection to excusing him, Your Honor.

10 THE COURT: Ladies and gentlemen, we've reached a good
11 stopping point for lunch so we're going to go ahead and take
12 our break at this point in time. If you happen to go to
13 lunch with one of your fellow jurors, friends, family
14 members, whatever, that's perfectly fine. Talk about
15 anything you want. Talk about the weather. Talk about Post
16 20 baseball. Just don't talk about this case, okay. It's
17 not time yet to talk about the case. If you could, I'm
18 going to ask that you be back in the jury room at about a
19 quarter after two and we'll resume with the trial at that
20 point in time. Continue to wear your badges. It helps the
21 bailiffs get you in and out. With that, have a great lunch
22 and I'll see you at 2:15. Thank you.

23 (Whereupon, the jury exited the courtroom.)

24 THE COURT: We'll be at ease until around 2:15.)

25 (Whereupon, the court was in recess until 2:15 p.m.)

WESLEY LOVE-DIRECT EXAMINATION

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1 THE COURT: I believe that we have all of the jurors
2 present and the defendant is here with counsel. Let's go
3 ahead and bring the jury in, please.

4 (Whereupon the jury entered the courtroom.)

5 THE COURT: Let the record reflect that the jury is back
6 and seated. I trust that the ladies and gentlemen had a
7 pleasant lunch. I am aware that one of you has an
8 obligation this afternoon at 5:30, so we will be finishing
9 up today at 5:00 at the latest so that y'all can attend to
10 that, just to let you know that. At this point we're still
11 in the state's case in chief. Mr. Taylor, if you'll call
12 your next witness, please.

13 MR. TAYLOR: Thank you, Your Honor. The state calls
14 Wesley Love.

15 WESLEY LOVE, after first being duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION BY MR. TAYLOR:

18 Q. Good afternoon.

19 A. Afternoon.

20 Q. Could you tell us your name, please?

21 A. Wesley Love.

22 Q. Where do you work?

23 A. Greenwood County Sheriff's Office.

24 Q. How long have you been working there?

25 A. About five years.

WESLEY LOVE-DIRECT EXAMINATION

- 1 Q. Back in December, 2010 were you working at the
- 2 Sheriff's Office then?
- 3 A. Yes.
- 4 Q. What was your job at that time?
- 5 A. Uniform patrol.
- 6 Q. So what does that mean?
- 7 A. I was on the road answering service calls.
- 8 Q. You were out patrolling basically?
- 9 A. Yes, sir.
- 10 Q. What is your current position with the Sheriff's
- 11 Office?
- 12 A. Evidence custodian.
- 13 Q. How long ago did you take over that spot?
- 14 A. About a year ago.
- 15 Q. Who did you take over for?
- 16 A. Timothy Stumbo.
- 17 Q. Okay. I just want to talk about one thing in
- 18 particular. I have what's been marked as State's
- 19 Exhibit 25. It's in evidence. Judge, may I approach
- 20 the witness?
- 21 THE COURT: Please.
- 22 Q. Take a look at this. Are you familiar with that?
- 23 A. I am.
- 24 Q. Where have you seen that before?
- 25 A. In evidence.

WESLEY LOVE-DIRECT EXAMINATION

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- 1 Q. Do you know who logged it into evidence?
- 2 A. Timothy Stumbo logged it in.
- 3 Q. So let's go to June 11, 2012. So this is quite a bit
4 after the incident that we're talking about today. Did
5 you check that out of evidence and give that to
6 somebody?
- 7 A. I did.
- 8 Q. Who was it that you gave it to?
- 9 A. I checked it out and gave it to John Long.
- 10 Q. Why did you give it to John Long?
- 11 A. Because none of us were certified to test, so I checked
12 it out and gave it to him and he took it to Officer
13 Griffin.
- 14 Q. When you checked it out of evidence, was it tampered
15 with? Had anybody opened it or gone in there and put
16 anything different in there or taken anything out?
- 17 A. No.
- 18 Q. How did you know that?
- 19 A. It was sealed and untouched since.
- 20 Q. Okay. You said you gave it to John Long?
- 21 A. Correct.
- 22 Q. I have no further questions.
- 23 THE COURT: Cross?
- 24 MS. TAYLOR: Nothing further.
- 25 THE COURT: Thank you, sir. You can step down. You are

JOHN LONG-DIRECT EXAMINATION

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1 free to go. Mr. Taylor?

2 MR. TAYLOR: Your Honor, the state calls John Long.

3 JOHN LONG, having first being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION BY MR. TAYLOR:

6 Q. Could you tell us your name, please?

7 A. John Long.

8 Q. Who do you currently work for?

9 A. The Greenwood County Sheriff's Office.

10 Q. How long have you been with them?

11 A. September 2003, approximately ten years.

12 Q. What is your current position with the Sheriff's
13 Office?

14 A. My current position is Officer in Charge of
15 Professional Standards.

16 Q. So you're not on the road? You're not dealing with
17 evidence or anything like that?

18 A. No.

19 Q. Let's take you back to June of 2011. Excuse me, June
20 11, 2012. You have sitting next to you State's Exhibit
21 25 that's in evidence. Do you recognize that?

22 A. I do.

23 Q. How do you recognize that?

24 A. Well, for one I looked over the chain of custody, but I
25 remember the black packaging that's in it.

JOHN LONG-DIRECT EXAMINATION

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- 1 Q. So you've touched that package or picked it up before
2 today?
- 3 A. Yes.
- 4 Q. Who gave it to you?
- 5 A. Wes Love.
- 6 Q. Why did he give that to you?
- 7 A. At the time I had let my certification lapse to do
8 marijuana analysis and I had called Kenya to get her to
9 do it for us.
- 10 Q. Who is Kenya?
- 11 A. Ms. Williams with the city.
- 12 Q. Ms. Williams?
- 13 A. I'm sorry. Isn't her last name -- Kendra.
- 14 Q. Kenya Griffin.
- 15 A. Griffin. I'm sorry.
- 16 Q. Basically I just want to make sure -- you were not
17 certified to test marijuana at that point.
- 18 A. That's correct. At one time I was, but at that
19 particular time I was not.
- 20 Q. Okay. As far as you know, based on just remembering
21 what happened, Wesley Love was not certified either?
- 22 A. He was not.
- 23 Q. Okay. And so Kenya Griffin was at the time?
- 24 A. That's right.
- 25 Q. Nobody else you could've taken it to, at least in

JOHN LONG-CROSS-EXAMINATION

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1 Greenwood?

2 A. Not around here.

3 Q. Not only were you not certified to test marijuana, you
4 couldn't test any other drugs?

5 A. No.

6 Q. When you received that package from Wesley Love, had
7 anybody opened it? Tampered with it? Changed anything
8 in it?

9 A. No, sir.

10 Q. And did you just drop it off to Kenya? How did you ---

11 A. I handed it to her. Hand to hand transfer.

12 Q. So you know for a fact she touched it and nobody
13 tampered with it before that?

14 A. That's correct.

15 Q. I have no further questions.

16 MS. TAYLOR: Just one, Your Honor.

17 CROSS EXAMINATION BY MS. TAYLOR:

18 Q. Is it Officer Long? What's your rank?

19 A. John Long. You can call me whatever you want to.

20 Q. All right, Mr. Long. Could you just tell me again what
21 your current position is with the Greenwood County
22 Sheriff's Office?

23 A. My current position -- I got promoted in February. I'm
24 the Officer in charge of professional standards.

25 Q. Professional standards. And that's, like, how police

KENYA GRIFFIN-DIRECT EXAMINATION

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- 1 officers should conduct themselves through the course
2 of their job. Is that ---
- 3 A. It's actually --- I do all the budgeting, HR, you know,
4 whatever comes my way.
- 5 Q. Do you have any say so over procedure, such as maybe
6 them writing stuff down? Taking notes in
7 investigations?
- 8 A. Well, if something comes to my attention, I would try
9 to correct it.
- 10 Q. Would you say that it's normal procedure for officers
11 to take notes in investigations such as the one we're
12 talking about today?
- 13 A. I wouldn't say it's normal. I would say it's based on
14 the person who is working the case.
- 15 Q. It's based on individuals?
- 16 A. Yes.
- 17 Q. But you encourage that; correct?
- 18 A. If I was working a case I would, yes.
- 19 Q. Great. Thank you so much, Mr. Long.
- 20 MR. TAYLOR: None from the state, Your Honor.
- 21 THE COURT: Sir, you can step down. You are free to go
22 or free to stay. Solicitor?
- 23 SOLICITOR STUMBO: Thank you, Judge. The state would
24 call Kenya Griffin to the stand.
- 25 KENYA GRIFFIN, having first been duly sworn,

KENYA GRIFFIN-DIRECT EXAMINATION

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1 testified as follows:

2 DIRECT EXAMINATION BY SOLICITOR STUMBO:

3 Q. Good afternoon, Ms. Griffin.

4 A. Good afternoon.

5 Q. You work for the City of Greenwood?

6 A. Yes, sir. I do.

7 Q. What is your rank there?

8 A. Sergeant.

9 Q. So I will call you Sergeant Griffin from here on out.
10 Sergeant Griffin, what is your current roll there at
11 the City of Greenwood?

12 A. I'm currently the evidence technician and crime scene
13 investigator.

14 Q. As part of that roll as evidence technician and crime
15 scene investigator, do you ever have occasion to
16 analyze substances that are alleged to be marijuana?

17 A. Yes, sir.

18 Q. What kind of training did you receive to be able to
19 conduct that kind of analysis?

20 A. I was certified by the State Law Enforcement Division.

21 Q. What kind of certification class do you have to go
22 through to get that certificate?

23 A. We have to go through a day long class. We take a
24 written test which you have to pass with, I believe,
25 eighty percent. We have to also do a laboratory part

KENYA GRIFFIN-DIRECT EXAMINATION

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1 where we have to correctly identify marijuana at 100
2 percent.

3 Q. Did you take that class?

4 A. Yes, sir. I did.

5 Q. Did you pass that class?

6 A. Yes, sir.

7 Q. Were you certified by SLED from that point on to
8 conduct marijuana analysis?

9 A. Yes, sir. I was.

10 Q. Now, how many times have you testified in court as an
11 expert in the field of marijuana analysis?

12 A. Just once.

13 SOLICITOR STUMBO: Your Honor, at this time, the state
14 would offer Sergeant Griffin as an expert in the field of
15 marijuana analysis.

16 THE COURT: Any objection or voir dire?

17 MS. TAYLOR: No objection to her being qualified as an
18 expert.

19 THE COURT: Ladies and gentlemen, in this case the
20 parties have stipulated that Sergeant Griffin is an expert
21 in the field of marijuana analysis. Normally when someone
22 testifies as a witness they have to testify as to something
23 they observed with one of their five senses; something they
24 saw, heard, smelled, et cetera. An exception for this rule
25 exists for someone who is qualified due to experience or

KENYA GRIFFIN-DIRECT EXAMINATION

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1 training in some particular field of expertise. If the
2 court finds that an individual is qualified in that area as
3 an expert witness, then that person can give opinion
4 testimony. Of course it does not mean that you have to
5 accept that testimony, but it is evidence for you to use as
6 you deem appropriate. Again, in this case, the state and
7 the defense have agreed that Sergeant Griffin is an expert
8 in the field of marijuana analysis. You may continue,
9 Solicitor.

10 SOLICITOR STUMBO: Thank you, Your Honor.

11 Q. Sergeant Griffin, were you certified back in June of
12 2012 to do marijuana analysis?

13 A. Yes, sir. I was.

14 Q. Did you have occasion to analyze a substance that was
15 submitted to you in connection with this defendant,
16 Manuel Ervin?

17 A. Yes.

18 MS. TAYLOR: Objection, Your Honor. We have a matter of
19 law. May we approach?

20 THE COURT: Yes. Come on up.

21 (Whereupon, a bench trial was held out of the hearing
22 of the jury.)

23 THE COURT: The record should reflect that a bench
24 conference took place. I will put what was said on the
25 record during our next break when we take our afternoon

KENYA GRIFFIN-DIRECT EXAMINATION

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1 break. For the record, Ms. Taylor's objections are noted
2 and overruled. You may proceed, Solicitor.

3 SOLICITOR STUMBO: Thank you, Your Honor.

4 Q. Sergeant Griffin, you did analyze a substance that was
5 brought to you in this case related to the defendant?

6 A. Yes, sir.

7 Q. Who brought you the evidence in this particular case?

8 A. John Long.

9 Q. I'm going to hand you what's been marked for ID
10 purposes only as State's Exhibit 19. For your
11 recollection purposes. What's the date that John Long
12 brought you this evidence?

13 A. June 8, 2012.

14 Q. John Long, he's the one that testified just before you.
15 Were you in the courtroom for that?

16 A. Yes.

17 Q. And he's with the Greenwood County Sheriff's
18 Department?

19 A. Yes, sir.

20 Q. Do you interact with him in the course of your job at
21 the city?

22 A. Yes, sir. I do.

23 Q. Was he formerly the evidence custodian at Greenwood?

24 A. Yes, sir.

25 Q. Then Tim Stumbo took his place; correct?

KENYA GRIFFIN-DIRECT EXAMINATION

- 1 A. That's correct.
- 2 Q. Then Wesley Love has taken Tim Stumbo's place?
- 3 A. Yes, sir.
- 4 Q. Now, the time that this was brought to you in June of
- 5 2012; at that time did the county have someone that
- 6 could analyze marijuana?
- 7 A. No, sir. They did not.
- 8 Q. Why is that?
- 9 A. I believe they had let their certification lapse.
- 10 Q. And Tim Stumbo could analyze, but then he took another
- 11 job and left the department; correct?
- 12 A. That's correct.
- 13 Q. And so at this time in June of 2012 you were the only
- 14 one in Greenwood, to your knowledge, that could analyze
- 15 marijuana?
- 16 A. Correct.
- 17 Q. When they brought you what's here in front of you
- 18 that's in evidence already at this point as State's
- 19 Exhibit 25. Do you recognize that bag?
- 20 A. Yes, sir.
- 21 Q. How many individual bags were packaged in that larger
- 22 bag?
- 23 A. There were twelve.
- 24 Q. When those twelve bags came to you in this larger bag,
- 25 when you opened up the bigger bag to examine the

KENYA GRIFFIN-DIRECT EXAMINATION

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- 1 substance inside, had it been tampered with in any way?
- 2 A. No, sir.
- 3 Q. Did it appear to have been torn open or had stuff added
- 4 to it or taken away from it?
- 5 A. No, sir.
- 6 Q. Now, did you conduct an analysis on State's 25?
- 7 A. Yes, sir. I did.
- 8 Q. What were your findings on these twelve bags?
- 9 A. I did find that it was positive for marijuana.
- 10 Q. Positive? All twelve bags were positive for marijuana?
- 11 A. Yes, sir.
- 12 Q. Was there a weight that you had per bag?
- 13 A. Yes, sir.
- 14 Q. How much did each individual bag weigh?
- 15 A. They were all different weights. I believe they were -
- 16 - one weighed 18.0 grams and there was one that weighed
- 17 6.0 grams. Another weighed 5.0 grams and then there
- 18 were eight that weighed 27.0 grams and one that weighed
- 19 26.0 grams, for a total of 271 grams.
- 20 Q. Okay. So nine of the twelve bags weighed either 27 or
- 21 there was one that was 26; correct?
- 22 A. That's correct.
- 23 Q. So nine of the twelve were of similar weight?
- 24 A. Yes, sir.
- 25 Q. And then there was one that weighed 18 grams?

KENYA GRIFFIN-DIRECT EXAMINATION

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- 1 A. Yes, sir.
- 2 Q. One that weighed 6?
- 3 A. Yes, sir.
- 4 Q. And one that weighed 5?
- 5 A. Yes, sir.
- 6 Q. And what was the total amount there in grams?
- 7 A. 271.
- 8 Q. How many grams -- this is a math question, now. How
9 many grams are in an ounce? Would that be 28? Does
10 that sound right?
- 11 A. Yes, sir. That sounds about right.
- 12 Q. So if nine of the twelve were 27 or 26 grams, nine of
13 the twelve bags were roughly an ounce of marijuana;
14 correct?
- 15 A. That would be correct. Yes, sir.
- 16 Q. And those are the bags that are here, again, in State's
17 25?
- 18 A. Yes, sir.
- 19 Q. Now, how do you conduct the analysis per bag? If you
20 could, give the jury just a brief overview of how you
21 would do this analysis.
- 22 A. The bags are first -- if they're packaged then they are
23 taken out and placed in what's called a weigh boat and
24 weighed. Once they're weighed, I do two tests on them;
25 a microscopic test and a chemical test. Both tests

KENYA GRIFFIN-DIRECT EXAMINATION

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1 have to be positive in order for me to say that that is
2 marijuana.

3 Q. And you did that as to all twelve of these bags here?

4 A. Yes, sir.

5 Q. And all twelve came back positive for marijuana?

6 A. Yes, sir.

7 Q. I'm going to show you what's in evidence as State's 24.
8 Based on your training and experience, do you recognize
9 what's in that bag?

10 A. Yes, sir. It's a digital scale.

11 Q. Okay. Will this measure in grams and ounces?

12 A. Yes, sir.

13 Q. Based on your training and experience, those who are
14 involved in the sale of narcotics use these?

15 A. Yes, sir.

16 SOLICITOR STUMBO: Your Honor, I believe it's already in
17 evidence, but just to make sure with Ms. Scott, State's 25
18 we would offer it into evidence at this time.

19 THE COURT: I have State's 25 coming in under Mr.
20 Archibald previously. I do believe that is in evidence.

21 SOLICITOR STUMBO: That's what I thought, Your Honor,
22 but I wanted to verify that.

23 Q. After you completed your analysis, where did you return
24 the evidence to?

25 A. I returned it to Wes Love.

MARY BETH COLEMAN-DIRECT EXAMINATION

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1 Q. At the Sheriff's Department?

2 A. Yes, sir.

3 SOLICITOR STUMBO: Your Honor, we would offer State's 19

4 -

5 Q. The State's 19 that you've reviewed, that is your
6 report reflecting your findings in this case?

7 A. Yes, sir.

8 SOLICITOR STUMBO: Your Honor, the state would offer
9 State's 19 into evidence.

10 THE COURT: Subject to the objection earlier?

11 MS. TAYLOR: Yes, sir, Your Honor.

12 THE COURT: Very good. 19 will be in evidence, subject
13 to earlier objection.

14 SOLICITOR STUMBO: Thank you, Your Honor. That's all
15 the questions I have of Sergeant Griffin at this time.

16 THE COURT: Ms. Taylor?

17 MS. TAYLOR: No questions from the defense. Thank you,
18 Sergeant Griffin.

19 THE COURT: Thank you, Sergeant. We appreciate you
20 coming. You are free to go. Solicitor, call your next
21 witness, please.

22 SOLICITOR STUMBO: Thank you, Your Honor. The state
23 would call Mary Beth Burroughs to the stand.

24 MARY BETH COLEMAN, having first been duly
25 sworn, testified as follows:

MARY BETH COLEMAN-DIRECT EXAMINATION

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- 1 DIRECT EXAMINATION BY SOLICITOR STUMBO:
- 2 Q. I believe I just called you Mary Beth Burroughs. You
3 are now Mary Beth Coleman; correct?
- 4 A. Yes.
- 5 Q. Mary Beth Burroughs was your maiden name?
- 6 A. I was divorced, so now I'm back to my maiden name.
- 7 Q. I want to make sure that today you are Mary Beth
8 Coleman.
- 9 A. Yes. I am.
- 10 Q. Ms. Coleman, thank you for being here today. You work
11 for SLED?
- 12 A. Yes.
- 13 Q. You work out of the Columbia office?
- 14 A. Yes.
- 15 Q. What is your role there at the State Law Enforcement
16 Division?
- 17 A. I work in the drug analysis department as a forensic
18 chemist.
- 19 Q. As part of your job as a forensic chemist, did you have
20 to go to school for that or have some kind of
21 specialized training?
- 22 A. Yes. I have a bachelor of science degree in chemistry
23 and a masters in teaching, both from the University of
24 South Carolina. I received training from the drug
25 analysis department at SLED and I also attended the

MARY BETH COLEMAN-DIRECT EXAMINATION

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1 South Carolina Criminal Justice Academy for legal
2 training.

3 Q. So you went to USC and got a degree in chemistry; is
4 that correct?

5 A. Yes, sir.

6 Q. Subsequent to that you went to work for SLED and you
7 received other training in drug analysis?

8 A. Yes.

9 Q. And are you certified to analyze narcotics?

10 A. Yes.

11 Q. Do you receive continuing education in this field?

12 A. Yes.

13 Q. How often do you have to go to keep your certification
14 up?

15 A. We complete proficiency tests once a year and then go
16 to different training as available.

17 Q. About how many particular individual cases, just an
18 estimate, have you analyzed in your time at SLED?

19 A. Over 3,000 cases.

20 Q. How many years have you been there?

21 A. Five years and four months.

22 Q. As part of your analysis in these cases do you have to
23 go to court sometimes, like today, and testify?

24 A. Yes.

25 Q. Have you been qualified as an expert?

MARY BETH COLEMAN-DIRECT EXAMINATION

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1 A. Yes.

2 Q. How many times have you been qualified as an expert
3 before?

4 A. Twelve times.

5 SOLICITOR STUMBO: Your Honor, at this time the state
6 would offer Ms. Mary Beth Coleman from SLED as an expert in
7 the field of chemical analysis of narcotics.

8 THE COURT: Any objection?

9 MS. TAYLOR: No objection to her being qualified as an
10 expert.

11 THE COURT: Ladies and gentlemen, again as I stated a
12 moment ago concerning Sergeant Griffin, usually a person
13 cannot give opinion testimony, but an exception to this rule
14 exists for expert witnesses. In this case the parties agree
15 that Ms. Coleman is an expert in the field of chemical
16 analysis of narcotics, therefore she is able to give opinion
17 testimony in that particular area. It doesn't mean that you
18 have to accept what she says, but it is evidence for you to
19 use in any way you deem appropriate. Solicitor.

20 SOLICITOR STUMBO: Thank you, Your Honor.

21 Q. Ms. Coleman, as part of your job at SLED did you have
22 occasion to analyze substances that were submitted in
23 relation to the defendant, Maunwell Ervin?

24 A. Yes.

25 Q. What did you analyze?

MARY BETH COLEMAN-DIRECT EXAMINATION

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1 A. Let me refer to my notes.

2 Q. Absolutely. Take your time.

3 MS. TAYLOR: Your Honor, at this time I would just like
4 to renew that same objection for Ms. Griffin.

5 THE COURT: The same objection is noted and we'll put
6 that on the record momentarily. Do you need to review your
7 notes or are you okay?

8 WITNESS: I need to review.

9 THE COURT: Go ahead.

10 Q. Okay. Are you ready, Ms. Coleman?

11 A. Yes.

12 Q. What was submitted to SLED for analysis in this case?

13 A. A BEST kit was submitted.

14 Q. What was the number on that BEST it?

15 A. The number is B216441.

16 SOLICITOR STUMBO: If I may approach, Your Honor?

17 THE COURT: Yes.

18 Q. I'm going to show you -- and it's leaking a little bit,
19 so I'm going to hold it for you so you don't have to put
20 your hands on it, but I'm going to show you what's been
21 marked for ID only at this point as State's number 23. Is
22 there a number on the BEST kit on the inside of this bag?

23 A. Yes.

24 Q. What is that number, if you can read that for the jury.

25 A. It is B216441.

MARY BETH COLEMAN-DIRECT EXAMINATION

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- 1 Q. Does that correlate with the numbers on your paperwork?
- 2 A. Yes.
- 3 Q. So what is contained here in State's 23 what was
4 submitted to SLED for analysis; correct?
- 5 A. Yes.
- 6 Q. Who initially took this item in at SLED? Take your
7 time if you need to refer to your notes.
- 8 A. Nikki Perry Hughes.
- 9 Q. Okay. She was the intake person?
- 10 A. Yes, sir.
- 11 Q. Ms. Hughes, do you know her?
- 12 A. Yes.
- 13 Q. Does she work in the same building that you work in?
- 14 A. Yes.
- 15 Q. What is Ms. Hughes' role there as a forensic
16 technician?
- 17 A. She works in the evidence login department and logs
18 evidence in from other agencies.
- 19 Q. Logs it in from the agencies and at that point it's
20 given a new number? Is it given a SLED lab number?
- 21 A. Yes.
- 22 Q. Ms. Hughes, does she have any responsibility for
23 opening a BEST kit if it comes into the lab?
- 24 A. No.
- 25 Q. In fact, if she were to open a BEST kit that came in

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- 1 before it got to you for analysis, what would happen?
- 2 A. I would not analyze it.
- 3 Q. And that would be because there's been some
- 4 compromising of the evidence; correct?
- 5 A. Yes.
- 6 Q. According to your paperwork, who took custody of the
- 7 BEST kit that's in State's 23 after Ms. Hughes had it?
- 8 A. Nikki Hughes put it in the storage room and then Amy
- 9 Stevens retrieved it from the storage to give to me.
- 10 Q. So Amy Stevens delivered the BEST kit in State's 23 to
- 11 you; correct?
- 12 A. Yes.
- 13 Q. Now, Ms. Stevens, does she work in your building?
- 14 A. Yes.
- 15 Q. Do you know her well?
- 16 A. Yes.
- 17 Q. Is her role in any way, shape, or form to open up a
- 18 BEST kit before it gets to you?
- 19 A. No.
- 20 Q. Now, this BEST kit in State's 23, when you received it
- 21 from Ms. Stevens, at that point was it tampered with in
- 22 any way?
- 23 A. No.
- 24 Q. Had it been cut open?
- 25 A. No.

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- 1 Q. Had it been torn in any way before it got to you?
- 2 A. No.
- 3 Q. What would you have done with it if it had been
4 tampered with when you received it?
- 5 A. I would've notified my supervisor and we would not have
6 analyzed it.
- 7 Q. So the BEST kit in State's 23 you received un-tampered
8 with as far as you could tell by looking at it;
9 correct?
- 10 A. Yes.
- 11 Q. Now, who was the first person who cut that BEST kit
12 open?
- 13 A. Me.
- 14 Q. You can refer to your notes. What date did you cut
15 open this BEST kit for analysis?
- 16 A. January 25, 2011.
- 17 Q. How soon was this after it had been brought into the
18 agency? What was the day that it was brought in from
19 local law enforcement?
- 20 A. It was submitted on January 24, 2011.
- 21 Q. And it was brought to you the next day for testing
22 then?
- 23 A. Yes.
- 24 Q. What agency brought this BEST kit in?
- 25 A. The Greenwood County Sheriff's Office.

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1 Q. What officer submitted it from the Greenwood County
2 Sheriff's Office?

3 A. Tim Stumbo.

4 Q. And that's where Ms. Hughes then took custody of it
5 from Tim Stumbo at that point; correct?

6 A. Yes.

7 Q. Now, when you cut this bag, this BEST kit, open on
8 January 25th, if you could just describe for the jury
9 what your procedure is. How do you test what's inside?

10 A. Well, before I open it I do look at the bag to make
11 sure that it has not been tampered with. It has a
12 tamper evidence seal at the top. If I think that it
13 has not been tampered with I write "OK" and my initials
14 and the date on the bag. After that I cut open the bag
15 and remove the evidence and I start to record the shape
16 of the evidence, what is in the bag, on a worksheet.
17 After that I perform a chemical test and an
18 instrumental analysis on the evidence.

19 Q. You said an instrumental analysis. Do you test the
20 weight of it first or do you test what the substance
21 is?

22 A. Yes. I also take a weight of the substance.

23 Q. Do you do that before you do an analysis of what the
24 substance is?

25 A. Yes.

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- 1 Q. What did you find that was sealed up inside of the BEST
2 kit in State's 23 when you opened it? What were the
3 bags inside?
- 4 A. May I refer to my notes?
- 5 Q. Absolutely.
- 6 A. There were four plastic bags, each containing rock
7 substance and there was a plastic bag containing a
8 powder substance as well as tablets.
- 9 Q. So there were four bags that had a rocklike substance
10 in it; correct?
- 11 A. Yes.
- 12 Q. And then there was a separate item number that was
13 split into two different things; is that correct?
- 14 A. Yes.
- 15 Q. With whole tablets and then a powder substance. Was it
16 consistent with the whole tablets?
- 17 A. Yes. All of the evidence appeared to be wet or damp.
18 I felt comfortable with separating the whole tablets
19 from what appeared to be crushed tablets.
- 20 Q. When you did that at first it was all in one container,
21 but you separated the powder out from the whole tablets
22 that were left; correct?
- 23 A. Yes.
- 24 Q. And according to your report afterwards it's reflected
25 as two separate items; correct?

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- 1 A. Yes.
- 2 Q. But when you got it out of the BEST kit it was in one
3 bag; correct?
- 4 A. It was in one bag that I separated into two items.
- 5 Q. Now, you indicated that within State's 23, the BEST
6 kit, you had an item that contained four plastic bags
7 that each had a rocklike substance in it. What was
8 found? What were your findings as to those four
9 rocklike substances?
- 10 A. Cocaine base crack was found.
- 11 Q. What was the total weight in those four bags?
- 12 A. 119.0 grams.
- 13 Q. So 119 grams of cocaine base or crack cocaine?
- 14 A. Yes.
- 15 Q. Let's move on to the other one bag that you split into
16 two bags. What was the substance found with the
17 tablets? Did you test those tablets?
- 18 A. Yes. The tablets I found benzylpiperazine, also known
19 as BZP, and methamphetamine.
- 20 Q. BZP, is that a controlled substance under our narcotics
21 laws?
- 22 A. Yes.
- 23 Q. The 14 tablets, the whole tablets that you found, all
24 contained that substance, BZP?
- 25 A. Well, I did not test each individual tablet because

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1 they were all packaged together and, like I said, they
2 were wet. I felt, using my judgement, that they had
3 contaminated one another and so I just took a
4 representative sample scraping from several of the
5 tablets to get my sample.

6 Q. In that sample that you tested it came back positive
7 for the BZP substance?

8 A. Yes.

9 Q. How many tablets were you able to count that were still
10 intact at that point?

11 A. I counted 14 tablets that were whole.

12 Q. Did you also test the powder substance or the crushed
13 up substance that was also in that bag?

14 A. Yes.

15 Q. You tested that separately?

16 A. Yes.

17 Q. What did it contain?

18 A. It contained benzylpiperazine, BZP.

19 Q. What was the weight on that?

20 A. 1.1 grams.

21 Q. So it was a smaller amount?

22 A. Yes.

23 Q. Now, is it uncommon at all, as a drug analyst at SLED,
24 for you to receive pills that have been apparently
25 maybe crushed up into a smaller substance or a powder

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- 1 substance?
- 2 A. It is common.
- 3 Q. In this case, once you pulled these out of the bag you
- 4 had 14 whole tablets and then a smaller amount of
- 5 crushed up powder; correct?
- 6 A. Yes.
- 7 Q. But both of those substances tested positive for BZP;
- 8 correct?
- 9 A. Yes.
- 10 Q. I'm going to hand you what's been marked for ID only at
- 11 this point as State's 20 and State's 21. Do you
- 12 recognize those two documents?
- 13 A. Yes.
- 14 Q. What is State's 20?
- 15 A. This is the chain of custody.
- 16 Q. Is that generated by SLED?
- 17 A. Yes.
- 18 Q. That's generated in the regular course of business at
- 19 the State Law Enforcement Division?
- 20 A. Yes.
- 21 Q. Is this a true and accurate copy of what's in your
- 22 notes?
- 23 A. Yes.
- 24 Q. State's 21, what's that?
- 25 A. This is a drug report.

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1 Q. Is that a report that you generate?

2 A. Yes.

3 Q. As part of your analysis in this case?

4 A. Yes.

5 Q. On page two of State's 21, does that bear your
6 signature?

7 A. Yes.

8 SOLICITOR STUMBO: Your Honor, at this time, sufficient
9 foundation having been laid, we would offer State's 23 into
10 evidence, which is the BEST kit, and State's 20 and 21,
11 which is the chain of custody from SLED and the report from
12 Ms. Coleman.

13 MS. TAYLOR: Just renewing my previous objection.

14 THE COURT: Renewing the previous objection as to 23 or
15 all of them?

16 MS. TAYLOR: Just the BEST kit.

17 THE COURT: Just the BEST kit, so 23 will be in evidence
18 subject to the defense objection. 20 and 21 are in evidence
19 without objection.

20 (Whereupon, State's Exhibits 20, 21, and 23 were placed
21 into evidence.)

22 Q. Just briefly, Ms. Coleman. This outer package here,
23 this vacuum sealed package, who produced that?

24 A. I did.

25 Q. Is that after you finished analyzing this substance in

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- 1 here?
- 2 A. Yes.
- 3 Q. Why do you seal it back up?
- 4 A. Just to contain the evidence.
- 5 Q. For it to be returned to the agency at that point?
- 6 A. Yes.
- 7 Q. So what is in this vacuum sealed package is essentially
- 8 what you cut open and all the contents you put it back
- 9 in this package after you're done with it for return?
- 10 A. Yes.
- 11 SOLICITOR STUMBO: Begging The Court's indulgence, Your
- 12 Honor.
- 13 THE COURT: Yes, sir.
- 14 SOLICITOR STUMBO: No further questions of Ms. Coleman
- 15 at this time.
- 16 MS. TAYLOR: Just a couple.
- 17 CROSS EXAMINATION BY MS. TAYLOR:
- 18 Q. Good afternoon, Ms. Coleman.
- 19 A. Good afternoon.
- 20 Q. Okay. So just to go back to Solicitor Stumbo's direct,
- 21 you described the evidence in that BEST pack as
- 22 contaminated and wet; is that correct?
- 23 A. It was damp -
- 24 Q. It was damp.
- 25 A. --- when I received it.

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- 1 Q. Okay. And just for one second. You see how all these
2 are leaking out? And you'll get this in the jury room.
3 Is that what it looked like when you tested it?
- 4 A. It seems to have gotten worse since I tested it.
- 5 Q. Would you say this was also wet and contaminated when
6 you received it?
- 7 A. The BEST kit was not leaking.
- 8 Q. But all these things that are leaking now, were they
9 similar or were they even a little bit wet?
- 10 A. Well, if you notice the four ziplock bags. I actually
11 re-packed that evidence into the ziplock bags. So I
12 added those bags.
- 13 Q. Right, but the fact that it's leaking. Was it leaking
14 when you got it?
- 15 A. Yes. I mean, it was ---
- 16 Q. It was ---
- 17 A. --- I noted on the worksheet that it was wet.
- 18 Q. Okay. So wet and contaminated would be a fair
19 statement?
- 20 A. Not ---
- 21 Q. Correct?
- 22 A. Not contaminated. I used the word contaminated -
- 23 Q. For the pills.
- 24 A. --- to describe - - yes.
- 25 Q. Okay. I apologize. No further questions. Thank you.

MARY BETH COLEMAN-REDIRECT EXAMINATION

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- 1 REDIRECT EXAMINATION BY SOLICITOR STUMBO:
- 2 Q. Ms. Coleman, is it uncommon for there to be dampness
3 inside a BEST kit when you open it up?
- 4 A. Could you repeat that, please?
- 5 Q. Do you ever, in the 3,000 cases that you've looked at
6 in your time with SLED, have you any other time had
7 wetness on the inside of a BEST kit?
- 8 A. Yes.
- 9 Q. So it's not uncommon; correct?
- 10 A. No.
- 11 Q. Is that common in the field if someone puts something
12 in a BEST kit and seals it and it's damp when they put
13 it in there and it's an airtight seal, it's going to
14 remain damp; correct?
- 15 A. Correct
- 16 Q. In your view that's not -- it didn't compromise the
17 substance ---
- 18 MS. TAYLOR: Objection, Your Honor. Leading the
19 witness.
- 20 THE COURT: Sustained as to leading. Rephrase.
- 21 Q. What's your opinion as to the dampness on the inside of
22 this? Did it affect it in any way?
- 23 A. It did not affect my analysis.
- 24 Q. Do you feel confident in your findings despite the
25 moisture?

1 A. Yes, sir.

2 SOLICITOR STUMBO: No further questions.

3 MS. TAYLOR: Nothing from the defense, Your Honor.

4 THE COURT: Thank you very much, ma'am. You are free to
5 go. Have a nice day. Solicitor, call your next witness,
6 please.

7 MR. TAYLOR: Your Honor, if we could put a few legal
8 matters on the record at this time.

9 THE COURT: Very good. Ladies and gentlemen of the
10 jury, we're going to take a brief break. There's a few
11 things I do need to address with the attorneys. I'll have
12 you back out here hopefully in the next ten or fifteen
13 minutes. Feel free to get yourselves something to drink,
14 relax for a moment, but don't talk about the case yet.
15 Thanks.

16 (Whereupon, the jury exited the courtroom.)

17 SOLICITOR STUMBO: Your Honor, I don't believe I
18 mentioned this before, but I was going to ask that Ms.
19 Coleman be excused to go back to Columbia.

20 THE COURT: I assume that that's not a problem.

21 MS. TAYLOR: No, sir.

22 THE COURT: Very good. You're free to stay. You're
23 free to go. Enjoy your drive back to Columbia if you go.
24 Thanks. This is probably a good opportunity for us to put
25 on the record Ms. Taylor's objections to the chain from

1 earlier this afternoon. You want to start, Ms. Taylor, with
 2 what you spoke to me about at the bench? The primary issue
 3 I think that you had related to I believe it was the fact
 4 that Mr. Budreau ---

5 MS. TAYLOR: The primary issue, Your Honor, is that
 6 Courtney Smith does not have personal knowledge of
 7 everything that took place and all the drugs that were
 8 found. That is evidenced through the fact he could not
 9 clearly identify which officer found the drugs that were
 10 detected by the K-9 dog and the Captain. He misspoke and
 11 said that it was Sergeant Russ when the incident report
 12 clearly states that it was Officer Budreau. He actually, if
 13 we pulled the court reporter's record back up, he said that
 14 he could not be sure who found what without looking at the
 15 incident report, which is just, I mean -- it wasn't drafted
 16 by him. It was drafted by Lieutenant Reeder. He's
 17 admitting, essentially, he has no personal knowledge of
 18 every single drug that was confiscated. So I am arguing
 19 that the chain of custody has not been proven. We don't
 20 have original finders and holders of these drugs in order to
 21 admit them into evidence. Under that, I believe they should
 22 all be excluded.

23 THE COURT: Mr. Taylor?

24 MR. TAYLOR: Judge, just very briefly. Agent Smith
 25 testified he saw all the drugs that were found. Dyar

1 Archibald testified he was the one that packaged them up and
2 started the chain. I understand what Ms. Taylor is saying.
3 I think found is the word, but that doesn't mean they picked
4 them up, put them in their pocket, held on to them. They
5 pointed them out and Dyar Archibald came in, bagged them up,
6 logged them in. The stuff is in evidence already,
7 especially the marijuana, was already in evidence before the
8 objection. That would be our position, Judge.

9 MS. TAYLOR: Your Honor, just to be clear, Courtney
10 Smith testified that he could not be sure about what was
11 found without referencing the incident report. Archibald
12 testified that he did not, himself, find any drugs, and he
13 was not present when all the drugs were found. He simply
14 collected them and placed them into BEST packs. So my
15 argument is that the first person to find the drugs and
16 touch them is the first person beginning the chain of
17 custody. If that person is not here to testify to what they
18 found and what they touched and then passed down the chain
19 to someone else, we don't have an accurate reflection of
20 what the chain of custody was. Courtney Smith admitted that
21 he could not -- he said at first he knew everything that
22 happened, but then he quickly stumbled upon which officer
23 found what and admitted he could not give an honest
24 depiction without referencing the incident report. So he's
25 going off of the incident report, not his personal knowledge

1 of witnessing what happened. We argue that Lieutenant
2 Reeder would have to be here or Officer Budreau, or Sergeant
3 Russ. Any of the three officers that actually found the
4 drugs in this case, one of them could be here to testify to
5 that we might have a chain of custody, but none of them are
6 here.

7 SOLICITOR STUMBO: Your Honor, just a couple of
8 counterpoints to point out Agent Smith's testimony. One,
9 all the pictures came in through him. He took all the
10 pictures and we've got pictures in evidence that show where
11 the drugs are in the bedpost, in the potato chip can, behind
12 where they were placed without being moved, on the kitchen
13 shelf. He took all those pictures and actually, physically
14 observed everything before it was moved from its position
15 where it was found by the other officers, so I fail to see
16 the argument here that somehow either he's in the chain or
17 these other officers that she references. Mr. Archibald is
18 the one that collects each piece of evidence where it is and
19 he testified that it was unmolested. Nothing was added to
20 it. Nothing was taken away from it. That it was just as it
21 was found when he packaged it up. Agent Smith testified, "I
22 took the pictures." We've got the pictures in evidence that
23 show marijuana and crack cocaine that's in evidence now in
24 the bedpost and the other places in the house. So there's
25 no chain problem whatsoever in this case, Your Honor. We

1 would completely dispute that.

2 MS. TAYLOR: Your Honor, he took the pictures. I'm not
3 disputing that. We have no indication how long it was, when
4 they found the drugs, when the pictures were taken, how many
5 times -- I mean, that's just -- the fact that he took the
6 pictures is not putting him as the first person in the chain
7 of custody. That's just not how chain of custody works.
8 The person that found the drugs -- and again, Your Honor, we
9 had three officers in this case that actually found drugs in
10 this house. None of those three came to testify today to
11 talk about what they found. Not one. We have the person
12 that actually zipped it up in the BEST case, who already
13 said he was not there when all the drugs were found, nor did
14 he personally witness it. Courtney Smith, who said he did
15 witness everything, but then gets it confused as to who
16 found what where. I just think that for Your Honor to
17 ignore this chain of custody issue is just grounds for an
18 appeal at this point, Your Honor.

19 THE COURT: May well be the case. As I understand the
20 law, though, the chain does not have to negate every
21 possible or every potential possibility of tampering. The
22 purpose of chain of custody, for fungible items is very
23 simple; that where evidence passes through several hands the
24 court should not be left to conjecture as far as who had it
25 and what was done with it between the time that it was

1 seized and the time that it was tested. In this case, we
2 have photographs of the items being located where they were
3 found. We have the testimony of the various officers who
4 handled the evidence, took the evidence, transported the
5 evidence, and ultimately the Sergeant and the SLED
6 technician who tested the evidence. Looking at the evidence
7 as a whole I understand and respect your position, Ms.
8 Taylor, that it would be necessary to have the person who
9 actually found the items, but based upon the evidence as a
10 whole I do believe that the state has proven a sufficient
11 chain in order to warrant admissibility and that was
12 essentially what my ruling was at the bench. Clearly any
13 gaps in the chain or any problems with the chain, that goes
14 to the weight and not necessarily the admissibility of the
15 evidence and certainly you are at liberty and I imagine you
16 will be arguing, in closing, concerning the moisture in the
17 bags, the twenty-one versus fourteen pills, et cetera. That
18 is clearly your prerogative to argue that, but in so far as
19 we're dealing with the limited issue of admissibility I do
20 find that the state has sufficiently demonstrated the chain
21 to warrant admission of those items that we've discussed.

22 MR. TAYLOR: The case on point for that State vs.
23 Hatcher. I just wanted to put that on the record. I don't
24 have the site off hand.

25 THE COURT: It's a fairly recent one, isn't it?

1 MR. TAYLOR: Yes, sir.

2 THE COURT: Taylor is the one that I -- it basically
3 restated Taylor from 2004.

4 MR. TAYLOR: It did. It was a 2011 case, Judge.

5 THE COURT: Very good. Anything else, Solicitor, that
6 you needed to put on the record before we proceed?

7 SOLICITOR STUMBO: Your Honor, I think at this time
8 we're going to have to break for the day and I'm going to
9 tell you why. After the court's ruling earlier I thought
10 about making another argument about the unavailability of
11 Detective Reeder. He is actually in some training this week
12 not in town. It was our intention not to call him. I
13 understand the court's ruling. We do believe there may be
14 some good faith argument here that under Rule 804B1, because
15 of his prior testimony under which he was subject to cross
16 examination he would not be here for. Agent Smith would be
17 able to the fact that Miranda was given by Agent Reeder.
18 That being said, Your Honor, we have taken a further look at
19 it over the lunch break. We have decided to get Agent
20 Reeder -- excuse me, Captain Reeder, back here for
21 testimony. We think it's the prudent thing to do. We are
22 bearing, essentially, the expense for that, but he is not
23 going to be here until first thing in the morning.

24 THE COURT: Where is he, out of curiosity?

25 SOLICITOR STUMBO: He's in Texas.

1 THE COURT: I see. I didn't realize that he was
2 unavailable. I understand, but I think you're probably
3 making a wise decision if you want to move forward with the
4 evidence you're seeking to introduce.

5 SOLICITOR STUMBO: Well, this is an important enough
6 case for our office with the Sheriff's Department, Your
7 Honor, where we believe that it's worth the expenditure and
8 we're going to make it happen. But that being said, he's
9 our next witness and we're going to need to call him at 9:00
10 in the morning if we can, or 9:30. I guess we can start at
11 9:30, but he's going to have to get on a plane and go back.

12 THE COURT: Do you anticipate him being your final
13 witness?

14 SOLICITOR STUMBO: Our intention, Your Honor, is to
15 recall Agent Smith.

16 THE COURT: After that?

17 SOLICITOR STUMBO: Correct. And then he would be our
18 final witness.

19 THE COURT: I think you had mentioned at the sidebar
20 that Jason Budreau is on honeymoon; correct?

21 SOLICITOR STUMBO: That's correct, Your Honor, and I --
22 there again we've dealt with chain issues. We called him in
23 the first trial, really for edification of the jury to hear
24 from the K-9 officer. Obviously I didn't want to mess up
25 his honeymoon. I was at his wedding on Saturday. So we're

1 not going to pull him back.

2 THE COURT: I understand. Very good. Anything else
3 that we need to address as far as the defense is concerned
4 at this point?

5 MS. TAYLOR: Not at this point, Your Honor.

6 THE COURT: Very good. Let's have the jury back in
7 here, please.

8 (Whereupon, the jury entered the courtroom.)

9 THE COURT: Ladies and gentlemen of the jury, please
10 don't get too comfortable because in a few moments I'm going
11 to be releasing you for the day and I'll tell you why.
12 We've moved a little bit quicker than I had anticipated and
13 that all of the parties had anticipated. There is still
14 another witness who needs to testify, but they simply aren't
15 available right now, but they will be here in the morning.
16 In all likelihood this case would've gone into the morning
17 anyway because of the concerns that we had about breaking at
18 5:00, so we're really not losing anything by just
19 reconvening tomorrow morning. I'll ask you to be back in
20 the jury room, if you would, by 9:30 tomorrow morning at
21 which point we'll continue with the trial and I anticipate
22 hopefully sometime tomorrow we will be done with all the
23 testimony and you'll have heard the argument and the charge
24 from this court. Same admonition as yesterday, don't read
25 anything about this in the paper. I know that there is a

1 reporter here from the Index Journal, so if your habit is
2 the same as mine to go out to the mailbox in the morning and
3 get the paper, well, for one day you're going to have to
4 break your habit and your routine. Just don't look at the
5 paper tomorrow morning. Okay? Don't talk to anybody about
6 the case. Aside from that, keep the badges. Wear them back
7 tomorrow. Have a great evening and I will see you tomorrow
8 morning at 9:30. Thank you very much.

9 (Whereupon, the jury exited the courtroom for the day
10 at 4:30 p.m.)

11 THE COURT: The jury is out. We'll be at ease until
12 tomorrow morning, but before y'all go, Mr. Taylor and Ms.
13 Taylor, I'm going to go ahead and email y'all the
14 instructions. They're not substantially different from the
15 ones I gave in the first trial with the exception of the
16 deletion of the firearms charge where Mr. Ervin was
17 acquitted on that offense and the addition of the possession
18 of benzyloperazine. Am I pronouncing that correctly?

19 MR. TAYLOR: I'm just saying controlled substance,
20 Judge.

21 THE COURT: BZP.

22 MS. TAYLOR: Your Honor, remind me if I'm wrong. Did
23 you charge on mere presence in the previous trial?

24 THE COURT: I will double check and certainly if you
25 want me to charge mere presence that's something we can

1 discuss, perhaps tomorrow morning. If you have something
2 that you would suggest. I can't remember offhand. I looked
3 at the charge that I gave.

4 MS. TAYLOR: I know we added one, but I couldn't
5 remember which one it was.

6 SOLICITOR STUMBO: Judge, could you copy me on that too?

7 THE COURT: Sure. When I was modifying the charge I gave
8 in January my only concern was getting the offenses right,
9 so I have not gone through the substance of it as much as I
10 normally would, but I'll double check that and certainly
11 consider a mere presence request from you.

12 (Whereupon, the court was in recess at 4:35 p.m.)

13 TRIAL DAY 3: 07/24/2013

14 BAILIFF: All rise. Court come to order.

15 THE COURT: Thank you. You may be seated.

16 (Whereupon, the court conferred with the court reporter
17 and a bench conference took place.)

18 (Whereupon, incident report, was marked as Court's
19 Exhibit 4.)

20 THE COURT: If we may we are going to go ahead and go
21 back on the record in the *State vs. Maunwell Ervin*. There
22 have been some developments as of last evening and I've been
23 discussing these issues with the attorneys in chambers prior
24 to coming out here and going on the record. I've marked as

1 Court's Exhibit number 4 an incident report which is derived
2 from an allegation that Rhenatta Lake made contact with one
3 of the jurors, a Ms. Warren. The record should reflect that
4 this morning I requested that Ms. Warren be separated from
5 the rest of the jury panel. We have all twelve jurors here
6 and Ms. Warren has been separated. In discussing this
7 matter with the attorneys in chambers, it's my intention at
8 the outset to inquire of Ms. Warren about the incident and
9 whether or not the contact that was made by Ms. Lake would
10 prejudice her or otherwise affect her ability to remain fair
11 and impartial and judge this case solely on the evidence as
12 presented. At that point in time -- and again, I've related
13 this decision to the attorneys, at that point in time we
14 will take a brief break of no more than five minutes or so,
15 so that we can assess where we stand depending upon Ms.
16 Warren's responses to my questions. So that's what we're
17 going to do at this point. Obviously we're at a stage where
18 we have twelve jurors. We've used the alternate. I know
19 that the Solicitor's office has been in contact with various
20 law enforcement individuals. It's the Solicitor's intention
21 to go ahead and seek a warrant against Ms. Lake. The court
22 will also at this point in time be issuing a bench warrant
23 against Ms. Lake and instructing the Solicitor to institute
24 contempt proceedings against her. This is potentially
25 indirect criminal contempt, so obviously Ms. Lake cannot be

1 summarily be found in contempt and the procedural
2 requirements will have to be followed in order to decide
3 exactly what took place last night. So, at this point in
4 time we're going to go ahead and bring out Ms. Warren if we
5 would, Mr. Willingham, and let me just ask her a few
6 questions, please.

7 (Whereupon, juror entered the courtroom to confer with
8 the court.)

9 THE COURT: Good morning, Ms. Warren. How are you?

10 JUROR: Fine.

11 Q. First of all, I apologize for keeping you in the room
12 separate from the other jurors, okay. The purpose in
13 doing that was that obviously I was informed of what
14 happened, what transpired last night when you were
15 contacted by somebody about this case.

16 A. Okay.

17 Q. The first thing I want to tell you is you did the right
18 thing; okay? You did exactly what you should've done
19 and intuitively you did it even though I didn't tell
20 you to contact the police if there was contact made
21 with you. So the fact that you did what you did is
22 exactly what you needed to do; okay? And I wanted to
23 reassure you of that. The first question I have for
24 you is -- and I believe I know the answer since I think
25 that they probably put you in that separate room before.

1 you ever got into the jury room. Is that right?

2 A. Uh-huh.

3 Q. So you have not discussed this incident last night with

4 any of the other jurors?

5 A. No.

6 Q. Okay. Now, Ms. Warren, I did read the incident report

7 and basically last night you explained to the

8 individual who contacted you that you could not discuss

9 this case with anyone. You followed my instructions

10 and basically you cut the conversation off then

11 contacted the police. Is that what happened?

12 A. Yes, sir. Uh-huh.

13 Q. Ms. Warren, you're still a juror on this case. The key

14 question I've got for you is despite what happened last

15 night, can you set that aside and still remain fair and

16 impartial and judge this case solely on the evidence

17 involved?

18 A. Yes.

19 Q. You're certain of that?

20 A. Yes.

21 Q. So you can put the incident last night completely out

22 of your mind and give a fair trial to both the

23 defendant and the state, despite what happened?

24 A. Yes.

25 Q. You're certain of that?

1 A. Yes.

2 Q. Very good. At this point in time, Ms. Warren, what I'm
3 going to ask you to do is if you would -- I hate to put
4 you back in that room that's much more uncomfortable,
5 but if you would just return to that room for a few
6 moments. There are some issues that I need to take up
7 out here concerning this and then we'll hopefully
8 proceed and be in a position to go forward. When you
9 do rejoin the jury, obviously don't discuss this
10 incident from last night with any of them; okay?

11 A. Okay.

12 Q. I appreciate that, Ms. Warren. Thank you very much for
13 knowing what to do when you had to do it. Thank you.

14 (Whereupon, juror exited the courtroom.)

15 THE COURT: Ms. Warren is out. At this point in time is
16 there anything that anyone needs to discuss with me about
17 her responses to my questions? I know that in chambers the
18 defense had told me that they were inclined to request that
19 she be released. My inclination, after discussions with her
20 and having a chance to view her credibility -- my
21 inclination is that if the defense is okay to go with 11
22 jurors I am okay to release her, but otherwise I really
23 don't see where this incident last night was so detrimental
24 to her impartiality that she could not serve as a juror. So
25 if we need to go with 12 I think we can go with 12. At the

1 same time, if the defense -- I'll leave it up to the defense
2 as to whether or not they would like to ask Ms. Warren to be
3 relieved and simply go along with 12 or any other motions
4 that they may want to address. I would note that at this
5 point in time, Solicitor, is there any indication that the
6 defendant -- or is this an open question. Is there any
7 indication in your mind that the defendant had prompted Ms.
8 Lake to engage in this conduct?

9 SOLICITOR STUMBO: It's still under investigation, Your
10 Honor. At this time I don't want to answer one way or the
11 other.

12 THE COURT: You don't know at this point is what you're
13 telling me.

14 SOLICITOR STUMBO: That's exactly right. As to Ms.
15 Warren's answers, we're obviously very satisfied that she
16 can be fair to us and to the defense here and we're ready to
17 proceed, Judge.

18 THE COURT: Very good. We are under a timetable,
19 because I know that one of the witnesses has got to catch a
20 flight and they need to be out of here and on the road in
21 the next hour and 40 minutes, maybe. 11:30 would be the
22 latest. An hour and ten minutes. 11:30 would be the latest
23 that they would be able to catch that flight. Ms. Taylor,
24 obviously I can give you about five or ten minutes to
25 discuss this with your client, but we have to move forward

1 one way or another.

2 MS. TAYLOR: Thank you, Your Honor.

3 THE COURT: Thank you. We'll be at ease for about five
4 or ten minutes. Madame Clerk, if you would issue that bench
5 warrant for me, please.

6 BAILIFF: Judge, hold on.

7 THE COURT: What? She wants to change her mind?

8 BAILIFF: Yes.

9 THE COURT: We're going to go back on the record. Mr.
10 Willingham has just informed me that the juror, Ms. Warren,
11 perhaps has had some second thoughts. I'm going to ask her
12 to step back out here and just tell me what she wants to
13 tell me.

14 (Whereupon the juror entered the courtroom.)

15 THE COURT: Ms. Warren, Mr. Willingham, the Bailiff,
16 told me that you had thought about this a little bit more.
17 Is there something you need to tell me, ma'am?

18 JUROR: Yeah. I thought about it a little bit more. I
19 don't think I'd be able to do it.

20 THE COURT: You can't do it?

21 JUROR: No.

22 THE COURT: Very good, Ms. Warren. If that's the
23 situation then I'll release you. I appreciate you coming
24 and I appreciate you doing what you did last night and
25 having the presence of mind to do it; okay?

1 JUROR: Okay.

2 THE COURT: You may be contacted at a later point in
3 time by an investigator or somebody else, because obviously
4 this is a fairly serious situation anytime you have someone
5 contacting a juror in the manner that they did. Just
6 cooperate with them if you would and I would appreciate it.
7 Thank you very much for your candor and your willingness to
8 do what you need to do. Hand the button to the bailiff.
9 Thank you and I'll see you later, Ms. Warren.

10 JUROR: Thank you.

11 (Whereupon, the juror was dismissed and exited the
12 courtroom.)

13 THE COURT: We will be at ease for about five or ten
14 minutes while you discuss this with Mr. Ervin, Ms. Taylor.

15 (Whereupon, the court was in a brief recess.)

16 THE COURT: We are back on the record in the *State vs.*
17 *Maunwell Ervin*, who is present. Ms. Taylor, you've had a
18 chance to discuss with your client where we stand. What's
19 your position, please?

20 MS. TAYLOR: Your Honor, like I discussed in chambers I
21 would like to get him under oath and have him read into the
22 record his decision, just for protection.

23 THE COURT: Very good. Mr. Ervin, if you would, you can
24 stay seated if you want, but just raise your right hand. I
25 need to put you under oath, sir.

1 MAUNWELL ERVIN, having first been duly sworn,
2 testified as follows:

3 Q. You are Maunwell Ervin?

4 A. Yes, sir.

5 Q. You've been discussing this with your attorney, the
6 situation that we're in. We have 11 jurors at this
7 point in time. The question is whether we proceed or
8 whether you waive your statutory right to a 12 person
9 jury and we proceed with 11, or whether you're going to
10 ask your attorney to declare a mistrial in this case.
11 That's essentially the question before us right now, or
12 before you. You have discussed this with your
13 attorney; is that correct?

14 A. Yes, sir.

15 Q. What would your preference be, sir?

16 A. We're going to continue.

17 Q. I'm sorry?

18 A. We'll move forward with 11.

19 Q. You want to move forward with 11; is that correct, sir?

20 A. Yes, sir.

21 Q. So you're okay to proceed with 11 jurors? Is that
22 right?

23 A. Yes, sir.

24 Q. Very good.

25 MS. TAYLOR: Your Honor, just briefly while we're on the

1 record, I would just like to note that my client's right to
2 cross examine should not be limited to a certain time delay
3 on a date certain trial by a crucial witness in the case.
4 While I will make every effort to ensure that Mr. Reeder is
5 free to go, I don't want to be impeded as far as completing
6 my cross examination due to that.

7 THE COURT: I understand. Anything further from the
8 state?

9 SOLICITOR STUMBO: Your Honor, I'm not sure if we need
10 to poll the jury or give an additional instruction when they
11 come out before we start back. If you would just instruct
12 them to pass a note to the bailiff if they've had any
13 contact. I know we discussed that in chambers. Then we can
14 proceed and if you get a note or some kind of contact then
15 we can deal with it as it comes.

16 THE COURT: That will be my intention. Mr. Willingham,
17 let's have the jury, please.

18 (Whereupon, the jury entered the courtroom at 10:42
19 a.m.)

20 THE COURT: Let the record reflect that the jury is back
21 and seated. Ladies and gentlemen of the jury, I know that
22 y'all were here on time. I'm sure you realize that we're
23 short one juror, but we're going to be proceeding
24 nonetheless. I apologize for keeping you waiting back
25 there. All I can tell you is that I assure that the delay

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1 was necessary. I assure you that there was no way to avoid
2 it. I assure you that I am very sorry for having caused you
3 to sit back there for so long. One thing I do want to
4 mention to you before we proceed with the trial is if at any
5 time someone attempts to contact you or if anyone has
6 attempted to contact you while this trial is going on what I
7 want you to do is during the next break I want you to send a
8 note by way of the bailiff informing me of what happened;
9 okay? Similarly, if anybody tries to contact you while the
10 case is ongoing, I want you to immediately contact law
11 enforcement. Report that to them or report it to the
12 bailiff if you're here in the courthouse; okay? Now, with
13 that we are still in the state's case in chief. Mr. Taylor,
14 if you would call your next witness please, sir.

15 SOLICITOR STUMBO: Your Honor, the state calls Captain
16 Jarvis Reeder to the stand.

17 THE COURT: Come up, please, Mr. Reeder.

18 JARVIS REEDER, having first been duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION BY SOLICITOR STUMBO:

21 Q. Good morning, Captain Reeder.

22 A. Good morning.

23 Q. You work with the Sheriff's Department?

24 A. I do.

25 Q. For Greenwood County?

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- 1 A. Yes.
- 2 Q. What is your current role there at the Sheriff's
3 Department?
- 4 A. I am the Captain of the criminal investigation division
5 as well as the narcotics unit.
- 6 Q. You were recently promoted to that position?
- 7 A. Yes.
- 8 Q. Before you were captain over investigations, what was
9 your rank and your role there at the Sheriff's
10 Department?
- 11 A. I was a lieutenant and I was the commander of the Drug
12 Enforcement Unit.
- 13 Q. The Drug Enforcement Unit is a task force with the city
14 and county. Is that correct?
- 15 A. Yes. Greenwood County Drug Enforcement Unit is a task
16 force primarily consisting of officers from the
17 Greenwood City Police Department and the Greenwood
18 County Sheriff's Office.
- 19 Q. And you were the commander over that unit?
- 20 A. Yes, sir.
- 21 Q. Captain Reeder, about how many cases during the course
22 of your time with the Drug Enforcement Unit, do you
23 think you've investigated?
- 24 A. A hundred or so.
- 25 Q. Was one of the cases you worked on as commander of that

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- 1 unit involving the defendant, Maunwell Ervin?
- 2 A. Yes, sir.
- 3 Q. Is he in the courtroom today?
- 4 A. Yes. He's sitting there with the plaid shirt on.
- 5 Q. You're familiar with him?
- 6 A. I am.
- 7 Q. Where was he residing, to your knowledge, at the time
- 8 you investigated him back in December 2010?
- 9 A. [REDACTED], which is located in the city of
- 10 Greenwood.
- 11 Q. Is that Lawson Street down by Lander?
- 12 A. Yes. It's directly behind Lander University.
- 13 Q. Did you have occasion, through the course of your
- 14 investigation, to obtain a search warrant for [REDACTED]
- 15 [REDACTED]?
- 16 A. I did.
- 17 Q. And that was information developed from what,
- 18 surveillance? Sources?
- 19 A. Prior to that we had received information that this was
- 20 a house involved in illegal drug activity and then I
- 21 think we received information from a burglary.
- 22 Q. Then did you conduct some surveillance on that house
- 23 yourself?
- 24 A. Yes.
- 25 Q. Based on that information you were able to gather, did

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- 1 you document that in a search warrant affidavit?
- 2 A. Yes, I did.
- 3 Q. And you applied for a warrant from a judge?
- 4 A. I did.
- 5 Q. Did you obtain the warrant from the judge?
- 6 A. I did.
- 7 Q. What was the date that you and your drug enforcement
- 8 team executed that search warrant?
- 9 A. We executed the search warrant on December 9, 2010.
- 10 Q. Was that late at night or during the day? What time of
- 11 day was it?
- 12 A. 2100 hours. Around 2114, which means around nine that
- 13 night.
- 14 Q. As commander of the unit, how did you organize your
- 15 team? How did y'all go in and execute this search
- 16 warrant?
- 17 A. We used the Greenwood County SWAT team, which is a SWAT
- 18 team composed of Greenwood County officers and officers
- 19 from the Greenwood City Police Department to execute
- 20 that warrant.
- 21 Q. Did the SWAT team go in first?
- 22 A. Yes. What happened is the SWAT team goes in, secures
- 23 the residence, secures all occupants in the residence,
- 24 and then they turn the scene over to the Drug
- 25 Enforcement Unit.

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- 1 Q. Who was in this residence at [REDACTED] when the team
2 goes into the house that night?
- 3 A. The defendant, Maunwell Ervin, and a Benoit Bush.
- 4 Q. At that time did you take Mr. Ervin, the defendant, and
5 Mr. Bush into custody?
- 6 A. At that time they were placed, once the SWAT team
7 entered, they secured everyone in the residence with
8 handcuffs and they were brought into a front room where
9 I observed them at.
- 10 Q. That's for purposes of officer safety?
- 11 A. Yes.
- 12 Q. To secure the residence while you sweep the home for
13 weapons and such?
- 14 A. Yes.
- 15 Q. Captain Reeder, at that point did you have any contact
16 or say anything to Mr. Ervin at that time?
- 17 A. I did. At that time he and Mr. Bush was in handcuffs
18 in the front room and I read them both their Miranda
19 Rights.
- 20 Q. Did you inform them why you were there?
- 21 A. Yes.
- 22 Q. And served a copy of the search warrant?
- 23 A. I did.
- 24 Q. Now, you say you read him the Miranda Rights. How did
25 you read him those rights? Off a card?

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1 A. No. It's just my practice that anytime we secure
2 anybody that I read them their Miranda Rights. I
3 basically told him that they're not under arrest, but
4 they have the right to remain silent. Anything they
5 say can be used against them in court. They also have
6 the right to talk to an attorney. If they can't afford
7 one. They also have the right to stop answering any
8 questions and at any time to consult an attorney. Then
9 I asked them if they understood their rights. Mr.
10 Ervin stated that he understood his rights and Mr. Bush
11 stated that he understood his rights.

12 Q. Did they at any time exercise their right to remain
13 silent? Let me back up. Did he at any time, Mr.
14 Ervin, exercise his right to an attorney?

15 A. No.

16 Q. At any time did he say he didn't want to talk to you?

17 A. No.

18 Q. Did at any time you pressure him or threaten him in any
19 way to say anything?

20 A. No, sir.

21 Q. He appeared to understand these rights as you read them
22 to him?

23 A. Yes. He told me he understood his rights.

24 Q. Were the other members of your unit there in the room
25 as you read these rights?

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- 1 A. Uh-huh.
- 2 Q. Now, subsequent or after you reading him his rights,
3 did he make any statements of any sort to you, Captain
4 Reeder?
- 5 A. He did. Once we started searching the residence he
6 stated that Mr. Bush didn't have anything to do with
7 what was in that house or that residence.
- 8 Q. We have a series of pictures. I beg the court's
9 indulgence, Your Honor. I don't think we have the
10 evidence out here, but I'm going to ask the witness
11 questions at this point. Captain Reeder, were there
12 any narcotics found in the residence?
- 13 A. Yes.
- 14 Q. Did you take part in a search of the back bedroom of
15 the house?
- 16 A. I did.
- 17 Q. How many bedrooms were there in this house?
- 18 A. I can remember one bedroom with a bed in it. There
19 were several rooms in the house, but I remember one
20 bedroom.
- 21 Q. There was only bed in the house.
- 22 A. Right.
- 23 Q. And were there any narcotics found in that bed?
- 24 A. Yes.
- 25 Q. Where were they found?

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- 1 A. They were found located in a bedpost of -- like a
2 headboard.
- 3 Q. In the post of the bed?
- 4 A. Inside the -- yes, sir.
- 5 Q. So it was hollowed out for purposes of hiding those
6 narcotics?
- 7 A. Possibly.
- 8 Q. Did it appear to be?
- 9 A. Yeah, it appeared to be.
- 10 Q. Were there digital scales found in the house?
- 11 A. Yes, sir.
- 12 Q. What types of drugs were found in the house?
- 13 A. There was crack cocaine, marijuana, and ecstasy
- 14 Q. Were those items field tested and weighed by y'all when
15 you first obtained them?
- 16 A. Yes. I think we seized 127 grams of cocaine, 291 grams
17 of marijuana, 21 ecstasy pills.
- 18 Q. Ultimately, after they're collected, they're taken
19 somewhere else to be tested in a lab later?
- 20 A. That's right.
- 21 Q. Who does that?
- 22 A. SLED.
- 23 Q. That, to your knowledge, was done in this case?
- 24 A. Yes.
- 25 Q. I'm going to show you two pictures up on the screen.

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1 Let me know if you can see them or if you cannot. I'll
2 show you first what's been marked as State's Exhibit
3 11.

4 THE COURT: If you need to step down, go ahead and move
5 around so that you can see the screen better, please.

6 (Witness complied.)

7 Q. Does this look familiar to yo?

8 A. Yes.

9 Q. Is this the inside of that bedpost?

10 A. Yes, sir.

11 Q. What types of narcotics did you find inside that
12 bedpost?

13 A. Marijuana and crack cocaine.

14 Q. I'll show you State's Exhibit 9 now here on the screen.
15 I believe as well State's Exhibit 22. Does that look
16 familiar to you?

17 A. Can I remove it?

18 Q. Sure.

19 A. Yes, sir.

20 Q. Was this potato chip canister found in the house?

21 A. Yes, sir.

22 Q. What was inside of that canister?

23 A. Crack cocaine. What I refer to as crack cookies,
24 because they resemble cookies.

25 Q. That's what's reflected here in State's Exhibit 9?

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- 1 A. Yes.
- 2 Q. That's as you remember it that night when y'all found
3 it?
- 4 A. Yes.
- 5 Q. Now, was there another officer that is part of your
6 team that's responsible for collecting the evidence in
7 the house?
- 8 A. Yes.
- 9 Q. That wasn't you that night, was it?
- 10 A. No, sir.
- 11 Q. But you observed these narcotics at that time?
- 12 A. Uh-huh. I did.
- 13 Q. Another member of the team actually collected them and
14 took them to evidence?
- 15 A. Yes, sir.
- 16 Q. Do you remember who that was? You can refresh your
17 recollection.
- 18 A. I'm thinking Sergeant Russ maybe. I'm not really sure.
- 19 Q. It's not in your report?
- 20 A. No.
- 21 Q. But you had another agent on scene there that night
22 that actually put the narcotics into the bags and start
23 the chain of custody; correct?
- 24 A. Yes.
- 25 Q. I'm going to show you State's Exhibit 24, what's

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- 1 already in evidence. What's in State's 24?
- 2 A. Digital scales.
- 3 Q. What's the significance of finding these in the house?
- 4 A. They were going to distribute illegal drugs. Weigh the
5 amount out that people buy.
- 6 Q. Did you have any other indication that night, Captain
7 Reeder, that any other people lived in that house other
8 than the defendant?
- 9 A. From my information I knew that there was a Brent Ervin
10 that possibly lived there as well. He wasn't there
11 when we executed the search warrant.
- 12 Q. Is he related to Mr. Ervin?
- 13 A. I think they're cousins.
- 14 Q. He wasn't there the night y'all executed the search
15 warrant?
- 16 A. No, sir.
- 17 Q. Just to reiterate, under Miranda after you've read him
18 his rights, Mr. Ervin states to you that the other guy,
19 Mr. Bush, he didn't have anything to do with what y'all
20 found in the residence that night?
- 21 A. That's right.
- 22 Q. Captain Reeder, one last question and then I'm going to
23 sit down. You state there's one bed in the house
24 total. Were there any other beds in this residence?
- 25 A. No. Not that I remember.

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- 1 Q. Any other mattresses?
- 2 A. Not that I remember.
- 3 Q. Sleeping bags?
- 4 A. Not that I recall.
- 5 Q. Or a pillow somewhere else in the house?
- 6 A. I don't remember seeing -- I saw a couch in the front
7 room and a bed in the back room.
- 8 Q. So it appeared that one person lived in that house?
- 9 A. Yes, sir.
- 10 Q. This defendant, Maunwell Ervin, is the one in the home
11 when you execute the search warrant?
- 12 A. Yes. He was in the house.
- 13 Q. Brent Ervin wasn't there; correct?
- 14 A. No, sir.
- 15 Q. No further questions at this time.
- 16 THE COURT: Ms. Taylor, cross.
- 17 CROSS EXAMINATION BY MS. TAYLOR:
- 18 Q. Good morning, Captain Reeder. How are you?
- 19 A. I'm fine.
- 20 Q. Good. All right. Just a couple of questions. You've
21 been promoted since this investigation; correct? At
22 this time you were a lieutenant.
- 23 A. Yes.
- 24 Q. When it took place. Okay. Can you just detail a
25 little bit -- you said you were the commander of the

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- 1 Drug Enforcement Unit: What does that mean your job
2 is?
- 3 A. I'm the supervisor of that unit.
- 4 Q. Okay. So that means you oversee all the officers
5 underneath?
- 6 A. Yes.
- 7 Q. Okay. So do you look over any notes they may have
8 turned in or ask them any questions about what they
9 found?
- 10 A. Not necessarily. I don't micro-manage them.
- 11 Q. You don't micro-manage them.
- 12 A. No.
- 13 Q. But you had to have some kind of conversation, because
14 you drafted the incident report. So you had to
15 communicate what they found so you could make an
16 accurate reflection.
- 17 A. Yes.
- 18 Q. Okay. And you said that you've handled over a hundred
19 cases.
- 20 A. Yes.
- 21 Q. Is that what you said? Okay. And you've been trained
22 by the DEA. Is that correct?
- 23 A. I have received training. I was assigned to a federal
24 government task force, Drug Enforcement Administration.
25 I've also been to numerous narcotics trainings and

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- 1 classes as well.
- 2 Q. Okay. And in that training anytime did they ask you or
- 3 did they tell you it would be good procedure to take
- 4 notes on anything?
- 5 A. I've never seen anything that says you have to take
- 6 notes.
- 7 Q. You've never seen anything or they've never told you?
- 8 A. I've never seen anything in writing that says that I
- 9 have to take notes.
- 10 Q. Okay. Did anybody suggest that that might be a good
- 11 procedure to follow?
- 12 A. Possibly, yes.
- 13 Q. Okay. Give me just one second. All right, in this
- 14 particular case, what's the first thing you do when you
- 15 get a tip or information that drug related activity is
- 16 occurring at a certain place?
- 17 A. Verify the residence.
- 18 Q. Verify the residence. And how do you do that?
- 19 A. Ride by. Conduct surveillance.
- 20 Q. Surveillance, okay. So you personally surveilled the
- 21 house of [REDACTED]; correct?
- 22 A. I did.
- 23 Q. Okay. And through that surveillance you were able to
- 24 ascertain that two individuals resided there; correct?
- 25 A. Yes.

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- 1 Q. Those two individuals would be Maunwell Ervin and Brent
2 Ervin; correct?
- 3 A. Yes.
- 4 Q. You received tips that Brent Ervin was a known drug
5 dealer in the community; correct?
- 6 A. I received tips that both Brent and Maunwell were drug
7 dealers in the community.
- 8 Q. That wasn't the question. Just -- you received tip
9 that Brent Ervin was a drug dealer; correct?
- 10 A. I received tips that both Brent and Maunwell were drug
11 dealers.
- 12 MS. TAYLOR: Your Honor, if you could instruct him to
13 please answer my question.
- 14 THE COURT: If you would answer with a "yes". I think
15 we understand.
- 16 MS. TAYLOR: Yes. We understand. Thank you. Okay.
- 17 Q. So how long did you surveil the premises?
- 18 A. About two weeks prior to my affidavit.
- 19 Q. Two weeks before you drafted the affidavit; correct?
- 20 A. Yes.
- 21 Q. Was this 24 hour surveillance or just kind of like --
- 22 A. It was spot check surveillance.
- 23 Q. What does that mean?
- 24 A. You sit there for some period of time and then you
25 leave.

JARVIS REEDER-CROSS-EXAMINATION

224

1 Q. Then you leave?

2 A. There's no amount of time that you sit on surveillance.

3 Q. Okay. And during this spot and check in that two week
4 period, did you see any drug deals take place?

5 A. No.

6 Q. Did you see any suspicious packages delivered?

7 A. No.

8 Q. Did you see anything else that indicated that this
9 house -- there was drug related activity taking place
10 there?

11 A. No. I just saw vehicles that were given to us that
12 both individuals drove.

13 Q. Both individuals. Maunwell and Brent Ervin; correct?

14 A. Yes.

15 Q. Okay. All right. But you didn't take any notes during
16 the two weeks of the surveillance?

17 A. I didn't take any notes during the two weeks of my
18 surveillance. Basically my notes were drafted in my
19 affidavit for my search warrant.

20 Q. In your affidavit. Okay. Do you happen to remember
21 what kinds of vehicles you saw in the driveway that
22 day?

23 A. I saw a Nissan Maxima and I saw a Dodge pickup.

24 Q. Pardon me one second. Okay. I apologize. I had to
25 get to the right page here. Did you ever question

JARVIS REEDER-CROSS-EXAMINATION

225

- 1 Brent Ervin about this incident?
- 2 A. I did not.
- 3 Q. Why didn't you question him? You stated previously he
- 4 wasn't there.
- 5 A. He wasn't at the residence when we executed the search
- 6 warrant and I had no reason because Maunwell stated
- 7 that the other guy in the house had nothing to do with
- 8 it.
- 9 Q. Okay. Is it common that you -- I mean, do you -- You
- 10 don't know who's going to be home when you execute a
- 11 search warrant, right?
- 12 A. No.
- 13 Q. I mean, it could be anybody. It could be a third
- 14 person that had nothing to do; correct?
- 15 A. It could possibly.
- 16 Q. Okay. So if someone is not at the scene at the time the
- 17 search warrant is executed, even though you know
- 18 through your affidavit and your prior surveillance that
- 19 they live there, and you also know through your
- 20 affidavit that they're a drug dealer, you still
- 21 wouldn't question them at all regarding this incident?
- 22 A. I had no reason at that time.
- 23 Q. You had no reason? No reason to question a known drug
- 24 dealer living in the same house?
- 25 A. He wasn't there.

JARVIS REEDER-CROSS-EXAMINATION

226

1 Q. Because he wasn't there at that time. But previously
2 you had surveilled and wrote in your affidavit that you
3 observed him to be living there; correct?

4 A. Yes.

5 Q. Okay. Okay. Walk me through just a little bit -- what
6 items were the officers able to find without the use of
7 a drug dog.

8 A. One of the main items I know were the crack cocaine and
9 the bulk marijuana I found in the post of the bed.

10 Q. Those were discovered without the use of the dog?

11 A. Yes.

12 Q. Okay. So what's the purpose of a drug dog. Let's back
13 up just a little bit. What's the purpose of a drug
14 dog? Bringing it to a situation like this.

15 A. I'm not a certified handler, but the purpose of a drug
16 dog is to possibly indicate the presence of narcotics.

17 Q. Indicate the presence of narcotics. So what happens
18 when, after you said, SWAT goes in, secures the
19 premises, makes sure nobody is in there with a gun or
20 is going to, you know, hurt one of the officers. Then
21 do you take the dog on a cursory sweep through the
22 house?

23 A. Well, usually what happens is the handler comes in and
24 observes the house and makes sure there's nothing that
25 will harm his dog once he uses him in that house.

JARVIS REEDER-CROSS-EXAMINATION

227

1 Q. Right. Okay. So the dog goes through the house though
2 and does a preliminary search; correct?

3 A. Yes.

4 Q. So the dog went to that bedroom where you found the
5 drugs but he didn't alert; correct?

6 A. Yes. I assume.

7 Q. Right. So a drug dog doesn't alert to drugs that are
8 found in a bedpost, but you find them independent of a
9 drug dog.

10 A. A drug dog, just like humans, are not one hundred
11 percent.

12 Q. I'm sorry. Can you say that again?

13 A. The drug dog, just like humans, they're not one hundred
14 percent accurate.

15 Q. So you're saying the dog missed the -- how many ounces
16 was it? Let's check. I think you might know better.
17 How many ounces did you find in the bedpost?

18 A. If you show me that package it might be on that label.

19 Q. I don't think I saw it, but I'm not great at reading
20 these kinds of things.

21 THE COURT: Hand him the other one with the crack. Do
22 we have the report? Let's just use the report instead of
23 opening the evidence at this point. Why don't you hand him
24 the SLED report. That might be more helpful.

25 Q. This might be more helpful. I apologize, so we don't

JARVIS REEDER-CROSS-EXAMINATION

228

- 1 have to fish through drugs. Just tell me how much
2 marijuana or crack, whatever it was, that you found in
3 the bedpost.
- 4 A. One of the bags had 49 grams of cocaine. The other one
5 had 25.6 grams.
- 6 Q. Of cocaine or of marijuana?
- 7 A. That was cocaine. Also the marijuana had 8 bags. Each
8 bag contained around 28 grams, which is about an ounce
9 of marijuana in each bag.
- 10 Q. Okay. So your testimony is that 49 grams of crack --
11 I'm sorry. Forty-nine in one bag and 29 in another,
12 and then -- sorry, one more. Twenty-nine in another
13 bag along with eight individual bags of marijuana, the
14 drug dog didn't alert to that?
- 15 A. Yes.
- 16 Q. Did the drug dog alert to anything in the house?
- 17 A. Yes.
- 18 Q. What did the drug dog alert to?
- 19 A. I think he alerted to, if I recall correctly, I think
20 he alerted to the hidden compartment that was in the
21 kitchen.
- 22 Q. So he did find drugs in the kitchen, but he went
23 through that bedroom and didn't alert, but then you
24 later came in and found the drugs in the bedpost. How
25 did you know to look in the bedpost?

JARVIS REEDER-CROSS-EXAMINATION

229

- 1 A. Based on my training and experience I know that
2 narcotics violators usually hide drugs any and
3 everywhere the common person just wouldn't look. From
4 my experience I've found drugs hidden in concealed
5 places.
- 6 Q. But that's also the same reason why you take a drug dog
7 in, because they can look or alert to places that we
8 can't see with our open eye or out in public; right?
- 9 A. Yes.
- 10 Q. Just to clarify, the drug dog went in there, did not
11 alert to that bedpost, and then you with a hunch found
12 the drugs in the bedpost.
- 13 A. Yes. The drug dog is also used as a tool to help
14 search.
- 15 Q. Okay. All right. Let's get back. In your incident
16 report you mention that Agent Watts, who I know is not
17 here to testify, seized several documents containing
18 both the names of Maunwell Ervin and Brent Ervin during
19 his search of the house; right?
- 20 A. Yes.
- 21 Q. And despite that you still didn't question Brent Ervin.
- 22 A. I didn't.
- 23 Q. Let's go to the bedroom that you assumed to be Maunwell
24 Ervin's. Okay. What did you find in that room other
25 than the drugs?

JARVIS REEDER-CROSS-EXAMINATION

230

- 1 A. Documents with Maunwell and Brent's name on them.
- 2 Q. In the room?
- 3 A. Yes.
- 4 Q. Okay. Did you find any clothes?
- 5 A. To be honest with you I don't remember. It was over
- 6 two years ago. I'm pretty sure there were clothes.
- 7 Q. There were clothes in there? Okay. I'm going to show
- 8 a picture, two pictures rather. Can you identify what
- 9 those two pictures depict?
- 10 SOLICITOR STUMBO: If I could see those, Your Honor.
- 11 MS. TAYLOR: Of course. Sorry.
- 12 SOLICITOR STUMBO: No objection.
- 13 A. Which side?
- 14 Q. That side. The side I gave them to you. Yes.
- 15 A. Yes?
- 16 Q. That's a dry cleaning receipt with the name Brent Ervin
- 17 on it; isn't it?
- 18 A. Uh-huh.
- 19 Q. And that was also found in the bedroom that you
- 20 believed to be Maunwell Ervin's.
- 21 A. I'm not sure they were found in the bedroom or not. I
- 22 know that there was a hall closet that I think clothes
- 23 were hanging up on as well. I'm pretty sure that these
- 24 were actually found in the hall closet.
- 25 Q. They were found in the hall closet?

JARVIS REEDER-CROSS-EXAMINATION

231

1 A. Just by looking at the photos I can't tell you if they
2 were found in the bedroom ---

3 Q. Right. Well it's ---

4 A. --- or found in the hall closet.

5 Q. You can refer to your incident report if you like. I
6 believe it states in there that they were found in the
7 bedroom.

8 SOLICITOR STUMBO: Objection, Your Honor. She can ask a
9 question and not state something from the incident report.

10 THE COURT: If you need to review the incident report to
11 get clarification feel free to do so.

12 A. There were numerous documents. My report doesn't say
13 which documents were found.

14 Q. Okay. It doesn't say which documents were found.

15 Okay. So how did you know that the bedroom was
16 Maunwell Ervin's if there's documents in there that
17 have both him and Brent Ervin's name? Aside from these
18 pictures. Even if these were found in the hall closet.
19 You said there were documents found in that room that
20 had Brent Ervin's name on it as well, so how did you
21 know it was Maunwell's room?

22 A. I assumed that it was his room because once the
23 narcotics were found he stated that Benoit Bush didn't
24 have anything to do with ---

25 Q. Right.

JARVIS REEDER-CROSS-EXAMINATION

232

- 1 A. --- anything located ---
- 2 Q. But ---
- 3 A. --- there, so I assumed that was his room.
- 4 Q. Okay. But he never told you it was his room; correct?
- 5 A. I don't recall.
- 6 Q. Okay. If he did it would be in your report; correct?
- 7 A. Not necessarily. I don't recall that.
- 8 Q. No, but if he had told you that you would've put it in
- 9 the incident report; correct?
- 10 A. I put in the incident report what he told me. He told
- 11 me that Benoit Bush ---
- 12 Q. We got that. That's not my question.
- 13 A. Can I answer your question?
- 14 Q. My question is ---
- 15 A. Can I answer the question? No.
- 16 THE COURT: Answer the question and then if you need
- 17 time to explain she'll certainly afford you that.
- 18 Q. My question is if he had given you any other statements
- 19 you would've included those statements in your incident
- 20 report; correct?
- 21 A. Yes. Yes.
- 22 Q. Okay. All right. So still in that room, it states in
- 23 the incident report -- we can re-look. There were a
- 24 bunch of clothes in there. Did y'all DNA test those
- 25 clothes at all?

JARVIS REEDER-CROSS-EXAMINATION

233

- 1 A. No.
- 2 Q. Okay. Did you fingerprint anything in the room?
- 3 A. No.
- 4 Q. No. Okay. Even at that time you now had three
- 5 individuals. You new from your surveillance Brent and
- 6 Maunwell lived there, and then you also had this third
- 7 party who was in the house at the time the search
- 8 warrant was executed; correct?
- 9 A. Yes.
- 10 Q. So you didn't fingerprint anything? Not in the
- 11 kitchen?
- 12 A. No.
- 13 Q. Not in the bedroom?
- 14 A. We didn't fingerprint anything in the residence of [REDACTED]
- 15 [REDACTED]
- 16 Q. Okay. I'm going to show you -- first just take a look
- 17 at that picture.
- 18 SOLICITOR STUMBO: No objection.
- 19 Q. Just take a look at this picture and describe what it
- 20 depicts, please.
- 21 A. It says, "Maunwell Ervin, [REDACTED],
- 22 [REDACTED], [REDACTED]."
- 23 Q. So that's a bill from State Farm?
- 24 A. Yes.
- 25 Q. Okay. And it's addressed to [REDACTED];

JARVIS REEDER-CROSS-EXAMINATION

234

- 1 correct?
- 2 A. Yes.
- 3 Q. Can you take a look at these arrest warrants?
- 4 A. Yes.
- 5 Q. What is the address listed on those four arrest
- 6 warrants?
- 7 A. [REDACTED].
- 8 Q. Okay. Which is not [REDACTED], the property
- 9 where this incident occurred; correct?
- 10 A. No.
- 11 Q. Give me just one second. Okay. Did you question
- 12 Benoit Bush at all in regards to anything that took
- 13 place during the course of this?
- 14 A. No.
- 15 Q. No. Is there a reason for that, outside of a
- 16 statement?
- 17 A. No.
- 18 Q. Okay. If you found individuals in a house when you
- 19 executed a search warrant and you then found drugs,
- 20 wouldn't you customarily at least question the other
- 21 individual that was present at the time the search
- 22 warrant was executed?
- 23 A. I would if no one took possession of those narcotics.
- 24 Q. No one did take possession of the narcotics in this
- 25 case; correct?

JARVIS REEDER-CROSS-EXAMINATION

235

- 1 A. Maunwell Ervin stated that everything found in the --
2 that Bush had nothing to do with anything.
- 3 Q. Right. That's not an admission that the drugs were
4 his. That's just saying this guy didn't have anything
5 to do with it; correct?
- 6 A. Based on my training and experience, if someone says
7 that they're taking the blame for it.
- 8 Q. But at that point you thought he was a drug dealer. So
9 you took his word that this guy didn't have anything to
10 do with it and just let him go and didn't question him;
11 correct?
- 12 A. I was at a residence of [REDACTED], not for Benoit Bush
13 or whatever his name was.
- 14 Q. Right. You were there for ---
- 15 A. I had no knowledge of Bush until that day.
- 16 Q. Right. You were there for Brent Ervin and Maunwell
17 Ervin; correct?
- 18 A. Yes.
- 19 Q. And the reason you never questioned Brent Ervin was
20 because he wasn't in the house when the search warrant
21 was executed; correct?
- 22 A. That's right.
- 23 Q. But this individual was and you never questioned him.
- 24 A. Right. I never questioned him.
- 25 Q. Okay. So just to clarify, you found documents that had

JARVIS REEDER-REDIRECT EXAMINATION

236

1 Brent Ervin's name on them. You personally surveilled
2 the premises for two weeks and through your own
3 observations determined that Brent Ervin was residing
4 there. Through tips you received from tipsters you had
5 information that Brent Ervin was conducting drug crimes
6 in the community, and he's currently incarcerated for
7 drug-related activity in Georgia. Yet you asked him no
8 questions because he was not there at the time the
9 search warrant was executed. Is that correct?

10 A. Yes.

11 Q. And you also didn't ask any questions of Benoit Bush,
12 who was there at the time the search warrant was
13 executed.

14 A. I didn't.

15 Q. Thank you. No further questions.

16 THE COURT: Anything on redirect.

17 SOLICITOR STUMBO: Just a couple, Your Honor, briefly.

18 REDIRECT EXAMINATION BY SOLICITOR STUMBO

19 Q. Captain Reeder, there were some statements here about
20 the bedpost and the eight bags within this black
21 plastic bag in State's 11. That's a pretty thick
22 bedpost, isn't it? I'll show it to you again.

23 A. Yes. It's a good sized bed post.

24 Q. The walls of it are pretty thick?

25 A. Yes.

JARVIS REEDER-REDIRECT EXAMINATION

237

- 1 Q. That's a lot thicker than those walls in this potato
2 chip can, right?
- 3 A. Yes. A lot thicker.
- 4 Q. The dog hit on this, State's 22, right? With the crack
5 cocaine?
- 6 A. Right.
- 7 MS. TAYLOR: Objection. Leading, Your Honor.
- 8 THE COURT: Sustained.
- 9 Q. Did the dog hit on anything in the kitchen?
- 10 A. Yes.
- 11 Q. What did he hit on?
- 12 A. Hit on that compartment.
- 13 Q. Didn't hit on anything in the bedroom though, right?
- 14 A. No.
- 15 Q. Now, tell us about your training and experience as to
16 where drug dealers typically hide their goods.
- 17 A. They usually hide them where a common person wouldn't
18 seem to look. They're going to hide them to conceal
19 them away from people that may try to rob them or steal
20 from them.
- 21 Q. You, based on your training and experience, did you
22 look in multiple areas of this house?
- 23 A. If you ask anyone in my unit they'll tell you I look in
24 the most crazy places, because based on my experience
25 I've found drugs in places like that.

JARVIS REEDER-REDIRECT EXAMINATION

238

1 Q. Let's just get to the elephant in the room, which I
2 think we're getting at here from the defense on cross.
3 Did you put those drugs in that bedpost?

4 A. I did not.

5 Q. Were they found as they appeared in those pictures?

6 A. They were found as they appear.

7 Q. And was that eight bags of marijuana?

8 A. Yes.

9 Q. And several cookies of crack cocaine?

10 A. Yes. I think 49 grams in one bag and 25 in another.

11 Q. One more -- I'm going to hand you what's in evidence as
12 State's 16 and 17 that's already been introduced into
13 evidence.

14 A. Yes.

15 Q. Do you recognize those pictures?

16 A. Yes.

17 Q. Whose name is on the bills in those pictures in State's
18 16 and 17.

19 A. In 16 this is a CPW bill that says Maunwell J. Ervin,
20 [REDACTED].

21 Q. Okay. It says [REDACTED]?

22 A. Yeah.

23 Q. How about the next one, State's 17?

24 A. In 17 this is a Direct TV bill with a due date of
25 12/7/10 that says Maunwell Ervin, [REDACTED].

JARVIS REEDER-REDIRECT EXAMINATION

239

- 1 Q. To your knowledge, did you find any other bills in the
2 house, utility bills or such, that had Brent Ervin's
3 name on them?
- 4 A. We possibly could've. I don't -- if I went back
5 through the search warrant I could probably tell you.
- 6 Q. But State's 16 and 17, those were found in the house?
- 7 A. Yes, they were.
- 8 Q. And they have [REDACTED] on them?
- 9 A. Yes.
- 10 Q. Just one more question. You were asked about
11 fingerprinting and DNA and that sort of testing. How
12 many times in narcotics cases have you ever
13 fingerprinted a house?
- 14 A. I can't recall any that I've ever fingerprinted.
- 15 Q. Have you ever submitted anything for DNA in a narcotics
16 case?
- 17 A. No.
- 18 Q. You're the Captain over the investigations unit now.
19 You do other types of investigations currently;
20 correct?
- 21 A. Uh-huh. (Affirmative)
- 22 Q. If it was a homicide case would there possibly be
23 fingerprinting and DNA?
- 24 A. Yes.
- 25 Q. But you've never done that in your experience in doing

JARVIS REEDER-RECROSS-EXAMINATION

240

1 narcotics investigations?

2 A. No, sir.

3 SOLICITOR STUMBO: That's all I have, Your Honor.

4 MS. TAYLOR: Just a couple of quick redirect, Your
5 Honor.

6 RECROSS-EXAMINATION BY MS. TAYLOR

7 Q. Okay, Captain Reeder. Just to briefly touch on what
8 Solicitor Stumbo just mentioned at the tail end of
9 that. Fingerprints -- the whole point of fingerprints
10 are to make a distinction if there may be some
11 discrepancy about who did something; correct? They're
12 identifying factors; correct?

13 A. Yes.

14 Q. Okay. So if you wanted to determine whether I touched
15 this podium you could take my fingerprints off of it
16 and determine that I was here and I touched it;
17 correct?

18 A. Yes.

19 Q. So wouldn't fingerprint analysis be useful when you're
20 trying to determine whose these drugs these belong to
21 or whose room that was?

22 A. It could possibly.

23 Q. It could've been useful. Okay.

24 A. Possibly.

25 Q. Let's get back to the drug dog. The drug dog in this

JARVIS REEDER-RE-CROSS-EXAMINATION

241

- 1 case, K-9 Cindy, she was an aggressive drug dog;
2 correct?
- 3 A. I don't -- aggressive as ---
- 4 Q. Well, there's two types. There's aggressive and then
5 there's submissive. In this case she was an aggressive
6 drug dog.
- 7 A. I'm not sure. I mean, I'm not really sure what you're
8 saying as aggressive or submissive.
- 9 Q. Okay. Aggressive drug dogs ---
- 10 A. I'm not a dog handler, so those terms are ---
- 11 Q. Right, but you're the captain. You were the lead
12 investigator, so ---
- 13 A. I am not a certified dog handler, so --
- 14 Q. Right, and ---
- 15 A. --- I'm not sure what those terms ---
- 16 Q. --- I'm not going to get too technical with you about
17 it, but this dog in this case was an aggressive dog;
18 correct?
- 19 A. I don't know.
- 20 Q. Okay. These dogs are trained to literally claw through
21 walls to get to drugs that they alert to on the other
22 side; correct?
- 23 A. I've seen them claw and I've seen them sit down and
24 alert and not claw.
- 25 Q. Did you see the drug dog alert to the drugs that were

JARVIS REEDER-RECROSS-EXAMINATION

242

- 1 found in the kitchen?
- 2 A. I don't recall.
- 3 Q. You don't recall if you saw it?
- 4 A. I don't. I mean, that's over two years ago. I really
- 5 don't remember.
- 6 Q. Over three.
- 7 A. Over three. I really don't remember.
- 8 Q. Right. Okay. Correct. All right. So these dogs are
- 9 also trained -- a lot of times they use them at the
- 10 border. They sniff around a vehicle. So they can
- 11 smell through a car to determine if there's drugs in
- 12 that vehicle; correct?
- 13 A. Possibly.
- 14 Q. Possibly? That's what they're used for. They can do
- 15 that; correct? So again, your testimony is that that
- 16 drug dog went into that bedroom and now, we can argue
- 17 about how thick that bedpost is, but he didn't alert.
- 18 Or she didn't alert. I apologize.
- 19 A. That dog did not alert on that bedpost.
- 20 Q. Right. You, independently, came back later and found
- 21 the drugs later without the aid of the drug dog.
- 22 A. Yes.
- 23 Q. Thank you. No further questions.
- 24 THE COURT: Thank you very much. You are free to go.
- 25 He is excused. Have a good day.

1 MS. TAYLOR: Without objection.

2 THE COURT: We're going to take a brief five minute
3 break ladies and gentlemen. I know that y'all have only
4 been out here for 45, but we've been at it a little bit
5 longer so I think we could use a quick respite. We'll have
6 you back in about five minutes. Don't talk about the case
7 yet, and if anybody needs to communicate with me this will
8 be an opportunity to do so. With that, take a break and get
9 something to drink and I'll see you back in a few minutes.
10 Thanks.

11 (Whereupon, the jury exited the courtroom at 11:25
12 a.m.)

13 (Whereupon, the court was in recess until 11:45 a.m.)

14 THE COURT: We are back on the record in the State vs.
15 Mr. Ervin. All parties are present. Let's bring the jury
16 back in, please, Mr. Willingham.

17 (Whereupon, the jury entered the courtroom at 11:45
18 a.m.)

19 THE COURT: The record should reflect that the jury is
20 back and seated. At this point, Solicitor, please call your
21 next witness.

22 MR. TAYLOR: Thank you, Your Honor. Very briefly the
23 state is going to recall Courtney Smith.

24 THE COURT: Mr. Smith, come up. You are still under
25 oath from yesterday.

COURTNEY SMITH-DIRECT EXAMINATION

244

- 1 MR. TAYLOR: This will not take very long. Just a few
2 questions, Agent Smith.
- 3 Q. Were you in the house? Did you witness and hear Jarvis
4 Reeder read Miranda Rights to Maunwell Ervin?
- 5 A. Yes, I did.
- 6 Q. How many people were in the room when those were read?
- 7 A. I was in the room, of course, Captain Reeder, Mr.
8 Maunwell Ervin, and Mr. Bush was in the livingroom
9 area.
- 10 Q. So was SWAT or anybody else standing around watching
11 this?
- 12 A. No, sir. Not that I can recall.
- 13 Q. Nobody was standing over Maunwell Ervin?
- 14 A. No, sir.
- 15 Q. Did anybody threaten him?
- 16 A. No, sir.
- 17 Q. Did anybody promise him anything?
- 18 A. No, sir.
- 19 Q. Did anybody ask him a question whenever he made -- did
20 he make any comments?
- 21 A. Yes, sir. He did.
- 22 Q. Did anybody ask him something?
- 23 A. No, sir.
- 24 Q. Did he just say it on his own?
- 25 A. Yes, sir.

COURTNEY SMITH-CROSS-EXAMINATION

245

- 1 Q. What did he say?
- 2 A. He made the statement that Mr. Bush, who was in the
3 residence as well, did not have anything to do with the
4 items that were found in the home.
- 5 Q. Based on your training and experience and being at that
6 location and hearing him say that, how did you take
7 that?
- 8 A. I took it as an admission of guilt that he was taking
9 responsibility for the things that were found inside
10 the home at [REDACTED].
- 11 Q. Did he ever mention Brent Ervin's name?
- 12 A. No, sir. He did not.
- 13 Q. I have no further questions.
- 14 MS. TAYLOR: Just one, Your Honor.
- 15 Q. So Mr. Ervin said, "Benoit Bush does not have anything
16 to do with this."
- 17 A. Yes, he did.
- 18 Q. He didn't say, "These are my drugs."
- 19 A. No, he did not.
- 20 Q. He didn't say, "I know whose drugs these are."
- 21 A. No.
- 22 Q. He didn't say anything like that. All he said was this
23 individual didn't have anything to do with it.
- 24 A. Yes, ma'am.
- 25 Q. So you're just assuming that that's an admission;

COURTNEY SMITH-CROSS-EXAMINATION

1 correct?

2 A. Through my experience. Yes, ma'am.

3 Q. Thank you. No further questions.

4 THE COURT: Sir, you can step down. Solicitor, call
5 your next witness, please.

6 SOLICITOR STUMBO: Your Honor, that's the state's case.

7 At this time we rest.

8 THE COURT: I have to take up some issues of law with
9 the attorneys. I hate to ask you to go back into the room,
10 but it will just be a few moments. I hope to have you back
11 out here shortly, okay? Don't talk about the case yet.
12 I'll let you know when you can. Thank you.

13 (Whereupon, the jury exited the courtroom at 11:48
14 a.m.)

15 THE COURT: The jury is out. At this point, Ms. Taylor,
16 motions from the defense?

17 MS. TAYLOR: I am renewing all prior motions and
18 objections, Your Honor, and make a motion for a directed
19 verdict at this time.

20 THE COURT: In the light most favorable to the state, I
21 do find that there's evidence from which the jury could
22 reasonably conclude that the defendant is guilty of the
23 crimes charges, so I will be denying your motion for a
24 direct verdict. With regard to all the previous rulings the
25 court reaffirms its rulings on those matters. I know in the

1 first trial, Ms. Taylor, your client elected not to testify.
2 Has he reconsidered that or has he given any additional
3 thought to that or are we in the same posture?

4 MS. TAYLOR: No, sir. We're in the same boat.

5 THE COURT: Just so the record is clear, is there any
6 objection to me essentially asking him the same questions I
7 asked him when we tried it the first time?

8 MS. TAYLOR: No objection.

9 THE COURT: Mr. Ervin, you're still under oath from
10 where I spoke to you earlier today when the jury issue
11 arose. I need to ask you some questions concerning your
12 right to testify. Do you recall when we discussed this at
13 the first trial?

14 MR. ERVIN: Yes, sir.

15 THE COURT: You do understand that at this point we've
16 reached that portion of the trial where you'll have an
17 opportunity, if you choose to do so, to present to the
18 defense. You understand that certainly you have the right
19 to testify. I have not been apprised of any sort of prior
20 criminal convictions. There may well be some, which the
21 state might be able to impeach you with if you choose to
22 testify, so you understand, Mr. Ervin, that you do have the
23 right to claim the protections under the Fifth Amendment to
24 the Constitution of the United States. This amendment
25 essentially says no person can be compelled to be a witness

1 against themselves in any case where they are a criminal
2 defendant. Do you understand that, Mr. Ervin?

3 A. Yes, sir.

4 Q. That means you can't be required to testify in this
5 case. You have the right, of course, to testify if you
6 choose to do so, but no one can make you testify. Not
7 myself, not the Solicitor, not your attorney. This is a
8 personal right that belongs to you. Only you can waive this
9 right if you chose to testify. Again, do you understand
10 that if you do choose to testify you'll be subject to the
11 same rules of cross examination that relate to any other
12 witness and you may be examined or cross examined or
13 impeached on any relevant issue involved in this case or on
14 any prior convictions involving dishonesty or false
15 statements or for crimes that are punishable by more than a
16 year in prison if the court determines that the probative
17 value of introducing those convictions outweighs the
18 prejudicial effect to you. Do you understand that?

19 A. Yes, sir.

20 Q. And that would simply be a way that the state would be
21 able to attack your credibility, so if you decide to testify
22 this decision has to be yours. It has to be made freely,
23 voluntarily, and with full knowledge of all the protections
24 given to you under the Fifth Amendment to the U.S.
25 Constitution and the corollary amendment to the South

1 Carolina constitution. Do you understand, Mr. Ervin?

2 A. Yes, sir.

3 Q. If you choose not to testify, just like in the first
4 trial, I'll instruct the jury that they cannot give the fact
5 that you chose not to testify any consideration whatsoever,
6 and that there's to be absolutely no prejudice to you
7 because you decided not to testify. Again, it's left
8 entirely up to you on what you want to do, Mr. Ervin. You
9 can talk to your attorney, to your family or friends, or
10 anyone else, but ultimately the final decision is yours to
11 make. Do you understand, Mr. Ervin?

12 A. Yes, sir.

13 Q. Have you understood everything I've explained to you
14 again?

15 A. Yes, sir.

16 Q. Is there anything you need to ask me?

17 A. No, sir.

18 Q. Is your attorney correct that you do not want to
19 testify? Is that correct?

20 A. Yes, sir.

21 Q. So you're going to assert your Fifth Amendment right?

22 A. Yes, sir.

23 Q. And this is your decision, Mr. Ervin?

24 A. Yes, sir.

25 Q. Very good. Ms. Taylor, do y'all anticipate presenting

1 a defense at this point?

2 A. We do not, Your Honor.

3 Q. You'll get final argument then. I know that you needed
4 a few moments to perhaps collect your thoughts. We can
5 handle this the same way we did in January. When the jury
6 is brought back out you we can rest on the record and then
7 we go straight to closings with the state's final argument
8 and then, of course, your final argument and a charge to the
9 jury. We're getting towards lunchtime, so I'm inclined just
10 to order lunch for the jury unless y'all have a preference
11 to break and then close.

12 MS. TAYLOR: I was going to ask if we can take a lunch
13 break and then close just because that way the jury doesn't
14 have to eat lunch here. They can go where they want and
15 you're going to charge right after so it would at least be
16 1:00, maybe 1:30, before they even got to eat lunch if we
17 break now.

18 THE COURT: That's a good point. Y'all don't have any
19 problem with that?

20 MR. TAYLOR: Judge, just based on the other issues with
21 jury tampering I think it would be better if they stay here,
22 have lunch, deliberate over lunch in the courthouse where we
23 know there's no contact with them, no issues there.

24 THE COURT: That's a good point too.

25 MS. TAYLOR: I mean, we can order lunch. I don't have

1 any --- I'm not trying to get them to walk around so that
2 they can be tampered with. But I think it's a good time to
3 take a break. I would like to eat as well.

4 (The Court confers with the Clerk of Court off the
5 record.)

6 THE COURT: Would there be any issue with arguing and
7 then charging after lunch?

8 SOLICITOR STUMBO: I'm okay with that, Your Honor.

9 THE COURT: Are you okay with that?

10 MS. TAYLOR: I would prefer to have lunch break before
11 the closing arguments.

12 THE COURT: We're going to do as Ms. Taylor suggests. I
13 think the likelihood of what occurred last night reoccurring
14 is pretty minimal. If it does occur, I believe that whoever
15 would attempt that has got to understand that the full
16 weight of the court will come down on them and they're
17 playing with fire. So I think I've made myself abundantly
18 clear in that regard. We'll be okay to go ahead and break
19 and then we'll argue and charge. That's what I'm going to
20 do. You rest when we come out. I'll tell the jury we're
21 taking a break. I'll have them back around 1:00, 1:15,
22 something like that. Probably around 1:15, and we'll
23 proceed with the trial. Let's have the jury, please.

24 (Whereupon, the jury entered the courtroom at 11:56
25 a.m.)

1 THE COURT: The jury is back and seated at this point.

2 Ms. Taylor, your case.

3 MS. TAYLOR: The defense rests, Your Honor.

4 THE COURT: Ladies and gentlemen of the jury, we've
5 reached that portion in the trial where you have received
6 all the evidence that you're going to receive in this case.
7 Since it's getting around lunchtime, if we were to proceed
8 with the closing arguments and the court's instruction, I
9 doubt that we'd be able to get you lunch probably before
10 1:30. So we're going to go ahead and take a lunch break at
11 this particular point in time; okay? After you return from
12 lunch at 1:15 we'll proceed with the closing arguments of
13 the attorneys, my instructions on the law, and then you'll
14 have an opportunity to deliberate and render your verdict.
15 Again, what I said throughout this trial still goes. Don't
16 talk to anyone about the case. If anyone tries to approach
17 you, tries to talk to you, tries to contact you in any way,
18 immediately contact law enforcement. Three little numbers,
19 9-1-1. Okay? I don't think that's going to happen, but if
20 it should happen that's what you do. Obviously, don't read
21 anything about this case in the paper. Don't look at
22 anything on the internet, et cetera. Have a lovely lunch
23 and I will see you back here if we could at 1:15. I promise
24 you we'll start promptly at 1:15.

25 (Whereupon, the jury exited the courtroom at 11:58

1 a.m.)

2 (Whereupon, the trial resumed at 1:21 p.m.)

3 THE COURT: If we may let's go back on the record in The
4 State vs. Mr. Ervin. All parties are present. I'm told the
5 jury is here. Last evening I emailed the proposed charges
6 to the jury to all the parties and just so that we can segue
7 nicely into the jury instructions after the arguments, are
8 there any additions? They're pretty much the same ones as
9 last time. I did include the request that you had regarding
10 a mere presence charge. That was included last time as
11 well. Anything that you saw I needed to consider?

12 SOLICITOR STUMBO: Everything looked good to us, Your
13 Honor. I read it over lunch again one more time and it's
14 all good.

15 THE COURT: Very good. Ms. Taylor, any concerns?

16 MS. TAYLOR: No concerns, Your Honor.

17 THE COURT: Very good. Again, who will be doing the
18 closing for the state?

19 SOLICITOR STUMBO: I am, Your Honor.

20 THE COURT: Again, the state will go first to be
21 followed by Ms. Taylor. Anything before we bring the jury
22 out from the state?

23 SOLICITOR STUMBO: Nothing from the state, Your Honor.

24 THE COURT: Nothing from the defense?

25 MS. TAYLOR: Nothing from the defense, Your Honor.

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1 THE COURT: Let us have the jury, please.

2 (Whereupon, the jury entered the courtroom at 1:21
3 p.m.)

4 THE COURT: Let the record reflect that the jury is back
5 and seated. I trust, ladies and gentlemen, that y'all had a
6 pleasant lunch. We're now at that stage of the trial where
7 the attorneys for the state and the defendant will give you
8 their closing summation or their closing argument. I'll
9 remind you that what the lawyers say during their closing
10 argument is not evidence. Of course you have to judge this
11 case based on the evidence presented from the witness stand
12 as well as the exhibits introduced into evidence. Normally,
13 a lawyer will reference facts that have been testified to or
14 certain pieces of evidence. That's perfectly common and it
15 happens in every closing argument. I will say, however,
16 that should anything that the lawyers say with regard to the
17 facts -- should what they say differ from what recall the
18 testimony to be, you should go with your recollection as
19 opposed to what they say the facts are. Because again, you
20 are the judges of the facts of this particular case. So
21 with that, Solicitor, you are invited to give your closing
22 summation, sir.

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24 SOLICITOR STUMBO: Thank you, Your Honor. If it please
25 the court. I had some real cute things to say maybe in the

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1 opening. The first thing out of my mouth would be something
2 catchy. Something, as us lawyers like to say, has a lot of
3 kick or shebang to it. But as I was sitting here this
4 morning thinking about what to say to you when I came up
5 here in this closing argument, quite frankly I've just been
6 overwhelmed with a sense of pride. Proud of being your
7 solicitor. Why is that? I'm going to tell you why.

8 The first reason is this, folks. It's because of you.
9 I've been able to sit here for the last three days and watch
10 you attentively do your jobs. You've sat here and you've
11 listened to the evidence. You've been very attentive.
12 You've been active when the witnesses are on the stand, when
13 the exhibits are being put up. I've watched how attentive
14 you've been and that is absolutely critical to our system of
15 justice. So I'm proud to be your elected Solicitor because
16 of what y'all have done here this week. Without you as
17 jurors coming in here and trying to figure out what the
18 truth is, and what the facts are, and what justice is, and
19 what justice means, we don't have a justice system in this
20 country. You are the key part of it. I know this week has
21 been an inconvenience for a lot of you. That's not lost on
22 me or the court. I know that there's a lot of other places
23 you'd rather be, but I thank you for your service. I'm
24 proud to be your solicitor because of what y'all have done
25 this week.

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1 The other reason that I'm proud to be the solicitor
2 here is because of guys like Agent Courtney Smith. This
3 week I've been able to watch this evidence come to light
4 because of the job that the Drug Enforcement Unit did here
5 in Greenwood County. These guys put their lives on the line
6 on a daily basis to keep this kind of poison off the streets
7 of this city and this county. That's what they did in this
8 case, folks. They took this poison off the streets. If
9 nothing else it's off the streets and it's here as evidence
10 in a courtroom, so they did their jobs and they did it well,
11 folks.

12 You're going to hear a lot of attacks probably. This
13 is the last chance I get to come up here and talk to you.
14 You're going to get to hear from Ms. Taylor at the end of
15 this case and I'm sure she's going to tell you all the
16 things that they did wrong. Are these guys perfect?
17 Absolutely not. None of us are. But I'm proud to be their
18 solicitor and the job that they're doing here and the job
19 that they did in this case.

20 Mr. Taylor and I, as the judge told you in the
21 beginning of the case, Mr. Taylor told you that the burden
22 of proof here is on the state. It's squarely on our
23 shoulders. That's a burden, folks, that we gladly bear in
24 this case because the evidence has shown in this case that
25 this man sitting over here, Maunwell Ervin, is guilty. It's

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1 shown that. So we gladly bear the burden of proof here,
2 folks. I'll talk a little bit more about what that burden
3 is in a second. We'll talk about that in a little more
4 detail. You're going to hear from the judge again in this
5 case on what that burden is and what exactly that means,
6 okay? But first of all, what we've been tasked with is
7 proving this case beyond a reasonable doubt. That is the
8 burden of proof on each and every element.

9 Now, there's five charges in this case and there's
10 different elements to each one. So what I'd like to do, if
11 y'all would turn your attention to the screen here. We're
12 going to talk a little bit about the elements in this case
13 and what do we have the burden of proving under our law.
14 The judge is going to reiterate some of this later on.

15 The first charge in this case is Trafficking crack
16 cocaine. What are the elements of Trafficking crack
17 cocaine? It is a person who knowingly sells, delivers,
18 brings into this state, or possesses -- and there's some
19 other language involved here, but here our focus is going to
20 be on the word possesses. Either by actual or constructive
21 possession. We'll talk a little more about this in a
22 second. We'll talk about what that means and the judge is
23 going to instruct you at the end of the case. Do they
24 possess, does this person possess, or do they aid, abet,
25 attempt, or conspire to sell, deliver, or possess. So this

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1 not only includes the person doing the actual selling or
2 Trafficking, but anyone whose part of that conspiracy.

3 That's cocaine base, so it has to be a cocaine base,
4 otherwise known as crack cocaine. In the particular facts
5 of this case we're talking about a range of over 100 grams
6 but less than 200 grams. So the weight here is important.
7 It's important for this reason, because the law says if it's
8 in this greater weight then the law assumes that there is
9 drug Trafficking going on. This is not the personal use.
10 This is for the purpose of Trafficking that drug. So that's
11 Trafficking crack cocaine. It's three basic elements. Does
12 the person possess it by either actual or constructive, is
13 it crack cocaine, and is it between 100 and 200 grams.

14 Now, constructive possession, that's what we're talking
15 about here. None of these drugs were found in someone's
16 pocket. Actual possession, as the judge will tell you, is
17 possession that's on someone's person. Is it in their coat
18 pocket? In their pants pocket? Are they holding it in
19 their hands? Here, obviously, according to the facts and
20 you've seen the pictures. This was drugs that were found
21 inside of a residence, a house, not on someone's person.

22 The judge will also tell you that constructive possession
23 is just as valid as actual possession. What the key is here
24 is this phrase, dominion and control. Did Maunwell Ervin in
25 this case have dominion and control over the drugs found in

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1 this house? That's the question you'll have to ask
2 yourselves in the jury room. What is dominion and control?
3 The law also says, and you'll here the judge say this, or
4 the right to have dominion or control.

5 And the fact that it was found in a house that is his
6 is important evidence for you to consider, ladies and
7 gentlemen. You have evidence in this case of bills. We
8 have -- and we'll talk more about the actual evidence in a
9 second when we get done with the elements. The other thing
10 that I want you to hear from this judge, and Judge Addy is
11 going to instruct you on this several times, that two or
12 more people can have joint possession of the same item. So
13 this is a very important principle in the law that
14 constructive possession also can be several people can have
15 dominion and control over a certain item.

16 Now, let's talk about what Mr. Ervin had in this case,
17 constructive possession. Well, ultimately it's his house,
18 and we'll talk more about that in a second, but ladies and
19 gentlemen, State's number 1, you'll have this back in the
20 jury room, the Town and Country paperwork. It's very clear
21 in this case that the person that leased this residence was
22 the man sitting right over there, Maunwell Ervin. The lease
23 agreement has his name on it. He's in the house when they
24 get there. It's his house. He's the one that's there. The
25 only other person on the lease that was supposed to be even

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1 living there was his 12-year-old son. You'll have this back
2 in the jury room and have a chance to look at it.

3 Furthermore, the bills are coming there in his name.
4 You've got a CPW bill, Maunwell J. Ervin, [REDACTED].
5 Not Creswell Avenue. [REDACTED]. That bill is
6 coming to him at that house. The Direct TV bill, Maunwell
7 Ervin, [REDACTED]. You'll have State's 16 and 17
8 back in the jury room to show, ladies and gentlemen, that
9 this is his house. There's one bedroom in the house. Not
10 two. Not three. One bedroom. One bed. Folks, that is
11 dominion and control. That's his house and his drugs found.

12 Now, how about the other evidence here. You have crack
13 cocaine in four bags here. What's the total weight? You'll
14 have the SLED analyst's report in the room. It's 119 grams.
15 That hasn't been disputed in this case. This was positive
16 for crack cocaine and the weight of 119 grams. That's,
17 under our law, Trafficking in crack cocaine in and of
18 itself. There is no intent to distribute element to this
19 particular weight range for crack cocaine. Ladies and
20 gentlemen, Maunwell Ervin is guilty. The elements have been
21 met here in this case.

22 How about the possession with intent to distribute
23 marijuana. This is the second indictment that we're going
24 to discuss here. What are the elements of this? Again,
25 possession either by actual or constructive, or aiding,

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1 abetting, attempting, or conspiring to possess the drug with
2 the intent to distribute. You have to have a positive test
3 there again for marijuana just as in the crack cocaine
4 scenario. What do the facts show us here?

5 Actually, let's talk about intent to distribute again.
6 Not only does, and the judge will instruct you of this, that
7 a permissive inference of over one ounce can show an intent
8 to distribute. So in other words here if you have over an
9 ounce, which is just 28 grams of marijuana, then there is an
10 intent and it can be a permissive inference there that
11 there's an intent to distribute. Here we have cash money.
12 Not a tremendous amount, but we have \$200 in cash. We have
13 baggies of similar weights. The fact that there's nine of
14 the twelve bags are about an ounce of marijuana, in a
15 quantity already packaged up to sell to the community and to
16 put out on the street. But the big one here, folks, is
17 scales. We've got the scales here in evidence, State's 24.
18 I don't know how many of y'all have a set of digital scales
19 sitting on the kitchen at your house. I typically don't
20 have a set of digital scales sitting out on the counter, but
21 there again that is an important piece of evidence here
22 showing an intent to distribute this marijuana.

23 There again, do the facts show us constructive
24 possession? Yes. In his bedpost. In the potato chip can
25 in the kitchen. Twelve bags of marijuana. There again,

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1 nine of them were of similar weight. Scales on a kitchen
 2 table. The total weight here, as Sergeant Griffin who took
 3 the stand and tested this marijuana told you, is 271 grams.
 4 About 9.6 ounces. So close to ten times the amount of what
 5 is required under a permissive inference to show an intent
 6 to distribute we have here. That's a big bag of marijuana.

7 How about the proximity to a school indictment? This
 8 one won't take as long, folks. In State's number 1, and
 9 you'll have this back in the jury room, this is an overhead
 10 drawing of the area around Lander University. I'm not going
 11 to belabor the point here. Y'all will be able to examine
 12 this in the jury room. But if the drug activity -- if the
 13 possession of the drugs happens within a half mile of a
 14 school, university, park, or a playground, and there is a
 15 second offense under the law for proximity to a school.
 16 Here, as y'all heard the officer, it's a stone's throw away
 17 from the Lander University campus. You can stand in the
 18 front yard and hit the President's house with a rock or the
 19 Jackson Library across the street. So this is two counts
 20 that he's guilty of as well. Dealing drugs out of that
 21 house.

22 Let's talk a little bit more about the burden of proof
 23 here. Each and every element has to be proven beyond a
 24 reasonable doubt. The term that you heard from Assistant
 25 Solicitor Taylor in the opening was what? He said firmly

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1 convinced. You can turn around this way now. Firmly
2 convinced is not a very difficult -- now, proof beyond a
3 reasonable doubt, that might be something you don't hear
4 everyday. But you'll hear Judge Addy instruct you two times
5 that this is proof that leaves you firmly convinced. That's
6 all it is.

7 Don't let it be more complicated than it's made. At
8 the end of this case, after you've seen the evidence, you
9 have a firm conviction that Maunwell Ervin did what we said
10 he did, that's the burden of proof. You firmly believe that
11 these are his drugs in his house over on [REDACTED].
12 If you're firmly convinced that those are his drugs then he
13 is guilty. So this is not a mathematical equation. It's
14 not a formula that we can prove in a lab. The judge will
15 tell you that you can't dissect someone's brain and
16 determine how much you've proven or whether there's intent.
17 He's going to talk about that in the sense of criminal
18 intent in the case, but folks, are you firmly convinced.
19 That's the burden here.

20 Ladies and gentlemen, not only is Maunwell Ervin a drug
21 dealer, he's one of the big drug dealers. We've got ten
22 times what's required under the law for intent to distribute
23 on this marijuana. We have well over 100 grams on
24 Trafficking weight here. Ladies and gentlemen, consequently
25 the Trafficking weight threshold for crack cocaine is ten

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1 grams. We're even in a higher category here of 100 to 200
2 grams right here in this bag.

3 You also have the possession of the BZP here in this
4 case, the pills. Now, you're going to hear I'm sure Ms.
5 Taylor get up here and talk about how there must be some
6 missing pills here. Do you remember that? What happened to
7 the other seven? Well, very plainly you heard from the SLED
8 analyst that gets up and tells you that not only are there
9 14 whole pills by the time she gets these little tablets,
10 but there's a bunch of other crushed up material in the bag
11 that weighs the same thing. So I know Ms. Taylor would have
12 you believe, folks, that someone stole the seven pills out
13 of the bag. You know that's not true. Nobody took evidence
14 here. Nobody planted evidence. If she can get you to
15 believe that and throw enough junk up on the window so you
16 can't see through it, casting some doubt there that somebody
17 took these pills. But you heard from the people that
18 handled the evidence in the chain of custody. As soon as
19 Officer Archibald seals that BEST kit the next person who
20 opens it is the analyst at SLED who finds 14 pills and the
21 powder. Nobody took the seven tablets out of there, ladies
22 and gentlemen. Y'all know that. Jurors have common sense
23 and you don't have to check that at the door.

24 Let's talk about some of the other defenses here.
25 Quite frankly, ladies and gentlemen, to buy a lot of the

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1 defenses you're going to hear here you have to suspend
2 reality and check your common sense at the door. Don't do
3 that. I ask you to keep your eye on the ball in this case,
4 on the evidence that's been put before you here in this case
5 and from this witness stand. Don't buy the stuff that
6 requires you to check your common sense at the door.

7 What are some of the things that we've heard in this
8 trial, and I'm sure some of the things that Ms. Taylor will
9 be able to talk about here in a moment. How about the fact
10 that the drug dog alerted on part of the drugs in the house
11 and not the other. Well, the clear implication there,
12 ladies and gentlemen, and Ms. Taylor didn't come out and say
13 this, but was that Captain Reeder, who is now the captain of
14 investigations here at the Sheriff's Department, that he put
15 those drugs down inside the bedpost. Is that believable?
16 Is that something that you think happened in this case?
17 That Captain Reeder would put his career on the line by
18 planting evidence in a house? That Agent Courtney Smith,
19 who puts his life on the line every night going out and
20 keeping this stuff off the streets, that they would plant
21 it? There's no motive for them to do that, folks? That's
22 what the defense wants you to believe here. That somehow
23 this is all a big conspiracy and a big scheme.

24 How about the fact that she asked if there were any DNA
25 analysis done or any fingerprints taken out of this house.

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1 What about that. You heard Captain Reeder. He's done all
2 kinds of drug investigations. They don't do DNA testing in
3 a narcotics case. Folks, it's not that complicated. He
4 went in the house, Maunwell Ervin's house, and found drugs
5 that he took ownership over. DNA? Fingerprints? But
6 that's what they want you to believe. If they can throw
7 that up there and put a little bit of shred in your mind
8 that somehow the cops are dirty here. The cops are
9 incompetent and these guys didn't do their jobs. That
10 somehow she can get you to not be able to see through that
11 window here and see clearly guilt in this case.

12 What about the fact that she argues that this can't be
13 Maunwell Ervin's house. How have we proved that he -- well,
14 the state hasn't proved that he lived there. Well, folks,
15 he is the one on the rental application. It's his
16 residence. He's the only one according to Town & Country,
17 who manages this property, who has the right to live there
18 and be there. There's one bed in the house. Y'all know
19 whose bed that is. It's his.

20 We've got utility bills coming to his house with his
21 name on the bill. He's the one responsible for paying them.
22 They're his drugs, ladies and gentlemen. Of course the
23 defense will have you believe - and this is the last smoke
24 screen here that they're going to throw up in front of you.
25 These have to be Brent Ervin's drugs. It must be Brent.

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1 It's cousin Brent who was also being investigated in this
2 case and is currently, as came out in the evidence, serving
3 time for drug dealing.

4 Two or more people can have joint possession of a drug;
5 correct? You'll here the judge say that. So their whole
6 defense is to make you think that it's all his cousin
7 Brent's drugs. This is all his activity. The state didn't
8 prove that he did it. Well, there's one little thing that
9 Maunwell Ervin said to officers that completely blows that
10 line of defense out of the water. What did he say? I'll
11 direct your attention the screen again. Talked about Mr.
12 Bush whose there in the house with him. He says, oh no. He
13 wasn't asked any questions. Wasn't pressured to say this,
14 folks. But this is the key here to constructive possession
15 we talked about earlier. He doesn't have anything to do
16 with the stuff y'all just found in this house. Mr. Bush,
17 maybe a friend, saying it's not his.

18 Now, what does that mean, folks? Like Agent Smith just
19 said on the stand. He was our last witness and what did he
20 say? What does that mean when someone says that what you
21 just found is not that person's. That shows knowledge and
22 it infers ownership that it's his. If he's saying that it's
23 not the other guy's then the reasonable, logical conclusion
24 there is that he has, at minimum, dominion and control over
25 the drugs. Even if someone else also has dominion and

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1 control over the drugs, by him saying that the other guy
2 didn't have anything to do with it that's in the house, what
3 does that tell you? That one, he knew they were there, and
4 two, he knew enough about them to know that this guy didn't
5 have anything to do with it. Dominion and control, folks.

6 Now, Ms. Taylor indicated to you at the beginning of
7 this case that her client is clothed with the presumption of
8 innocence. The judge will tell you that's like a robe of
9 righteousness placed upon his shoulders. Ladies and
10 gentlemen, as the evidence has come before you in this case
11 starting with the very lease agreement that confirms this is
12 that man's house, that the him being clothed with that robe
13 of righteousness has slowly been pulled away. Behind that
14 smoke screen of that robe of righteousness stands a man as
15 he is. A drug dealer in this community putting this poison
16 out on the streets and affecting lives. This just isn't
17 about these things being in the house, ladies and gentlemen.
18 This is about who it affects when it hits the streets.

19 Now, folks, the word verdict comes from a couple of
20 Latin words that mean to speak the truth. It comes from
21 verus which means the truth and dictum which means to speak.
22 So your verdict - and the judge is going to give you a
23 verdict form to go back and consider in that jury room, is a
24 word that literally means to speak the truth. So when you
25 come back out here after you've deliberated and made a

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1 decision in this case, folks, that your verdict should speak
2 what is true. Folks, what is true in this case is that
3 Maunwell Ervin is a drug trafficker and he's violated the
4 laws of this state by doing so. The only reasonable true
5 just verdict in this case, based on the evidence before you,
6 is guilty.

7 Mr. Taylor and I, Agent Smith, those that have worked
8 so diligently on this case, we place that decision here in a
9 few minutes in your very capable hands to speak the truth
10 and speak justice. Thank you.

11 THE COURT: Thank you, Solicitor. Ms. Taylor, you're
12 recognized for your closing, ma'am.

13 CLOSING ARGUMENT BY MS. TAYLOR:

14 Thank you, Your Honor. All right, ladies and
15 gentlemen. We're at the good part, the end. Almost time
16 for you to go home. All right. I want you to think about
17 one word, assume. How many times in this two-day trial have
18 you heard these officers say I thought, I assumed, or just
19 plain I don't know? We do not convict based on assumptions.
20 We convict when the state has proven their case beyond all
21 reasonable doubt. I think, I may be sure, I don't know,
22 that's not good enough; okay?

23 I want to go back to that clear window I talked to you
24 about that Solicitor Stumbo also referenced in his closing
25 argument; all right? Remember what I said about that

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1 window. It has to be - on a clear day that window is so
2 perfectly visible you can see trees, flowers, children,
3 leaves on the trees. You can see everything. There is
4 nothing you can't see through that window; okay? Now, let's
5 talk about what we've heard today.

6 These gentlemen over here, they're investigators. They
7 investigated this case. All eleven of you today are
8 investigators as well. Your job is to determine what you
9 heard today whether that's true or whether it's not true.
10 Now, remember going back I told you that you should listen
11 to what you hear but also what you don't hear. And you
12 didn't hear a lot of things. Okay? So let's go back to
13 that window.

14 Problem number one, no notes. You heard me talk about
15 that a lot. I think it's a big deal. No notes; okay. They
16 didn't think it was important. They didn't take any notes.
17 If they had taken notes in this case we might have a
18 different trial, a different suspect, maybe even a different
19 defendant; okay? It wasn't important. We don't need to
20 take notes despite the fact that this case is three years
21 old. They have decomposing, contaminated - words of their
22 SLED agent - evidence. Hundreds of cases that have taken
23 place in between and they didn't take any notes. That
24 window is pretty cloudy just from that, y'all. That's
25 cloudy; okay?

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1 Now, let's go back to Reeder, Captain Reeder's
2 testimony. He testified several times that he couldn't
3 remember because it was so long ago. Wouldn't that be a
4 helpful reason to just jot something down. They know these
5 cases take a long time from the time they arrest a criminal
6 to when they're actually put to trial. Write some notes.
7 Help the jury out. Make it clear. Keep that window crystal
8 clear. Maybe if he had taken notes he would've remembered
9 on the stand that a dry cleaning receipt with the name of
10 Brent Ervin was found in the same bedroom that they found
11 the drugs; okay? Maybe he would've remembered that if he'd
12 took notes. We don't know. Never took notes. Never asked
13 him questions. Cloudy, cloudy window; okay?

14 Now, let's talk about the fact that there were three
15 officers in this case that discovered drugs inside the
16 residence of [REDACTED]. Just three. You heard
17 testified that there were ten or more agents that were
18 there. Three found drugs. Two of those three did not sit
19 up here and tell you what they found. They didn't offer you
20 any testimony. They didn't tell you what they found, where
21 they found it. Listen to what you hear and listen to what
22 you don't hear. Why didn't those people testify? What
23 don't they want you to hear? That's a question you need to
24 take back with you to the jury room.

25 Now, you heard me mention the name Brent Ervin several

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1 times during this case. Did you ever hear them talk about
2 it on their direct examinations? No. They don't want you
3 to hear that name. That's a huge hole in their case. Brent
4 Ervin is their reasonable doubt and they know it. They
5 don't want you to know it, but they know it. Okay? No
6 questions asked of Brent Ervin.

7 Let's get to the drug dog incident, all right. Now,
8 according to Captain Reeder, a drug dog who is trained for
9 the sole purpose of identifying drugs in places where other
10 individuals might not be able to easily ascertain or look.
11 That drug dog walked through that bedroom and did not alert
12 to that bedpost where Captain Reeder found those drugs;
13 okay? Didn't alert. This dog would claw through a wall to
14 get to drugs on the other side if he sniffed it. This is a
15 lot of drugs and so is this. If I hid these in the
16 courtroom somewhere today, who do you think is going to be
17 more likely to find them first, K-9 Cindy or Captain Reeder.
18 It doesn't quite make sense, does it? That window just got
19 a little cloudier.

20 Now, let's talk about what they knew. They knew Brent
21 was a drug dealer. They have it in their own affidavit.
22 That's part of the reason they went to search. They had
23 tipsters say he was conducting drug-related activity in
24 Greenwood. They knew he lived in that house by their own
25 surveillance that they conducted. They found items in that

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1 house that had his name on them. Dry cleaning receipts.
2 They knew that. They didn't ask him one single question.
3 Not one. They also know that he's currently sitting in a
4 Georgia prison right now for crimes that are drug related
5 very similar to the ones we sit here to determine today.
6 Not one single question.

7 What we have here, ladies and gentlemen, is sloppy
8 investigation. Sloppy investigation. Essentially that
9 window has now become so cloudy you can't possibly clearly
10 see what's on the other side. It could be a tree. It could
11 be a truck. I don't know. You can't possibly tell me that.
12 What the state wants you to do is assume everything that
13 they've told you here today is true. Let's play devil's
14 advocate for a second. Let's say it is true. Okay. So
15 what do we know? We know that they didn't take any notes,
16 despite the fact that Officer Long got on this stand, who
17 runs professional development, is over all these officers
18 and how they should conduct their cases. What did he tell
19 you? He would've taken notes. Straight from the horse's
20 mouth. He would've taken notes in this case. No notes were
21 taken. All right. They knew Brent Ervin lived there.
22 Again, I hate to belabor that point, but y'all, that is so
23 important. They knew he lived there. They knew he was a
24 drug dealer. They knew he had prior histories with doing
25 drugs in that house. They never even questioned him.

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1 Now, why did they not question him. When I asked that
2 Captain Reeder told you it's because he wasn't in the house
3 when they executed the search warrant. Now, I don't know
4 how much t.v. y'all have watched and that's certainly not
5 relevant, but I would imagine that police officers don't
6 call ahead to check and make sure all the people they want
7 to arrest are home. Are all the drugs there too, by the
8 way? Just checking. Okay. No. They don't do that. In
9 fact, if they had executed the search warrant the day
10 before, the day after, maybe even an hour before. We're
11 talking about a 50/50 chance as far as who could be here.
12 It could've been Brent Ervin sitting in that seat. When he
13 said he didn't ask him any questions because he wasn't
14 there, well, there was another individual that was there,
15 Mr. Benoit Bush. They didn't ask him any questions either.
16 They just let him walk right out the front door. Despite
17 he's in the house. They found all of these drugs, all of
18 this evidence, but they just let him go. Yep, not
19 important. We got our guy. We don't need to ask any
20 questions. No need for that.

21 Ladies and gentlemen, essentially what they are asking
22 you to do is convict on a 50/50 coin toss. Unfortunately
23 for the prosecution, we don't convict on 50/50 coin tosses
24 and assumptions. We convict on proof beyond all reasonable
25 doubt. Beyond all reasonable doubt. That's their problem.

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1 That's what they don't want you to hear. Is it heads or
2 tails? It's neither. It's not beyond a reasonable doubt.
3 It's not guilty. Thank y'all. Thank you for your service.

4

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5 THE COURT: Ms. Taylor, thank you very much. Ladies and
6 gentlemen, it now becomes my responsibility to instruct you
7 on the law that applies in this particular case. The way
8 that this has traditionally been done is that the judge
9 simply sits up here and reads 23 pages of instructions to
10 you and you're supposed to absorb that like some sponge and
11 go back into the jury room and then apply it to the facts.
12 I've always found that to be a little bit unreasonable, so
13 what I'm telling you is I'll give you a copy of these
14 instructions for you to refer to if you need to in the jury
15 room. Please don't simply follow some parts of the
16 instructions and ignore other parts of the instructions, but
17 follow the instructions as a whole. When you're done with
18 your deliberations also please return the copy that you have
19 in there to the court.

20 Additionally, ladies and gentlemen, at this stage of
21 the proceeding it is not possible for additional evidence to
22 be presented and I cannot answer any question that you might
23 have concerning the facts of the particular case. However,
24 if you have any questions about these instructions, simply
25 send me a note and let me know what it is that you're

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1 struggling with and I'll try and assist you in understanding
2 what the law is.

3 Ladies and gentlemen of the jury, the indictments in
4 this case charge the defendant, Mr. Ervin, with several
5 offenses, namely possession of marijuana with intent to
6 distribute, possession of marijuana within the proximity of
7 a school, park, or playground, trafficking in crack cocaine,
8 trafficking crack cocaine within the proximity of a school,
9 park, or playground, and possession of a controlled
10 substance. I remind you the fact that Mr. Ervin was
11 arrested, charged, and indicted in these cases is not
12 evidence in this case and cannot be considered by you as
13 evidence in this case, nor does it create any presumption or
14 inference of guilt. The indictments, those documents, are
15 merely the formal written instruments which contain the
16 charges made against Mr. Ervin or the formal documents by
17 which a case is brought to court.

18 Furthermore, each indictment charges a separate and
19 distinct offense. You must decide each indictment
20 separately on the evidence and the law applicable to it,
21 uninfluenced by your decision as to any other indictment.
22 The defendant may be convicted or acquitted on any or all of
23 the offenses charged. You'll be asked to write a separate
24 verdict of guilty or not guilty for each charge.

25 In this case, ladies and gentlemen, the defendant has

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1 pled not guilty to these indictments and that plea puts the
2 burden of proof on the State of South Carolina to prove the
3 defendant guilty. A person charged with committing a
4 criminal offense in South Carolina is never required to
5 prove himself innocent. I charge you that it is an
6 important rule of law that the defendant in a criminal
7 trial, no matter what the seriousness of the charges may be,
8 will always be presumed to be innocent of the crime for
9 which the indictments were issued unless guilt has been
10 proven by evidence satisfying you of that guilt beyond a
11 reasonable doubt. This presumption of innocence does not
12 end when you begin your deliberations, but it accompanies
13 the defendant throughout the trial until you reach a verdict
14 of guilt based upon evidence satisfying you of his guilt
15 beyond a reasonable doubt.

16 The presumption of innocence is like a robe of
17 righteousness placed about the shoulders of the defendant
18 which remains with the defendant until it has been stripped
19 from him by evidence satisfying you of his guilt beyond a
20 reasonable doubt. Ladies and gentlemen, the presumption of
21 innocence is not merely a legal theory. It's not just a
22 legal phrase. It's a substantial right to which every
23 defendant is entitled unless you, the jury, are satisfied
24 from the evidence of the defendant's guilt beyond a
25 reasonable doubt.

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1 What is a reasonable doubt in the eyes of the law? A
2 reasonable doubt is the kind of doubt that would cause a
3 reasonable person to hesitate to act. The state has the
4 burden of proving the defendant guilty beyond a reasonable
5 doubt. Some of you may have served as jurors in civil cases
6 where you were told that it's only necessary to prove that a
7 fact is more likely true than not true, such as by the
8 greater weight or the preponderance of the evidence. In
9 criminal cases, the state's proof must be more powerful than
10 that. It must be proof beyond a reasonable doubt.

11 Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the defendant's guilt. Now, there
13 are very few things in this world that we know with absolute
14 certainty, and in criminal cases the law does not require
15 proof that overcomes every possible doubt. If, based on
16 your consideration of the evidence, you are firmly convinced
17 that the defendant is guilty of the crime charged, you must
18 find the defendant guilty. If, on the other hand, you think
19 there's a real possibility that the defendant is not guilty,
20 you should give the defendant the benefit of the doubt and
21 find him not guilty.

22 Ladies and gentlemen, I remind you that during this
23 trial you and I have certain duties to perform. As the
24 trial judge it's my responsibility to preside over the trial
25 of this case. I also have the duty to rule on the

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1 admissibility of the evidence offered during this trial.
2 You are to consider only the competent evidence before you.
3 Testimony which was ordered stricken from the record in this
4 case during this case you must disregard that testimony
5 because you're to consider only the competent testimony
6 which has been presented from the witness stand as well as
7 any exhibits which have been made a part of the record in
8 this case. I have the additional duty to charge the law
9 applicable to this case, and as the presiding judge I am the
10 sole judge of the law. It's your duty as jurors to accept
11 and apply the law as I now state it to you. If you already
12 have any idea as to what the law is or what the law ought to
13 be and it does not agree with what I now tell you the law is
14 you must abandon this idea because you're sworn to accept
15 the law and apply the law exactly as I state it to you now.

16 In every case tried in this court before a jury the
17 jury becomes the sole and exclusive judge of the facts in a
18 case. The trial judge cannot intimate, state, comment on,
19 or make any statement to a trial jury about the facts in a
20 case. Since you, the jury, are the sole judge of the facts
21 in this case you're not to infer from what I have said
22 during the progress of this trial in ruling upon the
23 admissibility of evidence or otherwise, or anything that I
24 say to you now during the course of these instructions, that
25 I have any opinion about the facts in this case. Ladies and

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1 gentlemen, the law does not allow me to have an opinion
2 about the facts in this case as this is a matter solely for
3 you, the jury, to determine.

4 As jurors, it's your duty to determine the effect and
5 the value, weight, and truth of the evidence presented
6 during this trial. Ladies and gentlemen, there are two
7 types of evidence which are generally presented during a
8 trial; direct evidence and circumstantial evidence. Direct
9 evidence is the testimony of a person who claims to have
10 actual knowledge of a fact such as an eye witness. It's
11 evidence which immediately establishes the main fact to be
12 proved. Circumstantial evidence is proof of a chain of
13 facts and circumstances indicating the existence of a fact.
14 It's evidence which immediately establishes collateral facts
15 from which the main fact may be inferred.

16 Circumstantial evidence is based upon inference and not
17 on personal knowledge or observation. Now, the law makes
18 absolutely no distinction between the weight or value to be
19 given to either direct or circumstantial evidence, nor is a
20 greater degree of certainty required of circumstantial
21 evidence than of direct evidence. You should weigh all the
22 evidence in this case, and after weighing the evidence if
23 you're not convinced of the defendant's guilt beyond a
24 reasonable doubt you must find him not guilty.

25 Necessarily, you must determine the credibility of

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1 witnesses who have testified in this case. Credibility,
2 ladies and gentlemen, simply means believability. It will
3 become your duties as jurors to analyze and to evaluate the
4 evidence and determine which evidence convinces you of its
5 truth. In determining the believability of witnesses who
6 have testified in this case you may believe one witness over
7 several witnesses, or several witnesses over one witness.
8 You may believe a part of the testimony of a witness and
9 reject the remaining part of the testimony of that same
10 witness. You may believe the testimony of a witness in its
11 entirety or reject the testimony of a witness in its
12 entirety. You may consider whether the witness has
13 exhibited to you any interest, bias, prejudice, or other
14 motive in this case, and you may also consider the
15 appearance and manner of a witness while on the witness
16 stand.

17 Now, in this case, ladies and gentlemen, we had two
18 witnesses who were found to be expert witnesses. Again, the
19 rules of evidence usually don't permit a witness to testify
20 as to opinions or conclusions. An exception to this rule
21 exists for witnesses we call expert witnesses. A witness
22 who by education and experience has become expert in some
23 art, science, profession, or calling, may state opinion as
24 to relevant and material matters in which the witness claims
25 to be an expert and may also state the reasons for that

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1 opinion. You should consider any expert opinion received in
2 evidence in this case, and like any other evidence, give it
3 the weight you think it deserves. If you decide that the
4 opinion of an expert is not based on sufficient education
5 and experience, or if you conclude that the reasons given in
6 support of the opinion are not sound, or that the opinion is
7 outweighed by other evidence, you may disregard the opinion
8 entirely.

9 Ladies and gentlemen, I instruct you and emphasis that
10 the fact that the defendant did not testify is not a factor
11 to be considered by you in any way in your deliberations and
12 in your consideration of the question of the guilt or the
13 innocence of the defendant. It must not be considered by
14 you in any manner whatsoever. A defendant has the
15 constitutional right to remain silent and the assertion of
16 this right must not be considered by you in your
17 deliberations. I repeat, under your oath you're to draw no
18 conclusions whatsoever from the fact that the defendant in
19 this case did not testify. The fact that Mr. Ervin did not
20 testify should not even be discussed in the jury room. The
21 burden of proof, as I have stated to you, is on the state.
22 The defendant is not required to prove his innocence. The
23 burden of proof remains on the state to prove guilt beyond a
24 reasonable doubt.

25 Now, in order to establish criminal liability, ladies

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1 and gentlemen, criminal intent is required. For example,
2 the mental state required to be proven by the state for a
3 particular crime might be purpose, intent, knowledge,
4 recklessness, or criminal negligence. Criminal intent must
5 be proven by the state beyond a reasonable doubt. Criminal
6 intent is always a matter that must be determined by the
7 jury from the circumstances surrounding the situation.
8 There's no way, ladies and gentlemen, to prove intent to a
9 mathematical certainty. There's no way medical science can
10 dissect a person's brain and determine what the person had
11 in mind. So the law says that criminal intent may be
12 inferred from the circumstances shown to have existed. This
13 is how you make a determination of whether or not the
14 element requiring intent was present. It's not necessary to
15 establish intent by direct and positive evidence, but intent
16 may be established by inference in the same way as any other
17 fact by taking into consideration the acts of the parties
18 and all the facts and circumstances of the case. Criminal
19 intent is a mental state, a conscious wrong doing. It's up
20 to you to determine what the defendant intended to do based
21 upon the circumstances shown to have existed.

22 I charge you, ladies and gentlemen, that mere
23 presence at the scene of a crime is not sufficient to prove
24 someone guilty of that crime. The defendant's presence
25 where a crime is being committed or mere association with

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1 the person who commits the crime does not make the person an
2 accomplice or an aider and abettor of the person committing
3 the crime. The burden is on the state to prove every
4 element of the crime charged. If you find, after reviewing
5 all the evidence, that the state has proven that the
6 defendant was only present at the scene of a crime that they
7 have not proven beyond a reasonable doubt any other
8 participation in the crime, that you should find the
9 defendant not guilty. The law is that proof of being at the
10 scene of a crime is not sufficient to find someone guilty.

11 In this case, ladies and gentlemen, the defendant is
12 charged with several offenses. First, with regard to the
13 trafficking crack cocaine charge, the state must prove
14 beyond a reasonable doubt that the defendant knowingly sold,
15 manufactured, cultivated, delivered, purchased, brought into
16 the state, provided financial assistance, or otherwise
17 aided, abetted, attempted, or conspired to sell,
18 manufacture, cultivate, deliver, purchase, or bring into the
19 state, was knowingly in actual or constructive possession,
20 knowingly attempted to become in actual or constructive
21 possession of crack cocaine. The state must also prove
22 beyond a reasonable doubt that the amount of crack cocaine
23 the defendant possessed was 100 grams or more but less than
24 200 grams.

25 The defendant is also charged with possession with

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1 intent to distribute marijuana. The state must prove beyond
2 a reasonable doubt that the defendant possessed marijuana
3 with the intent to distribute it. Possession of more than
4 28 grams or one ounce of marijuana creates an inference that
5 the defendant possessed the marijuana with the intent to
6 distribute it. This inference does not relieve the state
7 from proving beyond a reasonable doubt that the defendant
8 had the intent to distribute. It is simply an evidentiary
9 fact to be taken into consideration by you along with the
10 other evidence, and to be given the weight you decide it
11 should have.

12 To prove possession the state must prove beyond a
13 reasonable doubt that the defendant had both the power and
14 the intent to control the disposition or use of the crack
15 cocaine and/or marijuana. Possession may be either actual
16 or constructive. Actual possession means that the drugs
17 were in the actual physical custody of the defendant.
18 Constructive possession means that the defendant had
19 dominion and control, or the right to exercise dominion and
20 control, over either the crack cocaine and/or the marijuana
21 itself, or the property on which the drugs were found.
22 Again, mere presence at the scene where the drugs were found
23 is not enough to prove possession. The defendant's
24 knowledge and possession may be inferred when the substance
25 is found on the property under the defendant's control,

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1 however this inference is simply an evidentiary fact to be
 2 taken into consideration by you along with the other
 3 evidence in this case and be given the weight you decide it
 4 should have.

5 Two or more persons may have joint possession of a
 6 drug. With regard to the possession with intent to
 7 distribute marijuana charge the state must also prove beyond
 8 a reasonable doubt that the defendant intended to distribute
 9 the marijuana. Distribute means to deliver by administering
 10 or dispensing a drug. Intent may be shown by acts and
 11 conduct of the defendant and other circumstances from which
 12 you may naturally and reasonably infer intent. In
 13 determining whether the defendant had the intent to
 14 distribute the marijuana you may consider the circumstances
 15 surrounding the defendant's alleged possession. You may
 16 consider the amount of the substance alleged to have been
 17 possessed, the manner in which it was allegedly possessed,
 18 the place where it was allegedly possessed, and other
 19 factors which you consider to be important. You must find
 20 that the defendant did not intend to have the drugs solely
 21 for his own use.

22 The defendant is also charged with distribution of
 23 crack cocaine and possession of marijuana within the
 24 proximity of a school, park, or playground. The state must
 25 prove beyond a reasonable doubt that the defendant

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1 distributed, sold, purchased, manufactured, or lawfully
2 possessed with intent to distribute crack cocaine and
3 marijuana while in, on, or within a one half mile radius of
4 the grounds of a public or private elementary, middle, or
5 secondary school, a public playground or park, a public
6 vocational or trade school or technical education center, or
7 a public or private college or university.

8 The person must have knowledge that he or she is in,
9 on, or within one half mile of the grounds of a public or
10 private elementary, middle, or secondary school, public
11 playground or park, vocational or trade school, or technical
12 education center, or a public or private college or
13 university.

14 Finally, ladies and gentlemen, the defendant is charged
15 with possession of benzylpiperazine. The state must prove
16 beyond a reasonable doubt that the defendant knowingly or
17 intentionally possessed benzylpiperazine. Knowingly means
18 with knowledge, consciously, and not accidentally.

19 Intentionally means willfully intending the result which
20 actually occurs and not accidentally or involuntarily.

21 Intent may be shown by acts and conduct of the defendant and
22 other circumstances from which you may naturally and
23 reasonably infer intent.

24 Again, to prove possession the state must prove beyond
25 a reasonable doubt that the defendant had both the power and

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1 the intent to control the disposition or use of the
 2 benzylpiperazine. Possession may be either actual or
 3 constructive. Actual possession means that the
 4 benzylpiperazine was in the actual physical custody of the
 5 defendant. Again, constructive possession means that the
 6 defendant had dominion or control or the right to exercise
 7 dominion or control over either the drug itself or the
 8 property on which the drug was found.

9 Again, mere presence at the scene where drugs were
 10 found is not enough to prove possession. The defendant's
 11 knowledge and possession may be inferred when a substance is
 12 found on the property under his control. Again, however,
 13 this inference is simply an evidentiary fact to be taken
 14 into consideration by you along with the other evidence and
 15 to be given the weight you decide it should have.

16 Possession of benzylpiperazine is a crime unless the
 17 benzylpiperazine was obtained directly from or through a
 18 valid prescription or order of a practitioner acting in the
 19 course of professional practice.

20 A practitioner is defined by the law as a physician,
 21 dentist, veterinarian, scientific investigator, pharmacy,
 22 hospital, or other person, or institutions licensed,
 23 registered, or otherwise permitted to distribute, dispense,
 24 conduct research with, or administer a controlled substance
 25 in the course of professional practice of research in this

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1 state.

2 Ladies and gentlemen, there are several possible
3 verdicts which you may find in this case; guilty or not
4 guilty of trafficking in crack cocaine, guilty or not guilty
5 of possession with intent to distribute marijuana, guilty or
6 not guilty of possession within the proximity of a school,
7 park, or playground with respect to both the crack cocaine
8 and the marijuana charges, and guilty or not guilty of
9 possession of controlled substance. Now, there's no
10 significance whatsoever to the order in which I state these
11 possible verdicts. It's simply that one has to be stated
12 first. Ladies and gentlemen, your verdict has to be a
13 unanimous one.

14 Mr. Foreman, when the jury agrees on a verdict you'll
15 write the verdict on this verdict form that I have prepared
16 for you to help guide your deliberations and then sign your
17 name as foreperson. Then knock on the jury room door and
18 let Mr. Willingham know that you've reached a verdict and
19 we'll receive you back into the courtroom shortly after
20 that. Again, Mr. Foreman, this verdict form just basically
21 lists the charges.

22 First, I've listed the trafficking charge and it's
23 pretty self explanatory. It basically says, "We, the jury
24 in the above captioned case, on the charge of trafficking
25 crack cocaine, unanimously find Maunwell Ervin", and then it

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1 has two blanks where you can initial one, either not guilty
2 or guilty. The exact same is true for the four other
3 charges. Again, ladies and gentlemen, your verdict has to
4 be unanimous.

5 We don't have majority verdicts in this state, so all
6 11 of you must agree upon the verdict. I remind you that
7 have no friends to reward and you have no enemies to punish
8 in this case and that your verdict must be based upon the
9 evidence presented and on the law as I have instructed you.
10 Your verdict cannot be based upon or the result of passion,
11 caprice, prejudice, or based upon any consideration which is
12 not in the record in this case.

13 Ladies and gentlemen, I'm going to ask that you return
14 to the jury room but don't start your deliberations yet.
15 Your cue to begin your deliberations, Mr. Foreman, will be
16 receipt of these instructions, the verdict form, and all the
17 evidence back in the jury room. So when Mr. Willingham or
18 someone else brings all that back to you, that will be your
19 cue to start talking about and start discussing the case. I
20 need to take up a few issues with the attorneys and make
21 sure I've instructed you on everything they want me to
22 instruct you on. Again, when you get all the evidence back
23 there that's when y'all can start talking about the case.
24 So if you will adjourn for a moment. I hope to have this
25 case to you in the next minute or so.

JURY CHARGE

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1 (Whereupon, the jury exited the courtroom at 2:16 p.m.)

2 THE COURT: The jury is out. Exceptions, additions from
3 the state?

4 SOLICITOR STUMBO: None from the state, Your Honor.

5 THE COURT: From the defense?

6 MS. TAYLOR: None from the defense, Your Honor.

7 THE COURT: Very good. If y'all will verify that all
8 the evidence we have in the record is there and going back
9 we'll give this to the jury momentarily.

10 (Whereupon, the jury began deliberations at 2:19 p.m.)

11 (Whereupon, the jury passed a note from the jury room
12 to the bailiff for the judge which was marked as Court's
13 Exhibit 5 for identification.)

14 THE COURT: We're going to go back on the record in the
15 State vs. Mr. Ervin. The court has received a communication
16 from the jury. The question that they have posed to me is,
17 "Do we have to find him guilty on every charge unanimously?"
18 The answer to that question is yes. So my intention is to
19 have them come out and explain again that each charge has to
20 be considered separately, but in order to return a verdict
21 on any or all charges all 11 have to agree as to that
22 particular verdict. Is that acceptable to the state?

23 MR. TAYLOR: Judge, with no objection. I think just to
24 make clear that they could find him guilty on three charges
25 and two or whatever. Do you see what I'm saying, Judge?

JURY CHARGE

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1 THE COURT: I understand. I thought I - I know I
2 charged them that they have to consider each charge
3 separately and independently of the other charges. I'll
4 probably give them that example that they can certainly find
5 him guilty on three, not guilty on two, not guilty on all
6 five, guilty on all five, but each charge has to be
7 considered independently of the others. Is that acceptable
8 to the defense?

9 MS. TAYLOR: As long as they tell them they have to
10 unanimously agree for each charge.

11 THE COURT: Very good. Let's have the jury out, please.

12 (Whereupon, the jury entered the courtroom at 3:49
13 p.m.)

14 THE COURT: Let the record reflect that the jury is back
15 and seated. Mr. Foreman, I've received the communication
16 that you sent out in which you ask, "Do we have to find him
17 guilty on every charge unanimously?" The short answer to
18 that question is yes. Understand that each charge has to be
19 considered separately, okay? Separate and distinct from the
20 other charges. But certainly all 11 of you have to agree on
21 any verdict whether it's guilty or not guilty in order to
22 render a verdict.

23 We, again, don't have majority verdicts in this state,
24 so all 11 of you would have to agree on any verdict which is
25 rendered. But certainly it's within your prerogative in

JURY CHARGE

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1 deciding these charges independently that all 11 of you
2 could find him guilty on one, two, three, four, or all five,
3 or none of the charges. You could find him guilty on two,
4 not guilty on three, guilty on one, not guilty on four, if
5 you get my drift. Or not guilty on all five, guilty on all
6 five.

7 Based upon your view of the evidence, but you must
8 consider the charges separate and distinct from one another
9 in arriving at that verdict and again, all 11 of you have to
10 agree. It must be a unanimous verdict. So hopefully that
11 answers your question. If you need any further guidance
12 don't hesitate to ask. I'll ask you now to continue your
13 deliberations, please. Thank you.

14 (Whereupon, the jury exited the courtroom at 3:51 p.m.)

15 THE COURT: Exceptions from the state to my additional
16 charge?

17 MR. TAYLOR: No, Your Honor.

18 THE COURT: From the defense?

19 MS. TAYLOR: No, Your Honor.

20 THE COURT: We'll remain at ease then. Thanks.

21 (PAUSE)

22 (Whereupon, the jury passed a note from the jury room
23 to the bailiff for the judge which was marked as Court's
24 Exhibit 6 for identification.)

25 THE COURT: The record should reflect that I've received

1 an additional communication from the jury. I have that
2 exhibit marked as Court's Exhibit number 6 and I've asked
3 the bailiff to share it with counsel. I assume everyone has
4 had a chance to see it; correct?

5 MR. TAYLOR: Yes, sir.

6 MS. TAYLOR: Yes, sir.

7 THE COURT: The statement is that, "We are in deadlock
8 ten to one on all charges with one saying their mind will
9 not change." I assume that the state would request an Allen
10 charge at this point?

11 MR. TAYLOR: That's correct, Your Honor.

12 THE COURT: Any opposition?

13 MS. TAYLOR: No opposition, Your Honor.

14 THE COURT: Let's have the jury out, please.

15 (Whereupon, the jury entered the courtroom at 4:17
16 p.m.)

17 THE COURT: The jury is back and seated. Mr. Foreman,
18 I've received your communication that the jury is having
19 difficulty reaching a decision. Along those lines I want to
20 give y'all a little bit further instructions in the hopes
21 that maybe it will assist you in some regard. You basically
22 stated that you're unable to reach a verdict in this case.
23 As I instructed you earlier throughout the trial, your
24 verdict has to be unanimous.

25 I understand that when a matter is in dispute it's not

1 always easy for even two people to agree on something, so
2 when 11 people have to agree it becomes even more difficult.
3 In most cases, absolute certainty cannot be reached or
4 expected. However, you have a duty to make every reasonable
5 effort to reach a unanimous verdict in this case. In doing
6 this you should consult with one another, express your own
7 views, and listen to the opinions of your fellow jurors.
8 Tell each other how you feel and why you feel that way and
9 discuss your differences, please, with an open mind.

10 Now, although the verdict of the jury must be
11 unanimous, every one of you has the right to your own
12 opinion. The verdict you agree to must be your own verdict,
13 a result of your own convictions. You should not give up
14 any firmly held beliefs merely to be in agreement with your
15 fellow jurors. The majority should consider the minority's
16 position and the minority should consider the majority's
17 position. You should carefully consider and respect the
18 opinions of each other and reevaluate your position for
19 reasonableness, correctness, and impartiality.

20 You must lay aside all outside matters and reexamine
21 the questions before you based upon the law and the evidence
22 in this case. Ladies and gentlemen, if you don't agree on a
23 verdict in this case I must declare a mistrial in the case
24 and in that case it doesn't mean anybody wins. It just
25 means that at some point in the future I will try this case

1 with some other jury sitting exactly where you are sitting
2 now. The same participants will come and the same lawyers
3 will ask basically the same questions and get basically the
4 same answers, and we'll go through the whole trial process
5 again.

6 You were selected in the same manner and from the same
7 source as any future jury will be. There's no reason for me
8 to suppose that the case will ever be submitted to 11 people
9 who are more intelligent, impartial, conscientious, or
10 competent than you are. Or that clearer evidence will be
11 produced on one side or the other. Therefore, I'm going to
12 ask that you return to your deliberations and consider what
13 I've just told you in light of the earlier instructions that
14 I gave you with regard to the law that applies. I would
15 just ask that you keep at it and just let me know if at any
16 time you want to break for the evening. If you think that
17 perhaps fatigue is setting in or something and it might be
18 beneficial to start again fresh tomorrow morning, that's
19 perfectly fine. Just let me know, because at this point
20 we're on your schedule. You're not on the court's schedule
21 in any way, shape, or form. So with that I'll ask that you
22 return to your deliberations, please. Thank you very much.

23 (Whereupon, the jury exited the courtroom to resume
24 deliberations.)

25 THE COURT: The record should reflect that the jury is

1 out. Exceptions to the charge from the state?

2 MR. TAYLOR: None from the state, Your Honor.

3 MS. TAYLOR: None from the defense, Your Honor.

4 (PAUSE)

5 (Whereupon, the jury passed a note to the bailiff for
6 the judge.)

7 THE COURT: All right. We are back on the record in Mr.
8 Ervin's case and he is present with counsel. I have
9 received an additional communication from the jury, which I
10 have shared with counsel in chambers. It basically states,
11 "We have come to a decision on three charges but hopelessly
12 deadlocked on two." The court will make this a Court's
13 Exhibit.

14 (Whereupon, jury note was marked Court's Exhibit 7 for
15 identification.)

16 THE COURT: Under the law, obviously I cannot give an
17 additional Allen charge and have them try to decide the
18 remaining two. I can only send the jury out once with an
19 Allen charge. So my intention would be to receive the
20 verdict on the three charges that they've agreed on and a
21 mistrial will be declared on the two that they cannot agree
22 on. Does everyone concur?

23 MR. TAYLOR: Yes, Your Honor.

24 MS. TAYLOR: I'm sorry, Your Honor. Can you repeat the
25 question?

1 THE COURT: Sure. My intention is to receive the
2 verdict that they have agreed on with regard to the three
3 charges and then declare a mistrial on the two that they
4 cannot agree on. Procedurally I think that would be proper.
5 I don't know if the foreperson has written the verdict on
6 the verdict form. If you will, Mr. Willingham, just ask the
7 foreperson to step out and I'll ask him if he's completed
8 the verdict form.

9 (Whereupon, the bailiff asked the jury foreman to enter
10 the courtroom and he complied.)

11 THE COURT: I got your message that you've reached a
12 unanimous agreement on three charges. Is that right?

13 MR. FOREMAN: Yes, sir.

14 THE COURT: Have you already written that on the verdict
15 form?

16 MR. FOREMAN: Yes, sir.

17 THE COURT: Go back inside. Mr. Willingham will bring
18 you all out together. Thank you.

19 (Whereupon, the jury foreman exited the courtroom.)

20 THE COURT: I've made the note Court's Exhibit number 7.
21 Let's have the entire jury out, please.

22 (Whereupon, the jury entered the courtroom.)

23 THE COURT: Let the record reflect that the jury is back
24 and seated. Mr. Foreman, I'm informed that the jury has
25 reached a unanimous verdict on three of the five charges,

VERDICT

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1 but you are unable to reach a decision on the remaining two;
2 is that correct?

3 MR. FOREMAN: Yes, sir.

4 THE COURT: First, is the verdict on the three charges
5 unanimous?

6 MR. FOREMAN: Yes, sir.

7 THE COURT: If you would, hand that verdict form,
8 please, to Mr. Willingham.

9 (Whereupon, the jury foreman complied.)

10 THE COURT: Madame Clerk, if you will publish the
11 verdict just with regard to the questions posed where there
12 is an answer.

13 VERDICT

14 MADAME CLERK: State of South Carolina, County of
15 Greenwood. State of South Carolina versus Maunwell Javar
16 Ervin. We the jury in the above captioned case, on the
17 charge of possession with intent to distribute marijuana,
18 unanimously find Maunwell J. Ervin guilty. We the jury in
19 the above captioned case, on the charge of possession of
20 marijuana within one half mile radius of school, public
21 park, or playground, or college, or university, unanimously
22 find Maunwell J. Ervin guilty. We the jury in the above
23 captioned case, on the charge of possession of a controlled
24 substance, benzylpiperazine, unanimously find Maunwell Ervin
25 guilty. Signed by foreman Chad Teague.

VERDICT

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1 THE COURT: Ladies and gentlemen of the jury, with
2 regard to those three charges where a decision was rendered,
3 if this is your verdict please indicate, all of you, by
4 raising your right hand, please. Let the record reflect
5 that all hands went up.

6 Ladies and gentlemen of the jury, I want to thank you
7 for your service this week. I know that this is not an easy
8 thing to sit through. The criminal justice system
9 contemplates dragging citizens in off the street and having
10 to hear cases that they have no personal stake in, and I
11 want to thank you for the attention that you have shown in
12 this particular case and the work that you have done to
13 reach where we are at this particular point in time. I'm
14 not going to belabor the point any longer. I will tell you
15 two things real quick. First, you will receive a letter
16 from me thanking you again for your jury service this week.
17 The primary purpose of the letter is to twofold.

18 First, of course, to thank you for what you have done,
19 and secondly to solicit any feedback that you have. If
20 there's anything that you liked about court, didn't like
21 about court, thought we could've done better, wanted better
22 types of coffee or something else, please let me know. My
23 contact information will be there. Email, phone, snail mail
24 address. Let me know especially if there is something that
25 you did not like, okay?

VERDICT

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1 Second of all, it is quite normal that after a case has
2 concluded the attorneys may contact you or someone may
3 contact you or somebody from one of the lawyer's offices may
4 contact you just to find out how they did and how their
5 presentation went and that kind of a thing. We are still in
6 a free country. Everyone has the right to free speech. If
7 you want to talk to them that's perfectly fine. You can
8 tell them what you want to tell them. Usually the general
9 rule is that what happens in the jury room stays in the jury
10 room, but certainly you're at liberty to speak or not to
11 speak with anyone who contacts you. If someone contacts you
12 and you don't want to talk to them, simply tell them, "Look,
13 I listened to you for three days straight. I don't want to
14 really talk to you anymore about the situation." If they
15 persist in wanting to talk to you or if you feel like any
16 contact that you're receiving is inappropriate, notify the
17 authorities. They'll contact me immediately and it will be
18 taken care of. I promise you that much, okay? So if
19 there's any concerns that you have about that sort of a
20 thing or that sort of an issue, let us know immediately and
21 it will be rectified. With that, nothing further from the
22 jury from the state I assume, Mr. Taylor?

23 MR. TAYLOR: Nothing from the state.

24 THE COURT: Nothing from the defense?

25 MS. TAYLOR: Nothing from the defense, Your Honor.

1 THE COURT: Very good. You are released. You have my
2 thanks. Mr. Taylor, what are we doing with the rest of the
3 jury pool?

4 MR. TAYLOR: Judge, we're releasing the rest of the jury
5 pool.

6 THE COURT: Very good. You don't have to worry about
7 calling in tonight after six o'clock. We have enough work
8 probably for two weeks much less the remaining two days. So
9 we will not need the jury back. Thank you very much for
10 your service and I hope to see y'all around. Take care. I
11 do need him to sign. Mr. Foreman, if you'll stick around.
12 I'm going to ask that you sign the actual indictments. The
13 rest of y'all can exit out that way with my appreciation.

14 (Whereupon, the court conferred with the Clerk of Court
15 off the record.)

16 THE COURT: At this point, Ms. Taylor, any motions that
17 you would care to make post-trial, ma'am?

18 MS. TAYLOR: Just renewing all previous motions and
19 objections, Your Honor.

20 THE COURT: All previous motions are renewed. The same
21 rulings that was previously made. You also, of course, move
22 for a new trial?

23 MS. TAYLOR: Yes, sir.

24 THE COURT: That motion will be denied. Anything
25 further before we proceed with sentencing from the state or

SENTENCE

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1 the defense?

2 MR. TAYLOR: Nothing from the state, Your Honor.

3 MS. TAYLOR: Nothing from the defense, Your Honor.

4 SENTENCE OF THE COURT

5 THE COURT: If you want to ask Mr. Ervin to step up,
6 please. I'll hear about the state's position concerning the
7 matter and certainly anything in mitigation. Just so the
8 record is clear I am declaring a mistrial on indictments 11-
9 785 and 786. Those are the ones involving the trafficking
10 and the possession of crack within proximity to a school,
11 park, or playground. So those two indictments will be
12 returned to the clerk for further proceedings.

13 MR. TAYLOR: May it please the court?

14 THE COURT: Yes, sir.

15 MR. TAYLOR: Judge, you're very familiar with the facts.
16 I'm not going to go back over those again. I just want to
17 read his record to you. He was sentenced back in 2001 for
18 some type of federal drug conviction. It says dangerous
19 drugs. He was sentenced and it does say conspiracy to
20 commit PWID cocaine base. Received 135 months and it says
21 five years SRT. I do know he's out on federal parole at
22 this time. I spoke to the federal parole agent. I have a
23 name written down in the back, Judge. I know he said that
24 this would obviously violate his federal parole, so Mr.
25 Ervin will have to have a hearing on that at a later time.

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1 Judge, he's also got a prior offense for marijuana and
2 failure to stop for blue light. It looks like he received
3 probation. I'm not sure if he successfully completed that
4 probation. That was from 2000 where he pled guilty. Also a
5 failure to obey an officer that's a lower court charge out
6 of Greenwood. Judge, by our calculation the PWID marijuana
7 is a second offense and carries up to ten years. The
8 accompanying proximity carries ten years, and the one year
9 offense on possession of a controlled substance second
10 offense. Judge, we're asking for consecutive time, 21
11 years. I know you cannot consider the crack cocaine. That
12 was a mistrial, so you're not considering that today. I do
13 know I speak for the Drug Enforcement Unit. This man has
14 been a huge problem. He's a major drug dealer in Greenwood.
15 Although he has not gotten in trouble since this incident,
16 he's someone bringing in major amounts of cocaine from
17 Atlanta. As you heard during the trial, his business
18 partner and cousin, Bren, has been given 15 years out of
19 Georgia. Judge, we want to send a message that this type of
20 behavior is not acceptable, especially when you do it more
21 than once. You go to prison for approximately ten years,
22 get out, and then you continue to do it again. Again,
23 Judge, I don't know if any narcotics agents want to speak or
24 anything, but we're asking for the full amount.

25 THE COURT: Thank you, Mr. Taylor. Is there any

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1 indication how much time he has left on that federal
2 sentence?

3 MR. TAYLOR: I want to say the agent said three years,
4 but I may be incorrect. I don't know how they'll handle it.
5 If they'll revoke him in full or if they'll work out a deal
6 like the state Department of Probation and Parole. I do
7 know that the agent was in contact with me and wanted me to
8 tell him whenever a disposition is found in this case.

9 THE COURT: Very good. Ms. Taylor, certainly happy to
10 hear from you as far as anything in mitigation for Mr.
11 Ervin. Anything that, of course, he wants to say or Ms.
12 Barwick might want to say on his behalf.

13 MS. TAYLOR: Thank you, Your Honor. May it please the
14 court?

15 THE COURT: Yes, ma'am.

16 MS. TAYLOR: Just to reference that Bren Ervin was his
17 partner, I mean, we just conducted a whole trial where they
18 said these drugs didn't belong to him. That was my
19 assertion that they could've possibly belonged to two. So I
20 would respectfully ask that that not be considered in Your
21 Honor's decision.

22 I would like to say that since the date of this
23 incident he has been working constantly. He has not gotten
24 even so much as a traffic ticket since 2010, Your Honor. If
25 he is shuttling these massive amounts of drugs from Atlanta

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1 and he's such a big problem for the Greenwood County
2 Narcotics Unit I would imagine at this point he would've
3 been caught again if he was still in the business of dealing
4 drugs.

5 Like I said, he does own a local restaurant here in
6 Greenwood. I believe it's called Try Me. I think it just
7 speaks for himself. I've gotten traffic tickets in the last
8 three years. He hasn't. He's cleaned up his act. He has a
9 restaurant. He has a child that is permanently confined to
10 a wheelchair and has a severe disability and I believe two
11 other minor children. He needs to be available to support
12 his family. He understands, you know, that this is a
13 serious offense, but he's been conducting his life as a
14 perfect member of society since this has happened by all of
15 our accounts.

16 MR. TAYLOR: Judge, I just want to put on the record I'm
17 not sure how we're going to handle these other two pending
18 indictments. I'll be in touch with Ms. Taylor. We'll wait
19 and see what happens with sentencing and I'll speak with the
20 solicitor about it. I just want to put that on the record
21 as well.

22 THE COURT: Well, obviously I would not be taking into
23 account the two counts that the jury did not reach a verdict
24 on. That would be improper to consider that. Ms. Taylor,
25 anything else from you, ma'am.

SENTENCE

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1 MS. TAYLOR: I'm just briefly asking if my client would
2 like to address the court.

3 THE COURT: By all means.

4 MR. ERVIN: Your Honor, I just want to thank y'all for
5 listening to the case. I'm standing here today still saying
6 that I'm not guilty, but we went forward to the jury and
7 they found me guilty. I stand here and just ask that you
8 show a little leniency on me.

9 THE COURT: I understand. Thank you, Mr. Ervin.
10 Anything else?

11 MS. TAYLOR: Nothing further from the defense, Your
12 Honor.

13 THE COURT: Ms. Taylor, do you know how much time he
14 spent in pretrial confinement before he made bond? Madame
15 Clerk, can you find that?

16 MS. TAYLOR: You mean originally or how many days during
17 both the trials?

18 THE COURT: Since the trial he spent a week in January
19 when we first tried the case, and then he spent three days
20 this week.

21 MR. TAYLOR: Judge, I think it's eight and then whatever
22 he did before he bonded out is my calculation. So five the
23 week we tried it the first time and then three days this
24 week. That's eight plus whatever he's got. Judge, also for
25 the record, jeopardy is attached to the proximity on the

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1 possession of a controlled substance the state will dismiss
2 that charge. The controlled substance. We reduced it to a
3 possession.

4 THE COURT: Correct. Double jeopardy has attached to
5 that, so the PWID will, by law, have to be. Yes. The
6 proximity -- I don't care if you do it as a nol pros or
7 judicial dismissal, but clearly that would have to be
8 dismissed.

9 MR. TAYLOR: I will handle it now, Judge. Can I hand
10 this up? I just need your signature to judicially dismiss.

11 (Whereupon, the court conferred with the Clerk of Court
12 off the record.)

13 THE COURT: From my readings of the record, Mr. Ervin,
14 and tell me if this sounds about right. It appears that you
15 were arrested on December 10th and a quarter of a million
16 dollars bond was set by me on the 14th because the city
17 judge wouldn't hear it. Then you made bond on the 16th.
18 Does that sound about right, sir? About six days in jail
19 before you got out.

20 MR. ERVIN: Yeah.

21 THE COURT: All right.

22 MR. TAYLOR: Judge, by my calculations that would be 14
23 days total.

24 THE COURT: Ms. Taylor, would you concur in the
25 penalties that Mr. Taylor said ten, and ten, and one.

SENTENCE

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1 MS. TAYLOR: I would ask that you run them concurrently.

2 THE COURT: Of course, yes. But as far as the actual
3 time.

4 MS. TAYLOR: That is my understanding of the statute.

5 THE COURT: Mr. Ervin, anything further that you want to
6 say, sir?

7 MR. ERVIN: No, sir.

8 THE COURT: I'll tell you, Mr. Ervin, I appreciate your
9 position that you're not guilty of these particular
10 offenses. The jury, however, was extremely attentive. In
11 all candor, sir, if 11 people agree the state has met the
12 highest burden of proof known to mankind, I simply must
13 concur with their assessment of the overall evidence.
14 Whereas I understand you may very well disagree with the
15 verdict, I cannot say that your position is, in my mind,
16 well founded. I have taken into account everything that's
17 said and my biggest concern, Mr. Ervin, is that after doing
18 some substantial time in the federal system you come back
19 out and you get in trouble with the law with marijuana all
20 over again. This is not a piddly amount of marijuana.
21 There are many people who feel that marijuana offenses are
22 not as substantial as methamphetamine or crack cocaine. The
23 biggest problem is that marijuana is a gateway drug. It's
24 what leads people to start using other substances. You had
25 an awful lot of marijuana in your possession on this

SENTENCE

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1 particular day that was very close to a university, and in
 2 my mind very detrimental to the overall well being of our
 3 society as a whole.

4 The sentence of the court then on indictment 783,
 5 that's the PWID marijuana second offense, the sentence, Mr.
 6 Ervin, is that you are committed to the Department of
 7 Corrections for ten years.. You will receive credit for 14
 8 days in jail. On indictment 784, the sentence is that
 9 you're committed to the Department of Corrections for five
 10 years. This sentence will be consecutive to that on 783,
 11 and the sentence on the possession of a scheduled I
 12 controlled substance is that you're committed to the
 13 Detention Center for 14 days, credit 14 days served. I wish
 14 you luck, Mr. Ervin.

15 (Hearing ended at 4:59 p.m.)

16 (End of requested transcript of record)

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Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenwood County, South Carolina, on the 22nd-24th day of July 2013.

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

January 3, 2013

Tara T. Scott

Circuit Court Reporter

 ORIGINAL

State of South Carolina)
) Court of General Sessions
County of Greenwood)
 2011-GS-24-0785

State of South Carolina)
 vs.) Transcript of Record
)
Maunwell Jabaar Ervin)
)
)
)
Defendant)

April 11, 2016
Greenwood, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

Yates Brown, Deputy Solicitor
Attorney for the State

Lauren Taylor, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

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NO EXHIBITS WERE INTRODUCED.

1 THE COURT: All right, Mr. Brown, whenever you are
2 ready.

3 MR. BROWN: Judge, standing before you is Maunwell
4 Ervin on indictment 11-785. He is pleading guilty to
5 trafficking in cocaine. It is being reduced down from the
6 original over 200 grams, now to, between 28 and 100 grams.
7 That would be 7 to 25 range. Judge, we have negotiated a
8 plea of 7 years on the trafficking which would run
9 concurrent with his current sentence. Judge, he was found
10 guilty on several marijuana charges back in 2013. We
11 would ask that this be backdated to that charge time and
12 give him credit for that time served.

13 THE COURT: Do we have the ability to calculate those
14 days fairly easy?

15 MS. TALOR: I believe it was July, 2013, Your Honor.
16 I can get an exact date, it would have been the first or
17 second week of that year.

18 THE COURT: July 23rd of '13?

19 MS. TALOR: I don't know the date, it was July, 2013.
20 It would have been the first or second week of July.

21 THE COURT: All right. Your name is Maunwell Jabaar
22 Ervin?

23 MR. ERVIN: Yes, sir.

24 THE COURT: I have an indictment, it is number
25 11-785, it is for trafficking in crack cocaine. And it

1 reads that you while in Greenwood County on the 9th of
2 December of '10 did knowingly traffic in crack cocaine
3 which you provided assistance or have in your possession,
4 actual or constructively more than 100 but less than 200
5 grams of crack cocaine in violation of the health code
6 provision, 44-53-375. It is my understanding that you are
7 going to plead guilty to a related charge of trafficking
8 in cocaine, more than 28 but less than 100 grams, second
9 offense. Is that right?

10 MR. ERVIN: Yes, sir.

11 THE COURT: Ms. Taylor, you represent Mr. Ervin?

12 MS. TALOR: That's correct, Your Honor.

13 THE COURT: And you have explained to him the
14 elements of the offense and his potential punishment?

15 MS. TALOR: At length, Your Honor.

16 THE COURT: Do you have a belief that he could be
17 convicted of this crime if the State's witnesses were
18 called and believed by the jury?

19 MS. TALOR: I do.

20 THE COURT: And you agree with his decision to enter
21 this plea?

22 MS. TALOR: I do, Your Honor.

23 THE COURT: Sir, I am going to have you placed under
24 oath.

25 MAUNWELL ERVIN, being

1 first duly sworn, testified as follows:

2 THE COURT: Mr. Ervin, in the last twenty-four hours
3 have you taken any alcohol, drugs or medications?

4 MR. ERVIN: No, sir.

5 THE COURT: Are you clearheaded?

6 MR. ERVIN: Yes, sir.

7 THE COURT: Do you suffer from any disabilities,
8 mental, physical or emotional ones to affect your hearing
9 or understanding of my questions to you?

10 MR. ERVIN: No, sir.

11 THE COURT: In order for me to accept your plea you
12 have got to give up or waive your rights to have a trial
13 by jury on this charge. Do you understand?

14 MR. ERVIN: Yes, sir.

15 THE COURT: If you were to plead not guilty the State
16 bears the burden of proving your guilt. That requires the
17 State to call its witnesses, present its evidence for the
18 jury to consider the issue of guilt or innocence. You
19 can't be called as a witness by the State. The State is
20 not allowed to call you as a witness, not allowed to
21 comment on your silence. Now, in order for me to accept
22 your plea you must give up or waive these rights to
23 confront those accusing you of this offense. Do you
24 understand?

25 MR. ERVIN: Yes, sir.

1 THE COURT: Understanding your rights to challenge
2 these charges at trial, do you want to waive those rights
3 here today?

4 MR. ERVIN: Yes, sir.

5 THE COURT: Are you waiving your rights to defend
6 yourself freely and voluntarily on the offense of
7 trafficking in cocaine, 28 to 100 grams, second offense?

8 MR. ERVIN: Yes, sir.

9 THE COURT: Are you waiving those rights freely and
10 voluntarily?

11 MR. ERVIN: Yes, sir.

12 THE COURT: Mr. Brown, tell me the facts, please.

13 MR. BROWN: Thank you, Your Honor. On or about
14 December 9th, 2010 around 9:14 Officers from the Greenwood
15 Drug Enforcement Unit and the Greenwood SWAT Team executed
16 a lawful search warrant at the residence of 316 Lawson
17 Street here in Greenwood. The SWAT Team went through the
18 front door and once they entered the residence officers
19 located a Anoit, (phonetic), Bush living in the room, in
20 the living room. And they located Mr. Maunwell Ervin in
21 the hallway of the residence. At that time both
22 individuals were detained and placed in handcuffs. During
23 the sweep of the house officers with Greenwood County
24 executed lawful search warrant and they did find marijuana
25 and pills. He did have a trial and was found guilty on

1 the marijuana charges. Also, in the house in a false
2 bottom can of a horse shoe, kind of potato chips they did
3 find cocaine in the bottom of that. And also in a bedpost
4 in the room that Mr. Ervin was believed to be sleeping in.
5 The home did, was leased and was rented by Mr. Ervin.
6 Judge, the amount of weight of cocaine that was found
7 there was 119 grams, it was based off of what a SLED
8 report is. Judge, we are reducing that down to under 100
9 grams, between 28 and 100 grams. And have negotiated this
10 resolution. Judge, we will also be dismissing a related
11 proximity charge. And that should wrap up every charge
12 that he is, he has here in Greenwood. Judge, this is a
13 violent most serious charge or serious charge in which he
14 is pleading to.

15 THE COURT: Okay. Mr. Ervin, you heard the facts
16 summarized by the State. Are those facts accurate as to
17 the trafficking second offense, 28 to 100 grams you are
18 pleading to?

19 MR. ERVIN: Yes, sir.

20 THE COURT: Now, the State tells me that they
21 negotiated the charge down from a third or more to a
22 second offense. The weight down from 100 to 200, down to
23 28 to 100 grams. That is two steps, one in offense and
24 one in weight. And the State is recommending that you be
25 incarcerated no more than 7 years, negotiated a 7 year

1 sentence. And your days start accruing as of July, some
2 date, 2013, whenever the other conviction started,
3 whatever date that is in July of 2013. This sentence will
4 be backdated, so it will be concurrent since that time.
5 Were any other promises made to you to get you to plead
6 guilty?

7 MR. ERVIN: No, sir.

8 THE COURT: And the dismissal of all of the related
9 charges.

10 MR. BROWN: Yes, sir.

11 THE COURT: Proximity in particular.

12 MR. BROWN: Yes, sir.

13 THE COURT: Now, on your prior record do you have any
14 other serious convictions yet that you know of?

15 MR. ERVIN: No, sir.

16 MS. TALOR: We dealt with that issue today, Your
17 Honor, he does not. This would be his first serious.

18 THE COURT: Fair enough. A lot of times I hear
19 people having proximities and they don't realize those are
20 serious offenses with a strike. And they are dismissing
21 that one. This conviction counts as a serious conviction
22 on your record which can be used as one strike against
23 you, three small strikes, two small strikes and one big
24 strike or two big strikes can be used by the State to ask
25 for a sentence of life without parole. By you pleading

1 guilty here today you will have one small strike which is
2 a serious conviction. Do you understand?

3 MR. ERVIN: Yes, sir.

4 THE COURT: Additionally you will be classified as a
5 violent offender in the Department of Corrections by
6 virtue of this plea which means you will not be entitled
7 to all of the programs that the non-violent offenders are
8 entitled to. Do you understand that?

9 MR. ERVIN: Yes, sir.

10 THE COURT: How are you currently classified?

11 MR. ERVIN: Non-violent.

12 MS. TALOR: Non-violent.

13 THE COURT: Non-violent. This could modify that
14 classification by this time on this sentence. It may not
15 but it could be with the result of this plea. Do you
16 understand?

17 MR. ERVIN: Yes, sir.

18 THE COURT: This is eighty-five percent?

19 MR. BROWN: Yes, sir.

20 THE COURT: All right. So, a 7 year sentence the
21 State has negotiated with you, you have to serve
22 eighty-five percent of the 7 years before you are eligible
23 for a community release program. Do you understand?

24 MR. ERVIN: Yes, sir.

25 THE COURT: Has your lawyer explained all of this to

1 you?

2 MR. ERVIN: Yes, sir.

3 THE COURT: And she has gone over the State's
4 discovery file with you?

5 MR. ERVIN: Yes, sir.

6 MS. TALOR: The evidence.

7 MR. ERVIN: Yes, sir.

8 THE COURT: Have you understood your conversations
9 with her?

10 MR. ERVIN: Yes, sir.

11 THE COURT: Are you satisfied with her counsel and
12 advice to you?

13 MR. ERVIN: Yes, sir.

14 THE COURT: Are you satisfied with the negotiated
15 result of this plea and the minimum sentence she has
16 gotten you?

17 MR. ERVIN: Yes, sir.

18 THE COURT: Are you pleading guilty after having
19 enough time to speak to her?

20 MR. ERVIN: Yes, sir.

21 THE COURT: Are you pleading guilty freely and
22 voluntarily?

23 MR. ERVIN: Yes, sir.

24 THE COURT: And because you are, in fact, guilty?

25 MR. ERVIN: Yes, sir.

1 THE COURT: And do you understand that if you believe
2 something procedurally has been done wrong in this plea
3 today you have a limited number of days to file a notice
4 of intent to appeal. Do you understand?

5 MR. ERVIN: Yes, sir.

6 THE COURT: Regarding indictment 11-GS-24-indictment
7 785, I find that Mr. Maunwell Jabaar Ervin has made a
8 free, knowing and intelligent plea of guilty of
9 trafficking in cocaine, more than 28 but less than 100
10 grams, second offense. He has entered this plea with
11 advice of counsel, an attorney, of whom he states he is
12 satisfied. The State has provided facts to support,
13 Solicitor, do you have a number of that indictment on the
14 prior sentence so I can put on this, on my sentencing
15 sheet?

16 MR. BROWN: Yes sir, Judge.

17 THE COURT: I am going to write this prior conviction
18 indictment number on this sentencing sheet to say it runs
19 concurrent with one another. Okay.

20 MR. ERVIN: Yes, sir.

21 MS. TALOR: I have a case number, I don't have an
22 indictment number.

23 MR. BROWN: Judge, I believe, I will double check and
24 make sure this is the right one, but I believe it is the
25 PWID, 11-GS-24-0784.

1 MS. TALOR: I have 81 but that might be this warrant
2 number. But I think that is correct.

3 MR. BROWN: You have 81 on the indictment?

4 MS. TALOR: That was just my case number but that was
5 for my motion for PCR so I think that was for this case.

6 THE COURT: 784?

7 MS. TALOR: Yes.

8 MR. BROWN: 784, let me make sure that is right.

9 MS. TALOR: I have 781 but that is for this case that
10 we would have gone forward on today.

11 THE COURT: What about a date start. Mr. Ervin would
12 be my best guess on that.

13 MR. BROWN: Judge, I believe the trial was July 24th,
14 2013.

15 MR. ERVIN: July, that is what it was, 21st. I have
16 14 good days, jail credit days.

17 MS. TALOR: Yes, this case was actually tried twice,
18 Your Honor. He was incarcerated, his bond was revoked on
19 the first trial, that was in 2011. And he was held here
20 in the Greenwood County Detention Center that entire week
21 so that would have been seven days.

22 THE COURT: You have got 14 days or 7 days?

23 MR. ERVIN: 14.

24 THE COURT: 14, that is what I wrote down, 14 days in
25 addition to the day since July 24th, '13.

1 MS. TALOR: That's right. Because then he was, his
2 bond was revoked the second time and that would have been
3 the other 7.

4 THE COURT: Okay. This is a negotiated 7 years, I
5 accept the plea. He gets credit for days since July 24th
6 of 2013 plus 14 more. This runs concurrent with the
7 conviction from then which I believe to be 11-GS-24-784,
8 it is perhaps 781 but I will go with 784. If y'all find
9 out it is 781 I will amend the sentencing sheet to reflect
10 that.

11 MS. TALOR: I am pretty sure he is correct, Your
12 Honor.

13 MR. BROWN: Judge, I am looking at the public index
14 right now to double check.

15 THE COURT: I don't need to hear anything in
16 mitigation since it is all mandatory, minimum.

17 MR. BROWN: Judge, I will verify that, just the
18 indictment number so we can make sure it was--

19 THE COURT: And if it is not, I mean you are getting
20 days credit from the correct date. So it should work out
21 the same. Okay. Good luck to you.

22 MR. BROWN: Thank you, Judge.

23 MS. TALOR: Thank you, Your Honor.

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the County of Greenwood, South Carolina on the 11th day of April, 2016.

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

August 20, 2017

Joy Holston

Joy E. Holston, Court Reporter

My Commission expires: May 2, 2026

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENWOOD)

Mauwell J. Ervin, SCDC § 356337)

2017-CP-24 00641

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC
2017 JUN -1 PM 1:12

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- 1. Place of detention McCormick Correctional Institution
- 2. Name and location of Court which imposed sentence General Sessions Court, Greenwood County
- 3. Name(s) of co-defendant(s) (if any) None

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Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
- (a) 2011-GS-24-783
 - (b) 2011-GS-24-784
 - © 2011-GS-24-293 ? not client.
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 22, 2013, 10 years
 - (b) July 22, 2013, 5 years consecutive to 2011-GS-24-783
 - © July 22, 2013 14 days, time served
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ___
 - (b) after a plea of not guilty X
 - © after a plea of nolo contendere ___
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - I. South Carolina Court of Appeals
 - ii. ___
 - iii. ___
 - (b) the result in each such Court to which you appealed:
 - I. Convictions affirmed
 - ii. ___
 - iii. ___
 - © the date of each such result:
 - I. November 26, 2014
 - ii. ___
 - iii. ___
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - I. 2014-UP-427

- ii. ___
- iii. ___
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) ___
- (b) ___
- © ___
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Trial Counsel failed to object to an unconstitutional charge to the jury that the jury may infer his guilt from the fact that the apartment was in his name.
- (b) Trial Counsel failed to object to a charge to the jury that constructive possession means having dominion and control over the premises where the drugs are found.
- (c) Trial Counsel failed to object to the consecutive sentencing of the Applicant on the charges of possession with intent to distribute marijuana and possession with intent to distribute marijuana within proximity to a school which violated the double jeopardy provisions of the state and federal constitutions.
- (d) Trial Counsel failed to object to testimony of the officers involved in this case which was opinion testimony and the officers had not been qualified as an expert.
- (e) Trial Counsel failed to object to the numerous leading questions by the solicitor.
- (f) Trial Counsel failed to object to closing statement of the solicitor which improperly bolstered the testimony of the arresting officers
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) In the charge to the jury, the trial court instructed the jury "The defendant's knowledge and possession may be inferred when a substance is found on property under his control." Tr. at 285, ll 23 - 25; 288, ll 10-12; . This charge is a charge on the facts in violation of Article V, § 21 of the constitution of the State of South Carolina.
- (b) In the charge to the jury, the trial court charged the jury "Constructive possession means that the defendant had dominion and control, over either the crack cocaine and/or

marijuana itself, or the property on which the drugs were found." Such a charge eliminates the mens rea of the crime of possession of the drugs as the trial judge instructed the jury that control over the premises is sufficient to convict even without knowledge of the presence of the drugs. Such a charge violates the due process clause of Article I, § 3 of the Constitution of the State of South Carolina and the Fourteenth Amendment of the Constitution of the United States of America.

(c) A conviction of both possession with intent to distribute marijuana and possession with intent to distribute marijuana within proximity to a school violates the double jeopardy clause of Article I, § 12 of the Constitution of the State of South Carolina and the Fifth Amendment to the Constitution of the United States of America. All the facts to prove the crime of the possession with intent to distribute charge are included in the facts sufficient to convict the applicant with possession with intent to distribute marijuana within proximity to a school. The double jeopardy clause also prevents successive punishments for the same crime.

(d) During the trial the arresting officers were asked question by the prosecution which called for their opinion as to various matters. These witnesses were not qualified as experts and therefore could not give their opinion as to the evidence. The failure of the Trial Counsel to object to such statements prejudiced the applicant's trial and was error.

(e) Throughout the trial, the prosecuting attorney repeatedly asked leading questions which implied the answer the witness should give. The failure of trial counsel to object to the numerous leading questions prejudice the defense of the applicant.

(f) During the closing argument the prosecuting attorney made reference to the officers who testified saying "I'm proud to be their solicitor and the job that they're doing here and the job that they did in this case." Tr. at 256, ll 17-19. Such a statement improperly puts the credibility of the prosecuting attorney behind the credibility of the officers and thus improperly bolstered their testimony.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes. The application which this application amends

(b) any petition in State or Federal Courts for habeas corpus or post-convictions

relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. —

ii. —

iii. —

iv. —

(b) the name and location of the Court in which each was filed:

I. —

ii. —

iii. —

iv. —

(c) the disposition thereof:

I. —

ii. —

iii. —

iv. —

(d) the date of each such disposition:

I. —

ii. —

iii. —

iv. —

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

I. —

ii. —

iii. —

- iv. —
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered “yes” to (14) identify:
- (a) which grounds have been presented:
- I. —
- ii. —
- iii. —
- (b) the proceedings in which each ground was raised:
- I. —
- ii. —
- iii. —
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Trial Counsel raised no objection_
- (b) same
- (c) same
- (d) same
- (e) same
- (f) same
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- © your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered “yes” to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

I. Lauren M. Taylor

P. O. Box 31553

Greenville, SC 29608

ii. Robert M. Pachak

S. C. Commission on Indigent Defense

1330 Lady Street, Suite 401

Columbia, SC, 29201

iii. C. Rauch Wise

305 Main Street

Greenwood, SC 29646

(b) the proceedings at which each such attorney represented you:

I. initial plea, pretrial motions, trial and sentencing

ii. appeal to the South Carolina Court of Appeals

iii. preparation of this amended application for Post Conviction Relief

19. State clearly the relief you seek in filing this application:

New trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of McCormick)

I, Maunwell J. Ervin, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Maunwell J. Ervin

SWORN to and subscribed before me this 26th
day of MAY 2017.

[Signature]

Notary Public (L.S.)

My Commission Expires: 12/7/2019

FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC
2017 JUN -1 PM 1:43

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

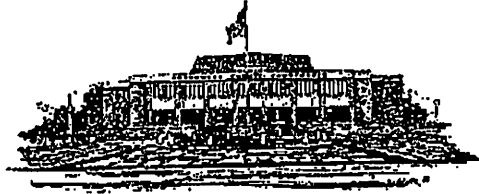
SWORN or affirmed to and subscribed before me this
_____ day of _____, 2____.

Notary Public

My Commission Expires: _____

County of Greenwood

CLERK OF COURT



TELEPHONE
(864) 942-8551

ROOM 114
GREENWOOD COUNTY COURTHOUSE
528 MONUMENT STREET
GREENWOOD, SOUTH CAROLINA 29646

June 1, 2017

Justin Hunter
South Carolina Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1549

RE: Manwell Ervin
Case number: 2017-CP-24-00641

Dear Mr. Hunter:

Enclosed please find the Post Conviction Relief application in the above referenced matter. Also included are the warrants, indictments and other appropriate paperwork from the General Sessions case file.

If you require anything further, please do not hesitate to contact me.

Sincerely,

Karen Heery
Deputy Clerk
864-942-8551

COUNTY OF Greenwood

Maurell J. Ervin, SCDC 356337

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

CIVIL ACTION COVERSHEET

2017 JUN - 1 PM
-CP -
2017-CP-2400641
FILED COMMON PLEAS
8th JUDICIAL CIRCUIT
GREENWOOD, SC

Submitted By: C. Rauch Wise
Address: 305 Main St
Greenwood, SC 29646

SC Bar #: _____
Telephone #: 864-229-5010
Fax #: 864-229-2663
Other: _____
E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
 - Constructions (100)
 - Debt Collection (110)
 - General (130)
 - Breach of Contract (140)
 - Fraud/Bad Faith (150)
 - Failure to Deliver/Warranty (160)
 - Employment Discrim (170)
 - Employment (180)
 - Other (199)
- Torts - Professional Malpractice**
 - Dental Malpractice (200)
 - Legal Malpractice (210)
 - Medical Malpractice (220)
 - Previous Notice of Intent Case # 20-NI-
 - Notice/ File Med Mal (230)
 - Other (299)
- Torts - Personal Injury**
 - Conversion (310)
 - Motor Vehicle Accident (320)
 - Premises Liability (330)
 - Products Liability (340)
 - Personal Injury (350)
 - Wrongful Death (360)
 - Assault/Battery (370)
 - Slander/Libel (380)
 - Other (399)
- Real Property**
 - Claim & Delivery (400)
 - Condemnation (410)
 - Foreclosure (420)
 - Mechanic's Lien (430)
 - Partition (440)
 - Possession (450)
 - Building Code Violation (460)
 - Other (499)
- Inmate Petitions**
 - PCR (500)
 - Mandamus (520)
 - Habeas Corpus (530)
 - Other (599)
- Administrative Law/Relief**
 - Reinstate Drv. License (800)
 - Judicial Review (810)
 - Relief (820)
 - Permanent Injunction (830)
 - Forfeiture-Petition (840)
 - Forfeiture-Consent Order (850)
 - Other (899)
- Judgments/Settlements**
 - Death Settlement (700)
 - Foreign Judgment (710)
 - Magistrate's Judgment (720)
 - Minor Settlement (730)
 - Transcript Judgment (740)
 - Lis Pendens (750)
 - Transfer of Structured Settlement Payment Rights Application (760)
 - Confession of Judgment (770)
 - Petition for Workers Compensation Settlement Approval (780)
 - Other (799)
- Appeals**
 - Arbitration (900)
 - Magistrate-Civil (910)
 - Magistrate-Criminal (920)
 - Municipal (930)
 - Probate Court (940)
 - SCDOT (950)
 - Worker's Comp (960)
 - Zoning Board (970)
 - Public Service Comm. (990)
 - Employment Security Comm (991)
 - Other (999)
- Special/Complex /Other**
 - Environmental (600)
 - Automobile Arb. (610)
 - Medical (620)
 - Other (699)
 - Sexual Predator (510)
 - Permanent Restraining Order (680)
 - Pharmaceuticals (630)
 - Unfair Trade Practices (640)
 - Out-of State Depositions (650)
 - Motion to Quash Subpoena in an Out-of-County Action (660)
 - Pre-Suit Discovery (670)

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Chastity Copeland
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GREENWOOD COUNTY
S. C.

Submitting Party Signature: C. Rauch Wise / MDC Date: 6/1/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD)	OF THE EIGHTH JUDICIAL CIRCUIT
)	
Maunwell Ervin,)	2017-CP-24-00754
S.C.D.C. No. 356337)	
)	
Applicant,)	
)	RETURN AND MOTION TO DISMISS
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the application for post-conviction relief filed by Maunwell Ervin (Applicant) on June 27, 2017, Respondent would show this Court:

I.

Applicant is currently incarcerated pursuant to order of commitment from the Greenwood County Clerk of Court. Applicant was indicted by the March 2011 term of the Greenwood County Grand Jury for trafficking in cocaine base, 100 to 200 grams (2011-GS-24-785) and trafficking in cocaine based within proximity of a school or park (2011-GS-24-786).¹ Lauren Taylor, Esquire, represented him. On April 11, 2016, Applicant and his counsel appeared before the Honorable Eugene C. Griffith, Jr., and pled guilty to the lesser included offense of trafficking in cocaine (28-100 grams, 2nd offense). Pursuant to a recommendation, Applicant was sentenced to the mandatory minimum term of imprisonment for seven years. As a result of the guilty plea, the proximity charge (2011-GS-24-786) was dismissed. Applicant did not file a notice of appeal.

¹ On July 23-24, 2013, Applicant proceeded to a jury trial on this current charges (2011-GS-24-785 and 2011-GS-24-786), along with possession of marijuana with intent to distribute (2011-GS-24-783), possession with intent to distribute marijuana within proximity of a school or park (2011-GS-24-784), and possession of a controlled substance (2013-GS-24-293). A mistrial was declared on the current trafficking charge (2011-GS-24-785) and the corresponding proximity charge (2011-GS-24-786).

II.

In his application, Applicant alleges he is being held unlawfully for the following reasons:

1. "Trial Counsel was ineffective for failing to raise a double jeopardy argument."
2. "Trial Counsel was ineffective in that she continued to represent me after I had filed a request that she be terminated as my attorney and after I had filed a Post-Conviction Relief action alleging she was ineffective in representing me at my trial."

Attached herewith and incorporated herein by reference are the Greenwood County Clerk of Court records, Applicant's PCR Application, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant pled guilty to the offense he challenges in this application on April 11, 2016 – requiring his current application to be filed by April 12, 2017 to be considered timely. This application was filed on June 27, 2017, which was over two months after the statutory filing period had expired.

Summary dismissal of a PCR application is appropriate when the application is filed after the statutory filing period. Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2003). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant has presented no law to make a prima facie showing that his PCR application should bypass the statute of limitations and be considered timely. In fact, Respondent would submit Applicant has no excuse for filing this action beyond the statute of limitations for the following reasons. Applicant clearly knew about filing post-conviction relief applications as he had already filed one six months before the plea. Further, Applicant knew of a supposed conflict with Counsel on the day he pled guilty and could have addressed it at that point or within one year of his plea. His alleged issue did not arise at some point throughout the year after his plea, but on the day of his plea and he was well aware of who was representing him on the day of his plea. Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

Even if this Court were to examine Applicant’s claims, they are without merit.

Applicant’s Double Jeopardy claim does not bypass the statute of limitations and is without merit

Applicant claims that his acquittal for possession of a weapon during the commission of a violent crime should prevent the retrial for his trafficking crack cocaine charge. Clearly this is not correct as trafficking crack cocaine does not contain the elements necessary for possession of a weapon during the commission of a violent crime. One can traffic drugs without using a firearm.

“Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” State v. Brandt, 393 S.C. 526 (2011), citing Blockburger v. U.S., 284 U.S. 299 (1932). Possession of a firearm during the commission of a violent crime requires proof of the possession of a firearm. Trafficking crack cocaine does not require proof of the possession of a firearm. Thus, there is clearly no double jeopardy argument to be made as Applicant’s acquittal on the firearms charge did not preclude his plea to trafficking crack cocaine. Even if this Court were to examine this claim and find it should bypass summary dismissal due to the statute of limitations, this allegation should be dismissed.

*Applicant’s conflict claim does not bypass the statute of limitations
and is without merit*

Applicant’s allegation that his plea counsel was ineffective because she represented him on a guilty plea after he filed a PCR application against her from a prior trial is without merit. Applicant has failed to allege how Counsel’s representation suffered during his plea hearing as a result of the PCR action he filed five months earlier. Counsel successfully negotiated a plea deal that dropped Applicant’s charge from trafficking in crack cocaine 100-200 grams to trafficking in crack cocaine 28-100 grams. Applicant’s exposure dropped from a mandatory 25 years to a range of 7-25 years and Counsel was able to negotiate a minimum sentence of 7 years. The State also dismissed a proximity charge. Furthermore, the following colloquy took place at the plea hearing:

THE COURT: Has your lawyer explained all of this to you?

MR. ERVIN: Yes, sir.

THE COURT: And she has gone over the State’s discovery file with you?

MR. ERVIN: Yes, sir.

MS. TAYLOR: The evidence.

MR. ERVIN: Yes, sir.

THE COURT: Have you understood your conversations with her?

MR. ERVIN: Yes, sir.

THE COURT: Are you satisfied with her counsel and advice to you?

MR. ERVIN: Yes, sir.

THE COURT: Are you satisfied with the negotiated result of this plea and the minimum sentence she has gotten you?

MR. ERVIN: Yes, sir.

THE COURT: Are you pleading guilty after having enough time to speak to her?

MR. ERVIN: Yes, sir.

THE COURT: Are you pleading guilty freely and voluntarily?

MR. ERVIN: Yes, sir.

THE COURT: And because you are, in fact, guilty?

MR. ERVIN: Yes, sir.

Transcript page 9, l. 25 – 10, l. 25. (emphasis added)

Clearly, Applicant had no issue with Counsel's representation and it benefitted him by Counsel's successful negotiation to a plea to a lesser included offense that resulted in a mandatory minimum sentence, as opposed to Applicant being exposed to the original charge and the mandatory twenty-five year sentence it carried. Applicant alleges he filed a request that Counsel be terminated as his attorney, however the Public Index shows no such filing and Applicant did not raise the issue and clearly held the contrary position at the plea hearing. Even if this Court were to examine this claim and find it should bypass summary dismissal due to the statute of limitations, this allegation should be dismissed.

V.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
for ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
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(803) 734-3737

January 25, 2018

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD)	
)	
)	2017-CP-24-00754
)	
MAUNWELL ERVIN, #356337,)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

C. Rauch Wise, Esquire
305 Main Street
Greenwood, South Carolina 29646

DATED this the 25th day of January, 2018.


 Caroline Collins, Administrative Coordinator
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COMMON PLEAS COURT

3 COUNTY OF LAURENS

4 -----x

5 MAUNWELL JABAAR ERVIN,)

6 Applicant,)

7 vs.)

Transcript of Record

8)

2015-CP-24-1268

2017-CP-24-0754

9 STATE OF SOUTH CAROLINA,)

10 -----x

11 Friday, March 2, 2018

12 POST-CONVICTION RELIEF HEARING

13

14 B E F O R E:

15 The Honorable J. Mark Hayes, II, Presiding Judge

16

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

18 C. Rauch Wise, Esq.
Attorney for the Applicant

19

20 Justin J. Hunter Esq.
Attorney for the State

21

22

23

24 Court Reporter: Tara Scott

25 Transcribed by: Bobbi Fisher, RPR, CET

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1 P R O C E E D I N G S

2 (Whereupon, the following proceedings commenced as follows:)

3 MR. HUNTER: Good morning, Your Honor. May it please the
4 Court.

5 Your Honor, we have Mr. Maunwell Ervin here this morning.
6 He has two cases. I believe we'll start first on
7 2015-CP-24-1268. Your Honor, I'll do my best with the history
8 here, and certainly Mr. Wise can fill in any gaps that I leave
9 out.

10 He was indicted March of 2011 in Greenwood County for
11 PWID marijuana; PWID marijuana within proximity; trafficking,
12 cocaine based; trafficking, cocaine based within proximity,
13 possession of a controlled substance; and possession of a
14 weapon during the commission of a violent crime.

15 Your Honor, he initially had a trial in January of 2013,
16 and I believe it was not guilty on the weapons charge and hung
17 on the remaining charges. He then had a trial July 23rd
18 through 24th, 2013, before Judge Addy on marijuana proximity
19 charge, the crack charge, the proximity charge, and the
20 controlled substance charge.

21 So he had a trial while represented by Ms. Lauren Taylor.
22 Again, that was July of 2013. He was found guilty on the
23 marijuana charge, the marijuana proximity charge, and the
24 possession of a controlled substance charge, sentenced to ten
25 years PWID marijuana and five years consecutive for the

1 proximity and time served for a controlled substance.

2 The trafficking and crack and trafficking/crack in
3 proximity charge were mistried. From those convictions, he
4 did file a direct appeal and his brief was filed, which was
5 dismissed, remittitur sent December 12, 2014.

6 He filed this action -- make sure I get the dates right,
7 Your Honor -- December 22nd, 2015. And he did file another
8 amendment, which has been incorporated into this CP number.

9 Your Honor -- and just to give an overview on both PCRs
10 we're going to do today, after filing that PCR application, on
11 April 11th, 2016, he appeared with Ms. Taylor before Judge
12 Griffith on the trafficking cocaine and proximity charge. He
13 pled guilty to the lesser included offense of trafficking and
14 cocaine, 28 to 100 grams. And the proximity charge was
15 dismissed. He was sentenced to the minimum of seven years
16 pursuant to a recommendation, given credit for time served.
17 He did not file a direct appeal on that.

18 So, Your Honor, I believe the way we'll proceed, we'll
19 start with the PCR application that was filed on the trial.
20 That would be the PWID marijuana, corresponding proximity
21 charge and a controlled substance charge. Again, he is
22 present today, represented by Mr. Rauch Wise.

23 MR. WISE: That's basically correct, Your Honor.

24 When I call Mr. Ervin, I assume we're going to discuss
25 both cases because, mainly, his testimony relates to the

1 second PCR because the first one deals with a bunch of legal
2 issues.

3 MR. HUNTER: Okay. We can go ahead and proceed with the
4 second PCR solely if you'd like to.

5 MR. WISE: Yeah, okay.

6 MR. HUNTER: And, Your Honor, just for the record, the
7 second PCR is 2017-CP-24-754.

8 MR. WISE: Think we can merge those two?

9 MR. HUNTER: We're -- I want to have the motion to
10 dismiss on --

11 MR. WISE: Okay. Gotcha.

12 MR. HUNTER: Is that the one we're proceeding on right
13 now?

14 MR. WISE: Well, we're actually going to do both.

15 MR. HUNTER: Okay.

16 THE CLERK: If you'd just raise your right hand, let me
17 swear you in.

18 MAUNWELL JABAAR ERVIN,
19 the witness, after having been duly sworn, was examined and
20 testified to as follows:

21 THE CLERK: Just have a seat in the chair and pull the
22 chair up to the microphone if you would.

23 DIRECT EXAMINATION

24 BY MR. WISE:

25 Q Mr. Ervin, please state your full name and spell your

1 first name.

2 **A** Maunwell Jabaar Ervin. M-a-u-n-w-e-l-l.

3 MR. WISE: And, Your Honor, some of the pleadings, I
4 think they spell his name M-a-n, and we're going to conform
5 all of them to the correct spelling.

6 THE COURT: So M-a-u-n-w-e-l-l.

7 THE APPLICANT: Yes, sir.

8 MR. WISE: That's correct. All right.

9 BY MR. WISE:

10 **Q** Mr. Ervin, we're going to jump ahead a little bit and
11 talk about the second PCR first. You entered a plea in this
12 case to some trafficking charges in April of 2016?

13 **A** Yes, sir.

14 **Q** Can you move that mic a little closer to you.

15 **A** Yes, sir.

16 **Q** Perfect, perfect.

17 All right. And you had been to trial twice before then?

18 **A** Yes, sir.

19 **Q** And had not been convicted on either trafficking charge?

20 **A** No, sir.

21 **Q** Been a hung jury?

22 **A** Hung jury.

23 **Q** All right. Now, when did you file your first PCR?

24 **A** I can't -- I don't know the --

25 **Q** All right. I'm going to hand you a document which is

1 part of a record. If you'd just -- that's the original PCR.
2 Just give me the date on that.

3 **A** 12/16.

4 **Q** That's the date you signed it, and the date it was filed
5 is here in the margin.

6 **A** Oh, okay. December 22nd, 2015.

7 **Q** December 22nd, 2015, you filed a PCR alleging ineffective
8 assistance of counsel.

9 **A** Yes, sir.

10 **Q** Is that correct?

11 **A** Yes, sir.

12 **Q** And that was relating to which lawyer?

13 **A** Lauren Taylor.

14 **Q** Lauren Taylor. All right.

15 Had you had much communication with her after you filed
16 this PCR?

17 **A** No, sir.

18 **Q** How did you come to be in Greenwood in April of 2016?

19 **A** They woke me up one morning and brought me to court and
20 said I had to go to court.

21 **Q** And did you -- were you expecting to be in court?

22 **A** No, sir.

23 **Q** Had you received any communication that you would be in
24 court?

25 **A** No, sir.

1 Q All right. So you come to Greenwood.

2 A Yes, sir.

3 Q And who was there?

4 A No one at first, but when I -- Lauren Taylor was there.

5 Q She came later?

6 A Yeah.

7 Q All right. Did you have a discussion with her about the
8 plea and about the PCR you had filed?

9 A No. She -- like I said, she knew I had a PCR, but she
10 told me that we might not go to court because she had a PCR --
11 I had a PCR but we ain't talked no more about it after that.

12 Q Okay. But that was discussed early on?

13 A Yes, sir.

14 Q All right. Did you finally enter a plea in this case?

15 A Yes, sir.

16 Q And what time of day was that?

17 A About 2:00. Two something.

18 Q After lunch?

19 A Yes, sir.

20 Q Now, at the time -- before you filed your PCR, did you
21 file a motion to have her relieved as counsel?

22 A Yes, sir.

23 Q I believe that was filed on April 30th of 2015. Is that
24 a copy of it?

25 A Yes, sir.

1 MR. WISE: I'd like to move to introduce this evidence.

2 MR. HUNTER: No objection.

3 MR. WISE: Showing the State a copy.

4 THE COURT: Without objection.

5 (Applicant's Exhibit No. 1 was marked for identification
6 and received into evidence.)

7 BY MR. WISE:

8 Q So you filed that with the clerk of court's office; is
9 that correct?

10 A Yes, sir.

11 Q All right. Do you know if you sent Ms. Taylor a copy of
12 that motion?

13 A Oh, yes, sir.

14 Q All right. So did she ever discuss with you any defenses
15 you may have to the trafficking charges based on double
16 jeopardy?

17 A No, sir.

18 Q Are you -- have you and I met on this?

19 A Oh, yes, sir.

20 Q And did we meet on May 26 of last year?

21 A Yes, sir.

22 Q And were you informed at that time of the defense on that
23 charge?

24 A Yes, sir.

25 Q And do you remember the case that I mentioned to you?

1 **A** Yeager.

2 **Q** Yeager?

3 **A** Yes, sir.

4 **Q** And have you read it?

5 **A** Yes, sir.

6 **Q** All right. Were you aware before my meeting with you
7 that you had a potential double jeopardy argument based upon
8 the equivalent of the gun charge in the first trial?

9 **A** No, sir.

10 **Q** You didn't know anything about that?

11 **A** No, sir.

12 **Q** All right. Now, that was never discussed with you?

13 **A** No, sir.

14 **Q** All right. Do you think that argument, had it been
15 raised, it had an excellent change of winning?

16 **A** Oh, yes, sir.

17 **Q** From bringing the case?

18 **A** Yes, sir.

19 **Q** All right. And did you file your second PCR within --
20 well within a year of the time you learned of that?

21 **A** Yes, sir.

22 **Q** And prior to that, you had no knowledge of that?

23 **A** No, sir.

24 **Q** All right. Let's go back to the first PCR. Most of
25 those are legal issues.

1 **A** Mm-hmm.

2 **Q** And she represented you in both trials, including the
3 first one. That was the equivalent of the gun charge?

4 **A** Yes, sir.

5 **Q** Is that correct?

6 **A** Yes, sir.

7 MR. WISE: Your Honor, I think, as a matter of law, the
8 issues he raised in the first one are all legal issues that
9 really no need for him to go into it in any great detail. I
10 mean, they are what they are. I'm asking his opinion on the
11 legal issue. I think it's really irrelevant.

12 MR. HUNTER: I'd agree with that.

13 THE COURT: All right.

14 MR. WISE: Answer any questions.

15 CROSS-EXAMINATION

16 BY MR. HUNTER:

17 **Q** Do you remember that plea hearing with Ms. Taylor?

18 **A** Yes, sir.

19 **Q** Do you remember that day?

20 **A** Yes, sir.

21 **Q** Did you ever ask her about this motion to relieve her
22 that you filed?

23 **A** No, I didn't ask her.

24 **Q** So did you -- did you ever say, "Why are you still my
25 attorney?" I mean, did you ever -- did that subject ever come

1 up, why she was still representing you?

2 **A** Yeah. We ask -- she said that -- we talked about it.
3 She had paperwork with her at the time.

4 **Q** She had that motion?

5 **A** Yeah, she had it with her.

6 **Q** Okay. Did she ever indicate to you --

7 **A** So I don't know how they get to them calling her to get
8 there and all. I don't know.

9 **Q** Okay. But did she ever indicate to you that you'd be
10 having a motion to relieve her as counsel that day?

11 **A** No.

12 **Q** You never heard a hearing on that issue?

13 **A** No.

14 **Q** Okay. Now, about that -- I guess about the guilty plea,
15 you said you never knew at all that you were going to plead
16 guilty that day?

17 **A** No.

18 **Q** So you never had any sort of correspondence with
19 Ms. Taylor about that guilty plea?

20 **A** No.

21 **Q** And I guess, as a result of this PCR, you understand that
22 it cancels out that plea and you go back on the original
23 charge?

24 **A** Yes, sir.

25 **Q** Okay. Just making sure. That's all I have. Thank you.

1 THE COURT: Any redirect?

2 MR. WISE: No redirect. You can come down.

3 THE COURT: Thank you, sir. Watch your step.

4 MR. WISE: Give me one second; I thought I had something
5 right in front of me.

6 I'd like to call Lauren Taylor.

7 And, Your Honor, for the record, we are abandoning the
8 issue 10(e) of our PCR petition.

9 THE CLERK: If you would just raise your right hand.

10 LAUREN TAYLOR,

11 the witness, after having been duly sworn, was examined and
12 testified to as follows:

13 THE CLERK: Thank you. Just have a seat in the chair and
14 move the chair up to the mic.

15 DIRECT EXAMINATION

16 BY MR. WISE:

17 Q All right. Please give us your full name.

18 A Lauren Marie Taylor.

19 Q And, Ms. Taylor, you're an attorney in Greenville, South
20 Carolina?

21 A That's correct.

22 Q And how did you come to represent Mr. Ervin?

23 A I was appointed to represent Mr. Ervin under the 608 rule
24 for indigent defense. I applied to be on this list in Laurens
25 County, and I was assigned his case.

1 Q Excuse me?

2 A I applied to be on that list in Laurens County, and I was
3 assigned his case through the 608.

4 Q Greenwood County?

5 A I apologize; yes, Greenwood.

6 Q Don't feel bad; I tried to file an order in Greenwood in
7 Laurens earlier this week. All right.

8 Y'all had a trial -- first trial back at the end of
9 January?

10 A That's right.

11 Q And what happened in that?

12 A We had several issues at the beginning related to the
13 search warrant. We had several pre-trial motions. We were
14 kind of in a unique situation. Back then, the Greenwood
15 County Courthouse was under construction, so we were actually
16 moved into the county council room which presented a few
17 issues as far as the proximity to the jury room, and some of
18 those issues were raised.

19 I believe the trial lasted about four days. At the end
20 of it, we were -- they were hung on all charges except the two
21 gun charges. They had acquitted him and found him not guilty.

22 Q And what was the gun charge?

23 A Possession of a weapon during the commission of a violent
24 crime.

25 Q And the violent crime being the trafficking?

1 **A** Trafficking.

2 **Q** And cocaine?

3 **A** Correct.

4 **Q** And trafficking, I believe, ecstasy?

5 **A** Ecstasy. And then also the PWID marijuana.

6 **Q** Well, PWID marijuana would be --

7 **A** I apologize.

8 **Q** Right after that trial, did you receive an email from
9 Charles Gross about a possible double jeopardy issue?

10 **A** I did.

11 **Q** All right. And what did that email tell you?

12 **A** I'll be honest, I knew I had received it, but I hadn't
13 reviewed it. He did -- I have seen this this morning. He
14 passed along a brief, I believe, that Chelsea McNeal and him
15 had drafted that day. She forwarded it to me. I don't
16 remember the details of it off the top of my head right now.

17 **Q** Let me back up. Did you get that email from Mr. Gross?

18 **A** Yes.

19 **Q** All right.

20 MR. WISE: I'd like to introduce this as Applicant's
21 Exhibit 2.

22 MR. HUNTER: No objection.

23 (Applicant's Exhibit No. 2 was marked for identification
24 and received into evidence.)

25 BY MR. WISE:

1 Q Handing you Applicant's Exhibit 2 and in that, you
2 mention that Mr. Gross mentions about a double jeopardy
3 argument.

4 A That's correct.

5 Q Did you subsequently obtain that brief?

6 A She had forwarded to me, and that's the only reason I
7 remember that is because I responded to him saying she
8 forwarded it to me.

9 Q Okay. Did that brief make a reference to Yeager v.
10 United States?

11 A I believe it did.

12 Q All right. Did you read Yeager v. United States?

13 A I did.

14 Q Did you understand that Yeager v. United States would
15 preclude a drug trafficking conviction in this case?

16 A It was my understanding, after talking to a couple other
17 attorneys, that there certainly was an argument that could
18 have been made but that the gun charge, specifically in the
19 way that I questioned the officer that found them -- which I
20 believe the reason they were acquitted is because they had
21 serial numbers that were in full tact, hadn't been, you know,
22 scraped or anything, and the officer admitted on the stand
23 that they never bothered to run the serial numbers; therefore,
24 they don't know whose they are or what -- you know, who they
25 belonged to, possession they were in.

1 So based on that fact of the guns, it was my opinion that
2 the double jeopardy wouldn't extend because the basic factual
3 circumstances were not as similar.

4 **Q** But the acquittal of the gun charge was also, was it not,
5 under Yeager, implicit acquittal of the drug trafficking
6 charge?

7 **A** I did not interpret it that way --

8 **Q** You didn't interpret it that way.

9 **A** -- at the time, but I think you could.

10 **Q** Did you ever discuss with Mr. Ervin the Yeager case?

11 **A** I don't recall.

12 **Q** Did you ever discuss with him any double -- possible
13 double jeopardy argument, even if you didn't mention the
14 Yeager case?

15 **A** I'm not sure.

16 **Q** Okay. Let's go back. Were you aware that Mr. Ervin
17 filed a post-conviction relief petition against you in
18 December of 2015?

19 **A** Yes, I was. And then I subsequently filed a motion to be
20 relieved based on that filing of the PCR in April of 2016.

21 **Q** Have you got that motion with you?

22 **A** I do.

23 **Q** April of when?

24 **A** 2016. April 7th, I believe.

25 **Q** April 7th?

1 MR. WISE: I'd like to introduce a copy of this as
2 Applicant's 3.

3 MR. HUNTER: No objection.

4 THE COURT: Without objection.

5 (Applicant's Exhibit 3 was marked for identification and
6 received into evidence.)

7 BY MR. WISE:

8 Q So you filed your motion on April the -- it's signed on
9 April the 7th; correct?

10 A That's correct.

11 Q And you referred to it as inherent nature of the
12 conflict.

13 A I thought that there could be some issues.

14 Q Which is probably pretty accurate if somebody filed a PCR
15 against you.

16 A Correct.

17 Q Were you aware that Mr. Ervin had also filed a motion
18 about a year earlier asking to be relieved as counsel?

19 A I don't -- I'm not sure.

20 Q Let me --

21 A More than one?

22 Q I'll hand you Applicant's Exhibit 1 and ask you if you
23 have seen that or recognize it.

24 A I do recognize it.

25 Q Okay. So you have got a copy of that sometime around the

1 time?

2 **A** Yes.

3 **Q** And I guess that's also another reason you would have
4 filed a motion to dismiss --

5 **A** That's right.

6 **Q** -- or to withdraw.

7 Did you discuss with the Solicitor's Office the fact that
8 you had this potential conflict because he had filed this
9 post-conviction relief petition?

10 **A** I did, and I was actually just trying to refresh my
11 memory back there. I remember the reason that I filed the
12 motion was because the Solicitor had indicated that they were
13 going to be putting the case up for trial a third time. I
14 knew that his pending PCR had not yet been heard. I knew
15 about his motion to be relieved, so I needed one as well.

16 I cannot remember right now what the disposition of that
17 was, whether Judge Addy heard me on that. I know that, that
18 day, like Maunwell testified to, we were there for a long
19 time, and we were negotiating with the Solicitor for a very
20 long time and going back, and they were telling us we were
21 going to have to try the case right then or the next day if we
22 didn't agree to a plea.

23 So I don't remember if it was actually heard, but I know
24 that that was the -- my intent of filing it, was to try to
25 prolong the trial.

1 Q You agree, at the plea colloquy, there was no mention of
2 these conflicts?

3 A I don't believe that there was.

4 Q Nobody got on the record and asked Mr. Ervin, "Did you
5 file a PCR against Ms. Taylor? Do you waive any conflict you
6 may have?" or anything like that?

7 A That's correct. I don't think he was -- it was
8 (indiscernible).

9 Q So the State was aware of this conflict?

10 A They would have had to have been based on my motion.

11 Q And you said that to --

12 A To the Solicitor's Office, yes, and Judge Addy.

13 Q Okay. And nobody put anything on the record about any
14 conflict or anything?

15 A Not to my knowledge.

16 Q All right. Let's go back to the first trial.

17 A Okay.

18 Q In that trial, the judge charged the jury -- I thought I
19 had the page; yeah, I've got the page. Have you got a copy of
20 the transcript? You got a copy?

21 A I do, but I don't have the jury charge.

22 Q Okay. I think that should be on page 285 of the
23 transcript. You got it?

24 A What specifically was your question?

25 Q I'm looking at -- let me get to mine -- line 10 through

1 12. No, it's not 285. I take that back. It's -- oh, no, 23
2 through 25. "The defendant's knowledge and possession may be
3 inferred when the substance is on the property under the
4 defendant's control."

5 **A** Yes.

6 **Q** You didn't raise an objection to that?

7 **A** I did not.

8 **Q** Are you familiar with all -- with two old South Carolina
9 cases that hold that a charge, making reference to an
10 inference, is a charge on the facts in violation of Article
11 1 -- excuse me, Article 5, Section 21 of the Constitution of
12 the State of South Carolina?

13 **A** I guess I'm not sure exactly what your question is. It
14 was my understanding that Defendant's knowledge and possession
15 could be inferred when the substance was found under his
16 control.

17 **Q** Are you aware of -- familiar with Article 5, Section 21
18 of the Constitution of the State of South Carolina which says
19 a judge shall not comment on the facts?

20 **A** Yes.

21 **Q** And are you familiar with a case of Finch v. Atlanta and
22 C (ph) Airline Railroad -- and it's an old case, 1907 -- that
23 holds that such an inference charge is improper?

24 **A** I don't believe I'm familiar with that one.

25 **Q** Okay. Also on page 288, lines 10 through 12, and it says

1 the defendant's -- again, it says, "The defendant's knowledge
2 and possession may be inferred when the substance is found on
3 the property under his control." And, you know, there's no
4 objection to that.

5 **A** I didn't. I believe that I guess the way I remedied this
6 in part at least was to get the, mere presence charges added
7 in. I did ask Judge Addy to instruct on those.

8 **Q** Right. And you'll agree that that charge kind of is --
9 but's head with the mere presence charge.

10 **A** It certainly did, and I think, at this point, my strategy
11 along the way had been to kind of -- there was another person
12 that was living in the home at the same time that the incident
13 happened, and throughout the trial, I felt I had really done a
14 pretty strong job of not quite assessing third-party guilt but
15 pointing to the strong possibility that these drugs would be
16 in the possession of someone else.

17 And then once we got down to the part of jury charges, it
18 was my opinion at that time that I may lose some credibility
19 with them if I proceeded with that. More so, like, the whole
20 time I have been saying this is not his, this is not his, but
21 then I would switch and say, Okay, well, if it is, maybe it's
22 just this part that's his. So I guess that was a strategy on
23 my part.

24 **Q** Now, Mr. Ervin was convicted of possession with intent to
25 distribute marijuana.

1 **A** Yes.

2 **Q** And possession with intent to distribute marijuana within
3 proximity to the school.

4 **A** Yes.

5 **Q** And Judge Addy ran these two sentences consecutively.

6 **A** Yes.

7 **Q** All right. Did you raise a double jeopardy argument to
8 Judge Addy about that?

9 **A** I did not.

10 **Q** Had you ever done an analysis under Blockburger of
11 whether or not possession with intent to distribute is a
12 separate crime from possession with intent -- excuse me,
13 possession with intent to distribute within proximity is not
14 double jeopardy with a charge of possession with intent.

15 **A** I guess -- what's the question again? I'm sorry.

16 **Q** Are you familiar with Blockburger?

17 **A** Yes, I was.

18 **Q** All right. Do you think that those two pass a
19 Blockburger analysis?

20 **A** At that time, I did, yes.

21 **Q** Hmm?

22 **A** At that time, I did, yes. I believe there's some new law
23 that is emerging on this issue.

24 **Q** Okay. Do you think Blockburger today would be different?

25 **A** I can't speak to it in this specific circumstance.

1 Q Let me rephrase it. Would your understanding of
2 Blockburger today be different?

3 A Probably, yes.

4 Q Okay. And then no objection raised to that?

5 A No.

6 Q Now, in several places in this trial, officers testified
7 to what I would call would be expert opinion. And, first of
8 all, go to page 84 of the transcript and testimony of Courtney
9 Smith. And look at line 18. Well, actually, you have to go
10 back to 15.

11 A This is on page 84?

12 Q Excuse me?

13 A Page 84?

14 Q 84 of the transcript, not the record on appeal.

15 MR. HUNTER: What lines?

16 MR. WISE: To actually make sense of it, you have to
17 start with line 15.

18 MR. HUNTER: Okay.

19 BY MR. WISE:

20 Q Where the Solicitor asks the question, "Tell us what is
21 in that picture."

22 A Yes.

23 Q All right? And then he comes down and says, "How is that
24 significant? How does that involve drugs at all?"

25 And he answers by saying, "Those who are dealing

1 narcotics use scales to weigh narcotics before selling."

2 And that's an opinion of this officer; correct?

3 **A** It -- yes.

4 **Q** And it's kind of an expert opinion?

5 **A** I saw that more as he was speaking in the course of his
6 job.

7 **Q** All right. But it's still an opinion.

8 **A** Yes.

9 **Q** And he was never qualified as an expert?

10 **A** No, he wasn't.

11 **Q** All right. Let's go also to page -- page 87, line 21 --
12 or 19, excuse me. And he says, "That's very interesting
13 looking crack cocaine. Can you tell us how that's packaged
14 and set up there?"

15 And he answered by saying, "We refer to it as a cookie.
16 Crack cookie. A crack cocaine cookie. Also on the top, you
17 see some of it is broken into little pieces. Normally, we see
18 it like that when it's ready for distribution."

19 But, again, that's an opinion?

20 **A** Correct.

21 **Q** And he was not qualified as an expert?

22 **A** No, he wasn't.

23 **Q** All right. Let's go to 94. Excuse me. 92 of the
24 transcript. And we're going to look at line 14, and it
25 actually continues on to page 93.

1 And he asks the question, "All these types of drugs we
2 have talked about, is it common for just a drug addict or a
3 user to have this much drugs?"

4 And he said, "No, sir."

5 Again, that's an opinion by this officer, isn't it?

6 **A** That's correct.

7 **Q** And then he asks the question on line 23, "So based upon
8 your experience and training, what type of person who
9 possesses these type of drugs in these amounts?"

10 And he answers, "A narcotics user and dealer. Based on
11 the pictures, it was ready to sell."

12 And that was an opinion.

13 **A** Yes.

14 **Q** He was not qualified as an expert?

15 **A** No, he wasn't.

16 **Q** And you didn't object to that?

17 **A** I didn't object to it. Again, I thought he was
18 testifying to his own personal knowledge during the course of
19 his job.

20 **Q** Well, he didn't have personal knowledge that Mr. Ervin
21 was a dealer.

22 **A** No. He was speaking to generalities.

23 **Q** He was just giving an opinion about what people who have
24 drugs like Mr. Ervin do; correct?

25 **A** Correct.

1 Q Let's look at 94, line 7 through 25. Excuse me. And he
2 says, "If you're a drug dealer, based on your experience and
3 training, could you get away with not having a set of scales?"

4 And he says, "No, sir."

5 Is that correct?

6 A Yes.

7 Q Again, that's an opinion of -- his opinion of what a drug
8 dealer does?

9 A Yes.

10 Q And there was no objection to that opinion?

11 A No, there was not.

12 Q All right. And then, of course, line 12, he has an
13 answer that says, "Narcotics users and drug dealers, as I
14 said, have scales, as I said, to, once they're ready to
15 package and sell, they weigh the narcotics for the amount for
16 distribution, the correct money to be exchanged."

17 And that, again, is an opinion?

18 A Yes.

19 Q To which no objection was raised.

20 A No objection was raised.

21 Q All right. And let's go to the testimony of Thayer (ph)
22 Archer on page 141. No -- yeah, 141, line 21. And he says --
23 question from I believe Mr. Taylor in this case, "What is
24 inside State's 24?"

25 And the answer was, "Digital scales used for weighing

1 narcotics."

2 And then the question is asked, "Based on your training
3 and experience as a narcotics officer, do those who traffic
4 and deal in narcotics use digital scales?"

5 And he answered, "Yes."

6 Is that correct?

7 **A** That's correct.

8 **Q** All right. And Mr. Archer was also not qualified as an
9 expert?

10 **A** That's correct.

11 **Q** He was -- on the scene gathering evidence.

12 **A** He was the initial responding officer, I believe.

13 **Q** And there's no objection to that opinion or testimony?

14 **A** No.

15 **Q** Let's go to 171, line 7. All right? And this is a SLED
16 chemist, who was qualified as an expert in analyzing drugs?

17 **A** Right.

18 **Q** But that was the only thing she was qualified for; is
19 that correct?

20 **A** That's correct.

21 **Q** All right. And then the question was, "I'm going to show
22 you what's in evidence as State's 24. Based upon your
23 training and experience, do you recognize what's in the bag?"

24 "Yes, sir. It's a digital scale."

25 And then further down, "Based on your training and

1 experience, those who are involved in the sale of narcotics
2 use these?"

3 The answer was, "Yes, sir."

4 And you'll agree that was beyond what she was qualified
5 for as an expert?

6 **A** At this point, yes, I'd agree.

7 **Q** Okay. And let's go to 218. Mr. Jarvis (ph) Reeder?

8 **A** It is.

9 **Q** All right. Line 25. And, again, he's going, "I'm going
10 to show you Exhibit 24 that's already into evidence. What is
11 that?"

12 And he says, "Digital scales."

13 And then the question is, "What's the significance of
14 finding these in the house?"

15 And Mr. Reeder answered, "They're going to distribute
16 illegal drugs, weigh them out, and then people buy them."

17 And Mr. Reeder was not qualified as an expert?

18 **A** No, he was not.

19 **Q** All right. And that's, again, an opinion that he
20 rendered?

21 **A** Yes.

22 **Q** Not an observation he made?

23 **A** That's correct.

24 **Q** All right. Now, let's go to 245 when Courtney Smith was
25 recalled.

1 MR. HUNTER: I'm sorry. What page?

2 MR. WISE: Page 245.

3 BY MR. WISE:

4 Q Line 1 through 10. And the question was -- this was
5 about a statement that allegedly Mr. Ervin made. And
6 basically -- and correct me if I'm wrong -- but basically the
7 statement was, he said that drugs don't belong to the other
8 guy.

9 A Yeah, something along the lines of "Everything's mine.
10 Don't worry about him."

11 Q Well, he didn't say it was his, did he? He just said it
12 doesn't belong to that guy.

13 A I'm not sure.

14 Q Okay. I think you cross-examined him on that.

15 A This was also brought up outside of the jury.

16 Q All right. He said -- the answer to the question was,
17 "He made the statement that Mr. Bush, who was in the residence
18 as well, did not have anything to do with items found in the
19 home." All right?

20 And then he asked -- this question was asked: "Based on
21 your training and experience and being in that location and
22 hearing him say that, how did you take it?"

23 And he answered, "I took it as an admission of guilt,
24 that he was taking responsibility for things that were found
25 inside the home."

1 So he -- and there was no objection to that.

2 That's line --

3 **A** Was I asking those questions?

4 **Q** No -- excuse me, it's cross.

5 **A** I thought so. I know this is complicated because the
6 Solicitor was Mr. Taylor and I'm Mrs. Taylor.

7 **Q** And it did cause some confusion, I'll agree.

8 So you asked him how you took it, and you got an opinion
9 answer of, "He took it as an admission of guilt." Correct?

10 **A** Correct.

11 **Q** Do you remember what the purpose was of asking this
12 officer how he took that? Because it seems pretty common
13 sensical that the answer was not going to be favorable.

14 **A** I think I was -- I think when you read further down into
15 the transcript, I'm trying to get at the fact that -- like you
16 just previously stated. He didn't say, "Bennett (ph) Bush
17 doesn't have anything to do with this. These are my drugs."
18 He wasn't explicit or "I know whose drugs these are." It
19 wasn't a statement.

20 **Q** All right. Now, also, in the closing argument of
21 Mr. Stonehoe (ph), let's look at the transcript on page 256.
22 All right. Line 17 through 19. And Mr. Stonehoe (ph) argues
23 to the jury, "But I'm proud to be their Solicitor" -- and
24 "their" he means the officers involved in this case -- "I'm
25 proud to be their Solicitor and the job that they're doing

1 here and the job that they did in this case," there's no
2 objection to that?

3 **A** No. I didn't object to the closing for several reasons.
4 One, I had done a pretty good job of discrediting his officers
5 on that stand, and I feel like he made that statement solely
6 to try to get some sort of rehabilitation back from what they
7 had lost through my cross. And, second, objecting in a
8 closing argument I think sometimes has a negative effect with
9 both the judge and the jury. So I almost thought making that
10 statement was him even further repudiating that they weren't
11 acting as they should to the standard.

12 **Q** I'm not going to disagree with the comments you made
13 about discrediting the officers, but did you ever consider
14 that to be actually bolster -- improper bolstering by the
15 Solicitor of what the -- basically saying these officers -- I
16 know these officers are good officers, I'm proud of them -- as
17 improper bolstering?

18 **A** I didn't at the time. I can see how you could view it
19 that way now in hindsight.

20 **Q** Give me one moment.

21 Do you recall who you talked to in the Solicitor's Office
22 about your motion to withdraw on the basis that he had filed a
23 post-conviction relief petition?

24 **A** I think it was Brian Maroney. I know that he was the
25 Solicitor we were negotiating with the day that Maunwell

1 entered in the last plea, but I also think he maybe was a
2 little bit new to Greenwood at that time. So I'm not sure if
3 it was Aaron Taylor. I know he left right around then. It
4 was either Aaron Taylor or Brian Maroney.

5 **Q** And at the time this case was tried, you had been out of
6 law school how long?

7 **A** I was sworn in in May of 2012, so it was about four
8 months.

9 **Q** About four months.

10 **A** That's correct.

11 **Q** Thank you very much.

12 MR. HUNTER: Just a few things.

13 CROSS-EXAMINATION

14 BY MR. HUNTER:

15 **Q** And we'll start with that plea. So when you arrived at
16 the courthouse -- and, again, this is the not guilty plea, the
17 second guilty plea -- or second proceeding, first guilty plea.

18 **A** Third proceeding.

19 **Q** Third proceeding. Third total proceeding. The first
20 time, it was a guilty plea.

21 Did you have any conversations with Mr. Ervin before that
22 day on what y'all would be doing that day?

23 **A** No. We tried the case twice. We had lengthy talks about
24 strategy, and, you know, we would essentially -- if we tried
25 it, we'd be trying the exact same case again.

1 Q So I guess what I'm getting at, was he -- from your
2 conversations with him, do you believe he understood what he
3 was going to be doing there that day? Trial? Plea? Motion?

4 A Yeah, I believe he understood that the motions could be
5 heard if we were relieved or if I was relieved, then the trial
6 would not go forward. He would have an alternative counsel
7 appointed. If that was denied, we would go forward and he
8 would either have to plea or they would begin with the jury
9 selection.

10 Q Okay. So -- and I believe the record reflects, in
11 negotiating this plea, the proximity charge was dismissed;
12 correct?

13 A That's correct.

14 Q And then the trafficking charge was lowered to lesser
15 included, 28 to 100; is that correct?

16 A That's correct.

17 Q And is that all during -- based on your negotiations with
18 the Solicitor's Office?

19 A Absolutely. We negotiated back and forth for over three
20 and a half hours.

21 Q That day, prior to the plea?

22 A Yes.

23 Q And during that whole time, are you relaying this
24 information to Mr. Ervin?

25 A Oh, yeah. Maunwell and I were in a room together. I

1 think the only time we weren't together was when they brought
2 him McDonald's. I think we -- I was going from him to Brian
3 and back and forth, so we definitely had plenty of
4 communication that day.

5 **Q** Okay. And, again, during this whole time you're going
6 back and forth, is there ever any discussion between y'all to
7 "we shouldn't be doing this because we both want each other
8 relieved" or want your representation relieved?

9 **A** No. Maunwell's questions were, you know, the same as
10 how -- how were we to try this case a third time. You know,
11 and I was explaining that, every time you try a case against
12 the State, they plug the holes up and it gets a little bit
13 harder for the defense. And that was what basically we were
14 weighing is, you know, the third time at the same trial or if
15 we could negotiate something that he could live with.

16 **Q** And this plea essentially reduces exposure from mandatory
17 25 years to the minimum seven; correct?

18 **A** Yes.

19 **Q** The minimum of the lesser included.

20 **A** That's right.

21 **Q** And also dismissing the proximity charge. If you recall,
22 was he at all concerned with how that plea hearing ended up?

23 **A** What do you mean?

24 **Q** During the plea hearing, the judge asked, "Are you
25 satisfied with your representation?" I'll represent to you he

1 says yes.

2 **A** Yes.

3 **Q** Do you recall anything during that plea hearing or
4 afterwards that would give you reason to believe he was
5 concerned with that plea?

6 **A** No. I mean, it was certainly a long -- like, before the
7 plea happened, he was going back and forth many times. I
8 mean, we were -- it was absolutely possible that I could try
9 that case for a third time that day. We were going back and
10 forth as to whether he would accept it or not.

11 After the plea, no, he didn't -- he didn't mention it to
12 me in the least, that I can recall.

13 MR. HUNTER: Court's indulgence one second.

14 BY MR. HUNTER:

15 **Q** Okay. So this double jeopardy issue that was brought up
16 about the acquittal on the gun charge and the, I guess,
17 resulting trafficking charge, you said you talked to some
18 other attorneys. Can you just explain your thought process on
19 the double jeopardy issues?

20 **A** Yeah. Well, obviously, it's noted that I had only been a
21 lawyer for about four months at this time. Jack Swerling was
22 a mentor of mine. I had discussed at length with him this
23 case, especially the outcome of the second trial of going
24 forward with an 11-person jury. And we certainly talked about
25 that issue.

1 I don't remember exactly why, I guess, other than the
2 fact that I reasoned with myself that the guns weren't in the
3 exact same or similar fashion, or common elements I guess
4 would be the right term in the case, as the drugs.

5 **Q** And just in your criminal experience, can you traffic
6 drugs without using a gun?

7 **A** Oh, absolutely.

8 **Q** Okay. Now, I just wanted to be clear on one thing. You
9 knew that he filed a PCR against you before that plea;
10 correct?

11 **A** Yes.

12 **Q** As far as that plea is concerned, are you aware of any --
13 any way -- positive, negative -- any way that that PCR
14 affected your representation on that plea?

15 **A** It affected -- his filing a PCR affected my
16 representation for the plea?

17 **Q** Yes.

18 **A** It didn't affect me at all.

19 **Q** What do you mean by that?

20 **A** I mean, I like Maunwell a lot. I worked really hard on
21 his case. You know, it didn't affect my ability to represent
22 him. I have no ill will or harm towards him based on him
23 filing a PCR against me.

24 **Q** Okay. So it didn't -- it didn't prevent you from getting
25 the best outcome you thought you could?

1 **A** Absolutely not.

2 **Q** Okay. All right. I'm just going to go through the
3 allegations as Mr. Wise did. When he went over page 285, line
4 23 through 25, I guess where the judge instructs the jury "the
5 defendant's knowledge and possession may be inferred when a
6 substance is found on property under his control," do you
7 remember that jury charge?

8 **A** Can you give me the lines?

9 **Q** I believe it was lines 23 through 25 on page 285.

10 **A** Yes.

11 **Q** Okay. And that's just a finding -- that's just a
12 permissive inference on constructive possession; correct?

13 **A** Correct.

14 **Q** Is that how you see it?

15 And are you aware -- I believe some other case law is
16 discussed earlier. Are you aware of the case, State v. Adams?

17 **A** Yes.

18 **Q** And what does that case say?

19 **A** That case basically delineates that the proper charge on
20 constructive possession is to instruct the jury that the
21 defendant's knowledge and possession may be inferred if the
22 substance was found on the premises under his control.

23 **Q** So given that case law, do you believe that the judge's
24 charge was in accordance with the law?

25 **A** I do.

1 Q So based on that, did you see any reason to object?

2 A No.

3 Q Okay. And let me ask -- this is page 285. Can you go to
4 page 286, lines 1 through 3. Can you just read that for me.

5 A "Part of this inference is simply an evidentiary fact to
6 be taken into consideration by you, along with other evidence
7 in this case, and can be given the weight you decide it should
8 have."

9 Q Okay. So given that, along with the constructive
10 possession inference, did you see any reason to object?

11 A No.

12 Q Okay. And moving on to the next allegation, this, I
13 believe, is page 288, lines 10 through 12. And it starts
14 with, "The defendant's knowledge and possession may be
15 inferred when a substance is found on the property under his
16 control."

17 I guess what's your -- just, in general, what is that
18 sentence saying?

19 A It's saying that he has constructive possession, I guess,
20 or that the constructive possession would be appropriate if
21 it's under -- if it's found under a dominion of control.

22 Q And how would you define "constructive possession"?

23 A Basically I'd say if it's in the custody, it's on the
24 person, or if it's in the house where he is, you know, a
25 tenant or a homeowner, he has the ability to, you know, come

1 and go, I guess -- off the top of my head.

2 **Q** So was that charge just simply defining what constructive
3 possession is?

4 **A** Yes.

5 **Q** And based on that, do you see any reason why you should
6 object to that?

7 **A** No.

8 **Q** And are you aware of the case of State v. Heath?

9 **A** I'm not sure.

10 **Q** This is -- just for the record, this is 370 S.C. 326.
11 It's a 2006 case. And, essentially, it holds, "In order to
12 prove constructive possession, the State must show a defendant
13 had dominion and control or the right to exercise dominion and
14 control over the illegal substance."

15 Based on that case, would you see any reason to object to
16 that charge?

17 **A** No.

18 **Q** Okay. Now, as far as the next allegation of possible
19 double jeopardy between the PWID marijuana and corresponding
20 proximity charge, had you done cases before where you had drug
21 charges and corresponding proximity charges?

22 **A** Nope.

23 **Q** You had never done that. Okay.

24 Had you done research on that before this trial?

25 **A** Yeah, in preparation for it.

1 Q And did you believe that those two could not be -- you
2 could not be sentenced on both?

3 A I think there's, like, some distinction case law.
4 There's certainly one standing that's the same set of facts or
5 circumstances. In this case, I'm not sure.

6 Q And are you -- have you ever read the proximity statute?

7 A Yes.

8 Q Okay. And I realize you don't have it in front of you
9 but --

10 A I don't.

11 Q Are you aware that the statute begins with "It is a
12 separate criminal offense"?

13 A Yes.

14 Q Okay.

15 A I believe it used to say it was unlawful, too.

16 Q And so what's your interpretation of that change?

17 A That it's separate. So the facts would have to be
18 separate.

19 Q Okay. And do you see there being a double jeopardy issue
20 based on the fact that it starts -- that it was changed to "is
21 a separate offense" rather than "it is unlawful"?

22 A No, not at this point.

23 Q Okay. And have you read the case, State v. Brown?
24 That's 319 S.C. 400, 1995.

25 A Yes.

1 Q You have?

2 A Yes.

3 Q What does that case say as it relates to this issue?

4 A I believe it deals with the proximity issue and that -- I
5 have it in front of me, if you can give me one second.

6 Basically, it's saying that Mr. Brown's cumulative sense,
7 like, he couldn't be convicted of both possession with intent
8 to distribute and possession with proximity. It would have to
9 be one or the other.

10 Q Where do you see that?

11 A I'm just summarizing. I'm on one portion of it. "Sandy
12 Brown's cumulative sentence for possession with intent to
13 distribute crack cocaine cannot stand if it results from the
14 same act which constituted the crime of distribution."
15 Apologize, not proximity.

16 Q I'm sorry? Could you read that again?

17 A It is towards the -- "Therefore, Sandy Brown's cumulative
18 sentence for possession with intent to distribute crack
19 cocaine cannot stand if it results from the same act which
20 constituted the crime of distribution."

21 Q Okay. But those aren't talking about proximity; correct?

22 A Oh, I apologize. No, I'm sorry.

23 MR. HUNTER: Your Honor, I'm looking at the end of this
24 case on essentially page 4 of 8 of this opinion, starting
25 with -- it says, "We wish to emphasize that there is no

1 prohibition against the contemporaneous prosecution by the
2 State for the possession with intent to distribute and
3 distribution of crack and related school charges where, like,
4 in this case, they arise out of the same conduct."

5 Have you read that part, Ms. Taylor?

6 **A** To an extent, yes.

7 **Q** Okay. And, basically, what is that saying?

8 **A** I mean, it's saying exactly that there's no
9 prohibiting -- like, they're going to allow you to do the same
10 prosecution for both possession with intent to distribute and
11 the school charges when they arise out of the same conduct or
12 same events.

13 **Q** Okay. I'm going to go on to the next allegation about
14 the expert opinion. These officers -- do you believe -- and I
15 know there were many instances here that were given, but can
16 you just explain in general why you didn't object to this?

17 **A** To --

18 **Q** To -- and don't want to go over every single one again.

19 **A** Sure.

20 **Q** But -- okay, where they talk about the scales and that
21 they'd be used for drugs.

22 **A** Why I didn't object, I guess to what Mr. Wise referred
23 to --

24 **Q** Yes, exactly.

25 **A** -- is that the expert testimony? I didn't object

1 because, again, I was trying to temper my objections with what
2 was going to irritate the jury and the judge, and I believed I
3 had gotten my point pretty sufficiently across through
4 cross-examination. In fact, even a lot of the things we
5 referenced I believe with the scales, I went back through
6 cross and had him explain that Pyrex is also used for baking,
7 not just for cooking crack.

8 But, essentially, I believed it was in the scope of their
9 normal activities as a police officer or drug investigators.

10 **Q** So based on their experience and their investigation?

11 **A** Correct.

12 **Q** Okay. Now, I'm just going to move on to the closing
13 argument. I believe that was page 256. And 256, again, as
14 referenced to earlier, starting on line 17, "I'm proud to be
15 their Solicitor and the job that they're doing here and the
16 job they did in this case."

17 Do you have that in front of you?

18 **A** Yes.

19 **Q** Can you just read that whole paragraph? I know that's at
20 the very end. Can you read the --

21 **A** Starting at line 12?

22 **Q** Starting at line 12. 12 through 19.

23 **A** "You're going to hear a lot of the facts probably. This
24 is the last chance that I get to come up here and talk to you.
25 You're going to get to hear from Ms. Taylor at the end of this

1 case, and I'm sure she's going to tell you all of the things
2 that they did wrong. Are these guys perfect? Absolutely not.
3 None of us are. But I'm proud to be their Solicitor and the
4 job they're doing here and the job that they did in this
5 case."

6 **Q** Okay. So in context, what is he saying?

7 **A** That I'm about to get up there with my closing and point
8 out all the things they did wrong.

9 **Q** Is that what you did?

10 **A** Absolutely.

11 **Q** Is that the main part of your case?

12 **A** Absolutely.

13 **Q** Okay. And just based on that sentence and what your
14 knowledge of the law is, is that vouching?

15 **A** Is it vouching?

16 **Q** What the Solicitor -- bolstering.

17 **A** I didn't believe it to be at the time. I could see it
18 now that he could see it that way.

19 **Q** But do you think in that sentence that the Solicitor is
20 making any sort of personal assurance or personal guarantee
21 that their testimony -- is he saying in any way, trust me --

22 **A** No, I almost think he's saying the opposite, that people
23 make mistakes and that they made mistakes here and he's proud.
24 He even says "no one's perfect."

25 **Q** Okay. Is he making any reference in that sentence to

1 anything that might be outside of the jury's -- I guess
2 outside of the testimony? Anything that, you know -- is he
3 giving any sort of indication that there's something they
4 don't know? "Trust me, there's something that y'all don't
5 know." Is he saying that at all?

6 **A** I didn't take it that way when I was listening to it.

7 **Q** And, again, why wouldn't you object to that?

8 **A** I didn't object because I feel like objecting in a
9 closing is a big deal, and at that point, I had done a really
10 good job of shaking up their witnesses. I had a great closing
11 planned, and I didn't think that was necessary.

12 **Q** Okay. And, again, your closing -- well, we just hit on
13 it. Can you just summarize the defense theory, especially in
14 your closing?

15 **A** Sure. Actually, I'd love to read it again; it's been a
16 while. My case theory was that they -- they botched this
17 investigation from the very beginning, even when it came to
18 obtaining a search warrant here. Jarvis Reeder sat outside of
19 Maunwell's house for two weeks, observing comings and goings.
20 Never took one single note on anything. Was testifying to
21 things he remembered as if they were, like, tattooed on his
22 brain. There were no notes. There was no investigation on
23 anyone other than Maunwell. They didn't fingerprint anything.
24 They didn't run serial numbers on the guns. Essentially, I
25 just painted a picture of a window that got dirtier and

1 dirtier and dirtier as the police proceeded with their
2 investigation. And at the end of it, you couldn't see through
3 it because they hadn't done their job.

4 **Q** That's all I have. Thank you.

5 **THE COURT:** Any redirect?

6 **REDIRECT EXAMINATION**

7 **BY MR. WISE:**

8 **Q** Let's go to page 285 of the transcript. And we're going
9 to get to line 18 in a minute, but let's go back to State v.
10 Peak. And State v. Peak basically says they have got to show
11 dominion and control over the drugs.

12 **A** Okay.

13 **Q** Do you agree with that?

14 **A** Yes. I have that case in front of me.

15 **Q** Now, let's look at this charge where the judge says,
16 "Constructive possession means that the defendant had dominion
17 and control or the right to exercise dominion and control over
18 either the crack cocaine or the marijuana itself." And you'll
19 agree that's a correct statement?

20 **A** Correct.

21 **Q** All right. But then he adds to it, "Or the property on
22 which the drugs were found." Right? And that's not in Peak,
23 is it?

24 **A** I'm not certain.

25 **Q** All right. So he basically has told the jury that, if

1 you exercise dominion and control over the property of where
2 the drugs are found, he's guilty?

3 **A** That's what it seems to infer, yes.

4 **Q** And that pretty well makes it mens rea.

5 **A** You could make that argument, yes.

6 **Q** Okay. Did you write Maunwell about the April hearing or
7 where the pleas was done and tell him we're going to go either
8 do a plea or do a trial?

9 **A** I don't recall.

10 **Q** Do you have your file with you?

11 **A** I have the trial binder. It doesn't have all of my
12 correspondence with him. I mean, I'm not sure.

13 **Q** But you'll agree that, after the second trial, as you
14 said, there wasn't much communication.

15 **A** That's correct.

16 **Q** You've been to a trial twice.

17 **A** That's right.

18 **Q** Thank you.

19 Did you have any correspondence with Tommy Thomas about
20 the case? From Lexington.

21 **A** I don't recall that.

22 **Q** Okay. Now, you'll agree that a person is not qualified
23 as an expert -- is not allowing to give their opinion about
24 conclusions from facts?

25 **A** Yes.

1 Q All right. And the officers, even though they're
2 investigators, gave a lot of conclusions about the facts.

3 A They gave conclusions, yeah, using their job, I guess,
4 and the nature of their capacity.

5 Q And the sum and substance of their conclusions was they
6 think Mr. Ervin is a drug dealer because they say drug dealers
7 have scales, drug dealers break it up like this, and so forth;
8 correct?

9 A Yes.

10 Q And they're not allowed to give their opinion, basically,
11 on the ultimate issue.

12 A That's right.

13 Q Much less when they're not qualified as an expert.

14 A Yes.

15 Q Thank you.

16 MR. HUNTER: Nothing else.

17 THE COURT: You may step down.

18 MR. WISE: I'd like to call Mr. Charles Gross.

19 THE CLERK: Sir, if you'd raise your right hand.

20 CHARLES GROSS,

21 the witness, after having been duly sworn, was examined and
22 testified to as follows:

23 THE CLERK: Just have a seat in the chair and pull the
24 chair up to the mic.

25 DIRECT EXAMINATION

1 BY MR. WISE:

2 Q Mr. Gross, you're an attorney, practicing law in
3 Greenwood, South Carolina?

4 A Yes, sir.

5 Q Do you remember the trial with Mr. Ervin back in 2013?

6 A I was aware that it was going on, and I remember being at
7 the first trial at the courthouse probably here in recesses,
8 and I was aware of the outcome but I did not attend any trial,
9 per se.

10 Q Were you aware of the basic issues involved in it?

11 A In a very general way. I think I became more aware of,
12 you know, some of the potential issues involved after the
13 first mistrial.

14 Q When he was acquitted of the gun charge?

15 A Right.

16 Q And I believe you -- and this is a copy of the email you
17 sent her on February 1, 2013?

18 A Yes.

19 Q And did you -- you make reference --

20 A Exhibit 2. I'd like for you to identify that for the
21 record.

22 Q Thank you.

23 And you made reference to a brief in there?

24 A I did.

25 Q Had you briefed that issue?

1 **A** Not in her case and not in the context of a drug case
2 with a weapons charge, but I had briefed the double jeopardy
3 issue following a hung jury on some counts and acquittal on
4 other counts.

5 **Q** Okay. And did she ever contact you about getting any
6 guidance or anything about that?

7 **A** Well, I think what the email reflects and what my
8 recollection is, I had done that -- my briefing in 20 -- or
9 before 2012, before I left the public defender's office. I
10 think it actually went back to about 2009.

11 And then Chelsea McNeal had had a similar issue in a case
12 that she was handling in the Fourth Circuit. Again, not the
13 same set of charges but the same legal concept. And I had
14 forwarded to her my briefing on that, which she then used in
15 her case.

16 And so what this email reflects and what my recollection
17 is, is that -- was is that I congratulated her on doing a very
18 good job. "You do have an interesting double jeopardy issue.
19 Chelsea and I have some stuff on it. I also have some stuff
20 on your entitlement to a transcript before they try it again.
21 And I recommend you order that if they don't dismiss."

22 And then, you know, she thanks for that and indicated
23 that they forwarded the motion to me. And I took that to mean
24 that she got that from Chelsea, so...

25 **Q** Without going into great detail, can you give us a

1 synopsis of why the Yeager case applies to this case?

2 **A** The Yeager case deals with the collateral estoppel
3 component of the double jeopardy clause, and it relies on Ash
4 v. Swinson, which is a very -- when I say very old, but an
5 older case dealing with the collateral estoppel component of
6 the double jeopardy clause.

7 And the Yeager case, I don't remember the exact charge,
8 but it was white collar crime that came out of the Enron
9 scandal, and there was hung juries and acquittals in that
10 case, and what the U.S. Supreme Court -- and I'm summarizing;
11 (indiscernible) would speak it better than I would -- is that
12 he treated the charges -- that they had a verdict that was a
13 hung jury as a non-entity and look at the evidence presented
14 or you look at the evidence presented in the trial regarding
15 the charge or charges where there was an acquittal, and then
16 the reviewing judge has to search and examine the record to
17 determine whether or not the jury could have resolved an issue
18 in the acquitted charges that would then preclude a retrial on
19 the hung jury charges.

20 **Q** In that analysis, does it make any difference what
21 (indiscernible) you place emphasis upon during the trial?

22 **A** I think that -- the way that's question is asked is, you
23 know, absolutely ambiguous or misleading. I think what it
24 matters is, is what the record was and what the evidence that
25 was presented in front of the jury. And then you have to look

1 at the -- I guess the facts that would have to be proven to
2 prove the charge that was acquitted, to prove the elements of
3 that charge.

4 And so the argument would be, I think in a situation like
5 this, is that charge for possession of gun during the
6 commission of a violent crime includes in it the elements of
7 one or more violent crimes, because the State has to prove
8 that, plus the possession on the gun during the commission of
9 that crime.

10 And so if you look in the record -- and I have not read
11 the record, but from the testimony earlier, the defense was is
12 that the drugs was not Mr. Ervin's. So if looking at the
13 record and there was evidence in the record to support the
14 conclusion that the drugs weren't Mr. Ervin's and the
15 possession of the drugs by Mr. Ervin was a fact that had to be
16 proven to meet the element of the violent crime to then become
17 an element of the gun charge, that would be the argument.

18 Q Okay. Thank you very much.

19 MR. HUNTER: Nothing for this witness.

20 THE COURT: Thank you. You may step down.

21 MR. WISE: Then the Applicant rests, Your Honor.

22 MR. HUNTER: Your Honor, the State does not intend to
23 call any witnesses; however, for purposes of the record, on
24 2017-CP-24-754, essentially what we refer to as the second
25 PCR, the State did make a motion to dismiss. I just want to

1 reassert my reasons for the record.

2 Again, Your Honor, he pled guilty to those two charges,
3 trafficking -- right, trafficking and cocaine, 28 to 100
4 grams, second offense. He pled guilty to that charge on April
5 11th, 2016; thus, a timely application would have to be filed
6 April 12th, 2017, to be considered timely.

7 This application on this was filed June 27, 2017, two
8 months after the one-year statutory period. The State argues
9 that none of his claims would excuse the statute of
10 limitations or bypass it. There's no tolling here. We
11 certainly don't agree with the proposition that he has one
12 year from when he found out he may have a claim. He clearly
13 knows the PCR process, evidenced by his filing the first one.

14 And also, Your Honor, despite the motions filed to
15 relieve by Ms. Taylor and Mr. Ervin, in this case, he was
16 facing a mandatory 25 years. She was able to negotiate a
17 seven-year sentence that a mandatory minimum of lesser
18 included, dismissing the proximity charge. Your Honor, again,
19 we would just assert our motion to dismiss based on statute of
20 limitations.

21 MR. WISE: I submitted an affidavit on Mr. Ervin's
22 behalf, but his testimony covered it, so I don't think there's
23 any need to submit the affidavit in response to it.

24 I would like to pass up to the Court the copies of
25 Yeager, Blockburger, and Rucker v. United States on the double

1 jeopardy issue also, to save the Court the trouble have having
2 to look them up.

3 But we'd be happy to submit proposed orders in the case.

4 THE COURT: Y'all will be doing that?

5 MR. WISE: Yes.

6 MR. HUNTER: Yes, Your Honor.

7 THE COURT: Okay. And will the proposed orders cover
8 both the State's motion to dismiss as well as the substance
9 of --

10 MR. WISE: It will.

11 MR. HUNTER: Your Honor, I think just to keep them
12 separate, since there's two CP numbers, I think it should
13 probably have one that just addresses one CP number, one that
14 addresses the other.

15 MR. WISE: That would probably be better.

16 THE COURT: And there's two double jeopardy issues. One
17 deals with the sentence of the consecutive by Judge Addy, and
18 the other double jeopardy issue deals with the issue that the
19 jury had found him acquitted of the weapons charge.

20 MR. WISE: That's correct.

21 MR. HUNTER: Yes.

22 THE COURT: Okay. I think I got it.

23 MR. HUNTER: Thank you, Your Honor.

24 THE COURT: Thank you very much.

25 (The above hearing concluded.)