

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable D. Craig Brown, Circuit Court Judge

RECEIVED

Jun 25 2021

S.C. SUPREME COURT

JOHNNY N. GREGG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-001491

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE) 2017-GS-21-00832

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

April 16-18, 2018

JOHNNY NICHOLAS GREGG,)

JR.,)

Defendant.)

B E F O R E:

Honorable William H. Seals, Jr.
Florence, County Courthouse
Florence, South Carolina

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

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Kay H. Richardson
Circuit Court Reporter

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25 **APRIL 16, 2018 - DAY ONE**

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VOIR DIRE

10

1 **(On the Record - 11:01 A.M.)**

2 VOIR DIRE:

3 THE COURT: Why don't we go ahead and get started.

4 MR. JEPERTINGER: If it please the Court, Your Honor.
5 The state would call the State versus Johnny Nickolas Gregg,
6 Jr. on 2017-832. In the indictment, he's charged with
7 possession of a weapon during the commission of a violent
8 crime; possession with intent to distribute a controlled
9 substance between Schedules I through V; trafficking in heroin
10 between 14 and 28 grams; possession with the intent to
11 distribute heroin in the proximity of a school; possession
12 with the intent to distribute cocaine base; possession with
13 the intent to distribute cocaine; and possession with the
14 intent to distribute marijuana.

15 THE COURT: All right. Thank you very much.

16 All right. Members of the jury panel, up to this point
17 in time, you have been determined to be qualified to serve as
18 jurors this week. However, I need to go one step further and
19 make sure that you're qualified to serve on a particular case.
20 In that regard, I'm going to ask you another series of
21 questions and, if any of these questions apply to you, I need
22 for you to please stand and respond.

23 In this particular case, the State of South Carolina
24 alleges that Johnny Nickolas Gregg, Jr., did in Florence
25 County, on or about January the 6th, 2017, possess a firearm

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VOIR DIRE

11

1 during the commission or attempted commission of a violent
2 crime, the crime being trafficking in heroin. Therefore, the
3 defendant is charged with possession a weapon during the
4 commission of a violent crime. Also, on that same day, he is
5 charged with possession with intent to distribute a controlled
6 substance, that substance being Xanax. And also that same
7 day, he is being charged with trafficking in heroin between 4
8 and 28 grams. Also on that same day is charged with
9 possession with intent to distribute heroin within the
10 proximity of a school and possession with intent to distribute
11 cocaine base, possession with intent to distribute cocaine,
12 and finally, possession with intent to distribute marijuana.
13 In this regard, has any member of the jury panel heard
14 anything about this case, read anything about this case,
15 talked to anybody about this case, if you know anything about
16 this case at all, please stand?

17 All right, ma'am, you can come forward if you'd like and
18 the lawyers may approach as well.

19 (REPORTER'S NOTE: Bench conference is held on the record in
20 the presence of but outside the hearing of the jury.)

21 THE COURT: Go ahead and give me your name and your
22 number?

23 JUROR 45: Number 45.

24 THE COURT: And your name?

25 JUROR 45: Twaniquyia Gainey.

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VOIR DIRE

12

1 THE COURT: Last name?

2 JUROR 45: Gainey.

3 THE COURT: Okay. And tell me what you got?

4 JUROR 45: I have a son with his brother.

5 THE COURT: Your son is his brother?

6 JUROR 45: My son is his nephew.

7 THE COURT: Is his nephew?

8 JUROR 45: Yes.

9 THE COURT: I tell you what, I'm gonna excuse you from
10 serving on this trial.

11 JUROR 45: Okay.

12 THE COURT: If you'll go out there and just have a seat.

13 JUROR 45: Okay.

14 THE COURT: And then we'll tell you what to do.

15 JUROR 45: Okay. Just sit out there?

16 THE COURT: Yeah, with the jury. Don't talk about this
17 case with anybody and you don't need to stand up again if any
18 of the questions apply to you.

19 MR. JEPERTINGER: Judge?

20 THE COURT: Yes.

21 MR. CLEMENTS: What we're going to do is have her wait in
22 the jury assembly room and when they come up here, we'll send
23 back to the jury assembly room, so they may be sent to Judge
24 Nettles.

25 THE COURT: Okay.

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VOIR DIRE

13

1 MR. CLEMENTS: So, you want her to go ahead and do that?
2 THE COURT: You can go on down to the jury assembly room.
3 Thank you.

4 (REPORTER'S NOTE: END OF BENCH CONFERENCE.)

5 THE COURT: All right. Mr. Suggs, if you would have the
6 defendant, Mr. Johnny N. Gregg, Jr., please stand and turn and
7 face the jury panel?

8 MR. SUGGS: Yes, Your Honor.

9 THE COURT: All right. You may have a seat. Thank you.
10 Is any member of the jury panel related by blood or
11 marriage or has a close personal or social relationship with
12 the defendant in this case, Johnny N. Gregg, Jr.? If so,
13 please stand.

14 All right. No one stood. And, Mr. Jepertinger, if
15 you'd stand and introduce yourself as the solicitor and any
16 members of your staff?

17 MR. JEPERTINGER: Good morning, everyone. My name is
18 John Jepertinger. I'm a deputy solicitor here in Florence
19 County. I have various police officers here, Ms. Melissa
20 Allen, the solicitor, in the back Mr. Ed Clements.

21 THE COURT: Okay. Thank you.

22 Is there any member of the jury panel related by blood or
23 marriage or has a close personal or social relationship with
24 this solicitor or any member of the solicitor's office? If
25 so, please stand.

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VOIR DIRE

14

1 (REPORTER'S NOTE: No response.)

2 THE COURT: No one stood.

3 Mr. Suggs, will you stand and introduce yourself and any
4 members of your firm?

5 MR. SUGGS: Thank you, Your Honor, may it please the
6 Court?

7 THE COURT: Yes, sir.

8 MR. SUGGS: Good morning, ladies and gentlemen. My name
9 is Scott Suggs. I'm an attorney and I practice law here in
10 Florence and my office is right on West Evans Street not far
11 from the McMillan Building, and I'm a sole practitioner so I
12 try to do everything myself.

13 THE COURT: Thank you.

14 Is there any member of the jury panel related by blood or
15 marriage or has a close personal or social relationship with
16 Mr. Suggs or has been represented by him at any point in time?
17 If so, please stand.

18 All right. Your name and your number please, sir?

19 JUROR 147: Ladawn Williams.

20 THE COURT: 1 what? 180?

21 JUROR 147: Ladawn Williams.

22 THE COURT: And your name?

23 JUROR 147: My number, I think is 147.

24 THE COURT: All right. 147. All right. How does that
25 question apply to you?

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VOIR DIRE

15

1 JUROR 147: I'm familiar with Mr. Suggs, I had him at one
2 point.

3 THE COURT: All right. Did he represent you at one point
4 in time?

5 JUROR 147: Yes, sir.

6 THE COURT: All right. Taking that into account, if you
7 were selected to serve on the jury in this case, could you be
8 fair and impartial not only to Mr. Suggs, but the solicitor's
9 office as well?

10 JUROR 147: I would try to be.

11 THE COURT: Is that a yes or a no?

12 JUROR 147: Yes.

13 THE COURT: All right. Would you be fair and impartial
14 to both sides; yes or no?

15 JUROR 147: Yes.

16 THE COURT: Thank you. I appreciate you standing.

17 Anybody else?

18 (REPORTER'S NOTE: No response.)

19 THE COURT: All right. The witnesses for the State of
20 South Carolina in this case, will be Agent Andron Brown; Agent
21 Shannon McKenzie; Agent Kendrick Spears; Investigator Cody
22 Jordan; and Frank Mizell with the Florence Police Department;
23 Stephen Starling with the Florence Police Department; and
24 Joseph Nida with Florence; Alex Ussery with Florence Police
25 Department; Lynne Black with SLED; and Deputy Chris Neal with

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VOIR DIRE

16

1 the Florence County Sheriff's Office.

2 All right. In that regard, is any member of the jury
3 panel related by blood or marriage, or has a close personal or
4 social relationship with any of these witnesses? If so,
5 please stand.

6 (REPORTER'S NOTE: No response.)

7 THE COURT: All right. No one stood.

8 Mr. Suggs, do you have a witness list of any kind?

9 MR. SUGGS: No, Your Honor.

10 THE COURT: Okay. Thank you very much.

11 Is there any member of the jury panel related by blood or
12 marriage to any law enforcement officer? If so, please stand.
13 That can be SLED, FBI, police department highway patrol,
14 sheriff's department.

15 All right. Juror Number, I think you said 147?

16 JUROR 147: Yes, sir.

17 THE COURT: All right. And who are you related to?

18 JUROR 147: I'm related to a police officer here in
19 Florence, South Carolina.

20 THE COURT: And who is that?

21 JUROR 147: Ms. Mary McNabb (spelled phonetically).

22 THE COURT: All right. Taking that into account, if you
23 were selected to serve on a jury in this case, could you be
24 fair and impartial, not only to the state, but the defense as
25 well?

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VOIR DIRE

17

1 JUROR 147: Yes.

2 THE COURT: All right. Thank you very much.

3 Anybody else?

4 (REPORTER'S NOTE: No response.)

5 THE COURT: Is any member of the jury panel aware of any
6 bias or prejudice for or against the State of South Carolina?
7 If so, please stand.

8 (REPORTER'S NOTE: No response.)

9 THE COURT: No one stood.

10 Has any member of the jury panel formed an opinion as to
11 the guilt or innocence of the defendant in this case, Johnny
12 N. Gregg, Jr.? If so, please stand.

13 (REPORTER'S NOTE: No response.)

14 THE COURT: No one stood.

15 Is there any member of the jury panel who is a member of
16 or contributor to any group, which has as its primary concern,
17 the promotion of law enforcement or victim's rights? These
18 groups would include but certainly not be limited to MADD,
19 SADD, or CAVE, Citizens Against Violent Crimes, the Fraternal
20 Order of Police, or the South Carolina Law Enforcement
21 Association. If so, please stand.

22 (REPORTER'S NOTE: No response.)

23 THE COURT: All right. No one stood.

24 Has any member of the jury panel or any member of your
25 immediate family ever been involved in a crime of personal

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VOIR DIRE

18

1 violence? This could be including but not limited to criminal
2 sexual conduct, assault and battery of a high and aggravated
3 nature, murder, manslaughter, kidnapping, armed robbery, et
4 cetera. Now, if you or any member of your immediate family,
5 have ever been a victim or a defendant in a crime such as
6 these just mentioned, please stand.

7 You may come on up here if you'd like and the lawyers can
8 approach as well.

9 (REPORTER'S NOTE: Bench conference is held on the record in
10 the presence of but outside the hearing of the jury.)

11 THE COURT: Hold on one second let me get the lawyers up
12 here. Just begin by giving me your name.

13 JUROR 113: 147, I mean 113.

14 THE COURT: 113. All right. How does that question
15 apply to you?

16 JUROR 113: My son was locked up for high and aggravated
17 assault.

18 THE COURT: Okay. Taking that into account, if you were
19 selected to serve on the jury in this case, could you be fair
20 and impartial, not only to the state, but the defense as well?

21 JUROR 113: Yes, sir.

22 THE COURT: Would you be fair and impartial to both
23 sides?

24 JUROR 113: Yes, sir.

25 THE COURT: Good. Thank you for standing.

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VOIR DIRE

19

1 All right. Come on up. All right. Your name and
2 number?
3 JUROR 10: Bernice Bartell.
4 THE COURT: And your number?
5 JUROR 10: 10.
6 THE COURT: 10?
7 JUROR 10: Yeah.
8 THE COURT: All right.
9 JUROR 10: It was my brother Arthur Jackson. He was
10 armed robbery.
11 THE COURT: Okay. Taking that into account, if you were
12 selected to serve on the jury in this case, could you be fair
13 and impartial to the state and the defense?
14 JUROR 10: Uh-huh (affirmative response).
15 THE COURT: Is that a yes?
16 JUROR 10: Yes.
17 THE COURT: Would you be fair and impartial to both
18 sides?
19 JUROR 10: Yes.
20 THE COURT: All right. I appreciate you coming forward.
21 MR. SUGGS: Did she say her brother was convicted of
22 armed robbery?
23 THE COURT: Was your brother convicted of armed robbery?
24 JUROR 10: Yes, he's serving now.
25 THE COURT: Okay. Thank you.

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VOIR DIRE

20

1 All right. Give me your name and your number?

2 JUROR 58: Cecil Howell, 58.

3 THE COURT: All right. Go ahead.

4 JUROR 58: I had a CDV in 2011.

5 THE COURT: Okay. You did?

6 JUROR 58: Uh-huh (affirmative response).

7 THE COURT: All right. Taking that into account, if you
8 were selected to serve on the jury in this case, could you be
9 fair and impartial not only to the state, but to the defense
10 as well?

11 JUROR 58: Yes.

12 THE COURT: Would you be fair and impartial to both
13 sides?

14 JUROR 58: Yes, sir.

15 THE COURT: Good. I appreciate you standing. You can
16 just have a seat.

17 MR. JEPPERTINGER: He's 147.

18 All right. Mr. 147, what you got?

19 JUROR 147: Mr. Suggs has me as a -- I had a case, an
20 attempted murder case and I'm still coming through it.

21 THE COURT: He had what?

22 JUROR 147: He had me in a case, he represented me in
23 that attempted murder case.

24 THE COURT: Taking that into account, if you were
25 selected to serve on the jury in this case, could you be fair

State v. Gregg - 2017-GS-21-00832
VOIR DIRE

21

1 and impartial not only to Mr. Suggs but the state as well?

2 JUROR 147: I cannot be fair to Mr. Suggs.

3 THE COURT: Could you be fair to the state as well?

4 JUROR 147: I don't know about the state.

5 THE COURT: Is that a yes or a no? All right. I'm going
6 to excuse you from this trial. You just go have a seat.

7 147 is excused from this trial.

8 (REPORTER'S NOTE: End of bench conference.)

9 THE COURT: Okay. All right. That's it.

10 Is there any member of the jury panel, who knows of any
11 reason why they could not give the parties in this case a fair
12 and impartial trial? If so, please stand.

13 (REPORTER'S NOTE: No response.)

14 THE COURT: Has any member of the jury panel or any
15 member of your family ever been prosecuted by this solicitor's
16 office at any point in time, regardless of whether the case
17 was dismissed or not? If so, please stand.

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Does any member of the jury panel have any
20 religious or philosophical objections to sitting in judgment
21 of your fellow citizens? If so, please stand.

22 (REPORTER'S NOTE: Bench conference is held on the record in
23 the presence of but outside the hearing of the jury.)

24 THE COURT: You are number 113?

25 JUROR 113: Yes, sir.

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VOIR DIRE

22

1 THE COURT: Go ahead and tell me again.

2 JUROR 113: I'm trying to think. He prosecuted my son.

3 THE COURT: Mr. Jepertinger?

4 JUROR 113: Uh-huh, (affirmative response).

5 THE COURT: All right. Taking that into account, if you
6 were selected to serve on the jury in this case, could you be
7 fair and impartial not only to Mr. Suggs but to Mr.
8 Jepertinger as well?

9 JUROR 113: Yes, sir.

10 THE COURT: Thank you. I appreciate you standing.

11 COURT REPORTER: What was her number?

12 MR. JEPERTINGER: That was number 113.

13 BAILIFF: Juror 83.

14 THE COURT: The thing I want to be fair is, 12 years ago
15 I got a charge but I didn't go to prison for it. So, does
16 that matter?

17 THE COURT: You're fine.

18 JUROR 83: Okay.

19 THE COURT: You were not convicted, so ---

20 JUROR 83: Okay.

21 THE COURT: If it carried more than a year, we would have
22 ---

23 JUROR 83: Okay. I just wanted to make sure.

24 THE COURT: Thank you.

25 MR. SUGGS: Was that 83?

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VOIR DIRE

23

1 THE COURT: 83.

2 (REPORTER'S NOTE: End of bench conference.)

3 Has any member of the jury panel financially supported
4 any group whose main purpose is the decriminalization of
5 narcotic drugs? If so, please stand.

6 (REPORTER'S NOTE: No response.)

7 THE COURT: All right. Anything further from the state?

8 MR. JEPERTINGER: No, sir.

9 THE COURT: How about the defense?

10 MR. SUGGS: No, sir, Your Honor.

11 THE COURT: All right. Except for those I have excused,
12 I find the jury panel qualified for this case.

13 Ms. Clerk, if you'll give us a jury of 12 and two
14 alternates. Take your time.

15 MR. JEPERTINGER: Your Honor?

16 THE COURT: We're waiting on her.

17 MR. JEPERTINGER: Yes, sir. Just one thing, if we've
18 excused anybody through that process, they need to go to the
19 jury assembly room.

20 THE COURT: Correct.

21 MR. JEPERTINGER: I didn't know if ---

22 THE COURT: Which one was that?

23 MR. JEPERTINGER: Ladawn William, 147?

24 THE COURT: Mr. 147, head on down to the jury assembly
25 room. Thank you.

State v. Gregg - 2017-GS-21-00832
JURY SELECTION

24

1 JURY SELECTION:

2 CLERK: Okay. When I call your name, just come up to the
3 front of the courtroom and face the back of the courtroom and
4 we'll tell you what to do after that.

5 99, Samirkumar Patel. Stand right here near the podium
6 is fine and turn around and face the back of the courtroom,
7 just turn around.

8 What say the state?

9 MR. JEPERTINGER: Please present Mr. Patel.

10 CLERK: What say the defendant?

11 MR. SUGGS: Your Honor, excuse me. We don't get a
12 printout like we ordinarily do?

13 THE COURT: If you want to give him one, you can.
14 Normally, I don't in criminal court.

15 CLERK: I can print him one.

16 MR. SUGGS: That's all right.

17 THE COURT: I figured you had your list and all your
18 information.

19 MR. SUGGS: Yes, sir. Thank you, Judge.

20 Please swear Mr. Patel.

21 CLERK: Okay, sir. If you'll step around this way and
22 have a seat in the box.

23 26, Elton Carter. What say the state?

24 MR. JEPERTINGER: Please present Mr. Carter.

25 CLERK: What say the defendant?

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JURY SELECTION

25

1 JUROR 26: Guilty.

2 MR. JEPERTINGER: He just said the word guilty, Judge.

3 Can we approach?

4 THE COURT: Yes.

5 (REPORTER'S NOTE: Bench conference is held on the record in
6 the presence of but outside the hearing of the jury.)

7 MR. JEPERTINGER: That's a weird response.

8 THE COURT: I wasn't ---

9 MR. JEPERTINGER: He said guilty when I said please
10 present Mr. Carter.

11 THE COURT: Let's bring him up here. Tell him to come on
12 up here.

13 MR. JEPERTINGER: Mr. Carter, can you come around,
14 please?

15 THE COURT: All right. Mr. Carter, did you say anything
16 when he said to present the juror?

17 JUROR 26: I didn't know y'all were meaning to ---

18 MR. JEPERTINGER: You said guilty.

19 THE COURT: Did you say the word guilty?

20 JUROR 26: Well, I ---

21 THE COURT: And why did you say that?

22 JUROR 26: I'm not sure. I'm not sure what y'all were
23 getting to me about.

24 THE COURT: We weren't really asking you anything. We
25 were just ---

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JURY SELECTION

26

1 JUROR 26: Not really.

2 THE COURT: Why don't we excuse him and then -- let's
3 just keep you sitting through this selection -- why don't you
4 go on down to the first floor and go to the jury assembly
5 room. Okay?

6 JUROR 26: Uh-huh, (affirmative response).

7 MR. SUGGS: I'm a little concerned about what he said in
8 front of all ---

9 THE COURT: Well, he's gonna have a trial and I'm gonna
10 let them know that he's not guilty until proven guilty beyond
11 a reasonable doubt.

12 MR. SUGGS: Yes, sir.

13 (REPORTER'S NOTE: End of bench conference.)

14 CLERK: Okay. 63, Barrett Isgett.

15 Sir, if you'll just come stand like right here and face
16 the back of the courtroom, please, that will be fine.

17 THE COURT: Right there will be fine. That's perfect.

18 CLERK: What say the state?

19 MR. JEPERTINGER: Please present Mr. Isgett.

20 CLERK: What says the defendant?

21 MR. SUGGS: Please excuse this juror for the purpose of
22 this trial only.

23 CLERK: You've been excused from this trial and, sir, you
24 may return to your seat.

25 83, Lettice McColl.

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JURY SELECTION

27

1 What say the state?

2 MR. JEPERTINGER: Please excuse Ms. McColl for the
3 purposes of this trial only.

4 CLERK: You've been excused from this trial only. You
5 may return to your seat.

6 21, Penny Burgess. Come right here.

7 What say the state?

8 MR. JEPERTINGER: We would excuse Ms. Burgess for the
9 purposes of this trial only.

10 CLERK: You've been excused from this trial only, you may
11 return to your seat.

12 61, Veronica Huff.

13 What say the state?

14 MR. JEPERTINGER: Please present Ms. Huff.

15 CLERK: What say the defendant?

16 MR. SUGGS: Please swear Ms. Huff.

17 CLERK: Please have a seat in the jury box, ma'am.

18 136, Jerry Watts.

19 What say the state?

20 MR. JEPERTINGER: Please present Mr. Watts.

21 CLERK: What say the defendant?

22 MR. SUGGS: Please swear Mr. Watts.

23 CLERK: Please have a seat in the jury box, sir.

24 46, Edward Graham.

25 What say the state?

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JURY SELECTION

28

1 MR. JEPERTINGER: Please present Mr. Graham.
2 CLERK: What say the defendant?
3 MR. SUGGS: Number again?
4 CLERK: 46.
5 MR. SUGGS: Please swear Mr. Graham.
6 CLERK: Please have a seat in the jury box, sir.
7 157, Tyler Montrose.
8 What say the state?
9 MR. JEPERTINGER: Please present Mr. Montrose.
10 CLERK: What say the defendant?
11 MR. SUGGS: Please excuse this juror for the purposes of
12 this this trial.
13 CLERK: You've been excused from this trial, sir, you may
14 return to your seat.
15 32, Jason Clardy.
16 What say the state?
17 MR. JEPERTINGER: Please present the juror.
18 CLERK: What say the defendant?
19 MR. SUGGS: Please excuse the juror for the purpose of
20 this trial.
21 CLERK: You've been excused from this trial and, sir, you
22 may return to your seat.
23 92, Theresa Moses.
24 What say the state?
25 MR. JEPERTINGER: Please present Ms. Moses.

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JURY SELECTION

29

1 CLERK: What say the defendant?
2 MR. SUGGS: Please present Ms. Moses.
3 CLERK: Please have a seat in the jury box, ma'am.
4 82, Jonathan Matthews.
5 What say the state?
6 MR. JEPERTINGER: Please present Mr. Matthews.
7 CLERK: What say the defendant?
8 MR. SUGGS: Please swear Mr. Matthews.
9 CLERK: Please have a seat in the jury box, sir.
10 109, Sylvia Robinson.
11 What say the state?
12 MR. JEPERTINGER: Please present Ms. Robinson.
13 CLERK: What say the defendant?
14 MR. SUGGS: Please swear Ms. Robinson.
15 CLERK: Please have a seat in the jury box, ma'am.
16 38, Amber Core.
17 What say the state?
18 MR. JEPERTINGER: Please excuse this juror for the
19 purposes of this trial only.
20 CLERK: You've been excused from this trial only, ma'am.
21 You may return to your seat.
22 40, Brian Davis.
23 What say the state?
24 MR. JEPERTINGER: Please present Mr. Davis.
25 CLERK: What say the defendant?

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JURY SELECTION

30

1 MR. SUGGS: Please swear Mr. Davis.
2 CLERK: Please have a seat in the jury box, sir.
3 158, Cynthia Victory.
4 What say the state?
5 MR. JEPERTINGER: Please present Ms. Victory.
6 CLERK: What say the defendant?
7 MR. SUGGS: Please swear Ms. Victory.
8 CLERK: Please have a seat in the jury box, ma'am.
9 58, Cecil Howell.
10 What say the state?
11 MR. JEPERTINGER: Please present Mr. Howell.
12 CLERK: What say the defendant?
13 MR. SUGGS: Please swear Mr. Howell.
14 CLERK: Please have a seat in the jury box, sir.
15 Number 7, Stephen Arnold.
16 What say the state?
17 MR. JEPERTINGER: Please present Mr. Arnold.
18 CLERK: What say the defendant?
19 MR. SUGGS: Please swear Mr. Arnold.
20 CLERK: Please have a seat in the jury box.
21 85, Knight McKnight.
22 What say the state?
23 MR. JEPERTINGER: Please present Ms. McKnight.
24 CLERK: What say the defendant?
25 MR. SUGGS: Please swear Ms. McKnight.

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BY THE COURT

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1 CLERK: Please have a seat in the jury box, ma'am.
2 THE COURT: Two alternates.
3 CLERK: 156, Timothy Gaskins.
4 What say the state?
5 MR. JEPERTINGER: Please present Mr. Gaskins.
6 CLERK: What say the defendant?
7 MR. SUGGS: Please swear Mr. Gaskins.
8 CLERK: Please have a seat in the jury box, sir.
9 Number 14, Danny Birch.
10 This is the second alternate.
11 MR. SUGGS: What's the number again?
12 CLERK: 14, Danny Birch.
13 THE COURT: Call the next one.
14 CLERK: 71, Victoria Kelehear.
15 What say the state?
16 MR. JEPERTINGER: Please present Ms. Kelehear.
17 CLERK: What say the defendant?
18 MR. SUGGS: Please swear Ms. Kelehear.
19 CLERK: Please have a seat in the jury box, ma'am.
20 BY THE COURT:
21 THE COURT: Any objections to the jury of the process
22 from which they were drawn? What says the state?
23 MR. JEPERTINGER: None from the state.
24 THE COURT: How about the defense?
25 MR. SUGGS: No, Your Honor.

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BY THE COURT

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1 THE COURT: All right. Thank you very much.

2 The remainder of the jury panel, if you would, go back
3 down to the jury assembly room at this time.

4 (REPORTER'S NOTE: Remaining jury venire exits courtroom @
5 11:33 P.M.)

6 THE COURT: All right. The remainder of the jury, I'm
7 going to excuse you at this time until 1:30. In the meantime,
8 we're going to do a little pretrial and try to get things
9 ironed out so that we can proceed forward with you at that
10 time.

11 But I want to tell you one thing, you know a little bit
12 about this trial based on the jury selection process. In
13 other words, you know who the defendant is, you know who the
14 charges are and things of that nature. You are instructed not
15 to leave this courthouse and investigate this case in any form
16 or fashion. Do not get on the internet and try to look up
17 anybody's name, don't Google anything, just put it out of your
18 mind. Don't even talk about it with anybody, including your
19 family or even among yourselves at this time. Just go, enjoy
20 your lunch, come back at 1:30, and hopefully we'll be ready to
21 roll at that time.

22 All right. Everybody else remain seated while the jury
23 is excused.

24 (REPORTER'S NOTE: Jury exits courtroom @ 11:35 A.M. The
25 following takes place outside the presence of the jury.)

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MOTIONS

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1 THE COURT: All right. Any pretrial at this time from
2 the state?

3 MOTIONS:

4 MR. JEPERTINGER: Judge, just a couple of things and we
5 took this up at the bench and I don't know if it was on the
6 record, but we move to amend count four to be trafficking in
7 heroin between 14 and 28 grams. In essence, the penalty of 28
8 grams or more carries 25 to 40; 14 to 28 is a mandatory
9 minimum of 25. So, it does lessen -- it would a lesser
10 offense, Judge, and I think that would be a permissible
11 amendment to that indictment in terms of that. Also, I
12 informed defense and His Honor that we would not be going
13 forward on possession of a stolen pistol. Now, I wanted to
14 put that all on the record.

15 The other issue that came up here during jury selection,
16 I just want this to be clear. When Juror 26 was called, he
17 was a white male -- I don't have his name right now in front
18 of me -- but when he stood in front of me he said -- I said
19 present the juror and he looked at me and he said guilty. I
20 don't know if he was referring to me, referring to Mr. Suggs,
21 referring to the defendant, or referring to this process as a
22 whole. Judge, and I'm sure you will inform this jury
23 throughout the course of this trial that this person is
24 innocent, this defendant is innocent unless and until the
25 state, represented by me, proves his guilt beyond a reasonable

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1 doubt.

2 THE COURT: Oh yeah, I'll certainly do that. I think the
3 guy was low functioning in some regards and I think he thought
4 we were asking to go ahead and give us a verdict at this time,
5 and he just decided he'd choose guilty or not guilty, but we
6 dismissed him. I didn't even hear it. I'm glad you brought
7 it to my attention. I'll certainly instruct that jury in
8 great detail as to the burden of proof and the presumption of
9 innocence. All right?

10 Any pretrial from the defense?

11 MR. SUGGS: Judge, I'm sorry. I was going -- I was going
12 to make a comment about that, what we discussed ---

13 THE COURT: That will be fine.

14 MR. SUGGS: And that does concern me, Judge, that he
15 would utter that phrase, guilty, in front of the panel, in
16 front of the venire, Judge, and -- and from the -- from the
17 venire, we selected the petit jury. So, I'm quite certain
18 that all of the jurors heard that. And, to me, it sounded as
19 if he was responding to a question about his opinion of my
20 client's guilt or innocence, simply by virtue of what Mr.
21 Jepertinger had asked or what the Court had asked, and that
22 kind of -- that kind of talk, to me, contaminates the entire
23 panel. Because if in fact, he was thinking in those terms and
24 he did utter that phrase in response to what he was thinking,
25 I'm afraid that might've contaminated the entire venire, and

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1 in fact would've contaminated the petit jury. So, Judge, I
2 would, at this time, Judge, out of an abundance of precaution,
3 and I think I've got to do this, Judge, I think I've got to
4 move for a mistrial, really before we even begin. And I don't
5 know -- I don't believe that we can just put these folks aside
6 and draw another jury based on what's left. I mean, I don't
7 think there are enough, first of all. And even if there were,
8 I think there is some other administrative thing going on with
9 them trying to pick another jury. I think the only thing that
10 could be done would be to -- to try this young man's case with
11 -- with a whole new venire, which would have to be next week
12 and that would be the only safe way to do it. I'm just
13 afraid, you know, it's like screaming fire in a theatre; once
14 you say ---

15 THE COURT: Go ahead and wrap it up; I know where you're
16 going.

17 MR. SUGGS: Yes, sir, you're gonna have those
18 ramifications. Of course, we don't have people running out of
19 the courtroom screaming and knocking each other over but, not
20 literally but figuratively, that kind of thing can spread and
21 it can spread rapidly among the folks that are sitting in
22 judgment of my client. And I just think, Judge, that -- that
23 it calls, based on what that man said, it calls for a
24 mistrial, Judge, and I'd ask the Court to consider that and
25 grant it.

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1 THE COURT: First of all, I didn't even hear it and you
2 made the comment that everybody heard it. I don't see how
3 everybody heard it. He was right in front of me and I didn't
4 hear a thing. If the solicitor hadn't brought it to my
5 attention, I would have never even known it was said.

6 The second thing I want to tell you is I will certainly
7 instruct the jury that this defendant is innocent until he's
8 proven guilty and he has to be proven guilty beyond a
9 reasonable doubt. I will do that in great detail.
10 Furthermore, if you would like a curative instruction, I'll be
11 glad to do that as well at the end of this trial. But I don't
12 see how in the world that little simple process where the
13 solicitor said present the juror, guilty. That's all that
14 happened. Three words and I don't think we need to totally
15 throw this thing out in that regard. I'll instruct them. If
16 you want to draft up a charge, I'll be glad to do it and I'll
17 give them detailed curative instructions.

18 MR. SUGGS: And I understand you have already ruled ---

19 THE COURT: I have.

20 MR. SUGGS: --- and no more arguments allowed and I
21 understand that and I'm not going to.

22 THE COURT: Good.

23 MR. SUGGS: but I will ask this, Judge. When we -- when
24 we start opening statements, of course, I will talk about
25 presumption of innocence, burden of proof, et cetera. Am I

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1 allowed to mention that since ---

2 THE COURT: If you want to, you can.

3 What do you think, Solicitor?

4 MR. JEPERTINGER: I don't think it's in evidence and I
5 don't think he's gonna present that that another person said
6 the word guilty.

7 THE COURT: Why don't you let me during instruction if
8 you want it at that time?

9 MR. SUGGS: Yes, sir, Judge.

10 THE COURT: I'm not even sure if they heard it.

11 MR. SUGGS: It shocked the mess out of me. Of course I
12 was standing right here, but it just shocked me.

13 THE COURT: Yes. All right.

14 Solicitor, anything else?

15 MR. JEPERTINGER: Judge, I called Mr. Suggs' office last
16 week. There was a series of phone calls that Mr. Gregg made
17 from the jailhouse. We redacted a portion, it's long and a
18 lot of the stuff is just frankly irrelevant to the trial.
19 It's banter between he and his girlfriend or he and his friend
20 or he and his mother and it's just irrelevant. We've redacted
21 down to a portion dealing with how he set up his phone
22 operation there at the jailhouse, because we're gonna have
23 Christopher Neal from the Sheriff's Department explain that.
24 He's in charge of that. Also, what we feel is the damning
25 portion of what he tells a friend or a loved one about the --

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1 when the police came in and what happened.

2 THE COURT: All right. I'll hear from the defense.

3 MR. SUGGS: Judge, I would ask that, well first of all, I
4 -- the material that Mr. Jepertinger presented to me, I got a
5 few weeks ago on a disc. Now, the stuff that he's talking
6 about redacting, I just heard about that, so, I don't know
7 what he's talking about in terms of redacting exactly what.
8 But, I would ask the Court not to allow any of the
9 information, conversations between my client and his mother or
10 whoever else he's talking to from the jail to be admitted into
11 evidence.

12 Now, I understand and I know exactly what Mr.
13 Jepertinger's argument is gonna be. His argument is gonna be
14 that, well, at the beginning of all these phone calls, there's
15 some little announcement that says, and I'm just paraphrasing,
16 Judge, that -- that these calls can be or are being recorded
17 or something of that nature. But, that's about all it says
18 and I know folks hear that before they start talking. But you
19 know, a lot of times, I don't think people really think that
20 the conversations that they're having, while they're being
21 recorded, are necessarily going to be used against them in a
22 court of law. Because, you know, there are no Miranda
23 warnings which are given at the beginning of these
24 conversations by the recording device, it just says that the
25 conversation is gonna be recorded. And, you know, I guess it

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1 stems from my argument, Judge, that the jail, to be in jail,
2 I've never personally been in jail, and thank God for that,
3 and but a lot of these folks have been in jail and been in
4 jail for several months, weeks or several months, and I would
5 imagine being in jail is a very frightening experience and
6 oftentimes the only comfort that that person can receive if
7 it's not an actual visit is to reach out to that loved one,
8 family member, mother, and try to get that degree of comfort
9 and consolation that he or she needs because they are in jail.
10 And I don't think that because they're seeking that sort of
11 comfort and consolation, that that what they say should be --
12 they should be expect their own words to be used against them
13 in trial. Judge, I think that, you know, these are grown men,
14 I understand that. But, you know, I think back to all the
15 battles that the United States has waged throughout its
16 history and all the men and women, the men who have died on
17 our battlefields for our country and these are grown men.
18 Some of the last words out of their mouths before they die is
19 I want my momma, and that's the kind of thing that I think
20 we're looking at here. We've got a man who wants to talk to
21 his momma from the jail or someone he loves, someone he's
22 attached to, someone that he can get comfort and solace from.
23 And to think that those conversations can be -- can be turned
24 around and used against them in a court of law, I just think
25 that that's improper and should not be allowed to happen.

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1 THE COURT: All right. Your response to that, Solicitor?

2 MR. JEPERTINGER: Well, a couple of them. First of all,
3 I don't think Miranda would apply because it's not subject to
4 custodial interrogation, he's not being interrogated. Two, as
5 Mr. Suggs said, they are informed before they use the phone
6 system that the phone conversations are being recorded.
7 Three, it would constitute admission by a party-opponent. So,
8 that's my argument.

9 THE COURT: All right. I'm going to allow the phone
10 calls. You can review them ahead of time if you would like.

11 MR. JEPERTINGER: We sent his brother, Mr. Suggs'
12 brother, picked these up last week.

13 THE COURT: Okay. Well, good.

14 MR. JEPERTINGER: And he signed for it.

15 MR. SUGGS: Judge, my brother did pick it up and I put it
16 in my laptop and my laptop speakers are just absolutely
17 useless, so I had an external speaker that I hooked up to my
18 laptop and I turned it all the way up and I still had problems
19 understanding.

20 THE COURT: You've got time. We'll make sure you have
21 time. You can use the state's computer.

22 MR. JEPERTINGER: Yes, sir. In fact, I think we redacted
23 it down to about three or four minutes if you want to listen
24 to it here since ---

25 THE COURT: That's fine. Go ahead and plug it up.

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1 MR. JEPERTINGER: I'm just going to mark this and do this
2 as State's 1.

3 COURT REPORTER: Mr. Jepertinger, I'm going to take this
4 out and put State's 1 actually on the disc.

5 MR. JEPERTINGER: That will be fine.

6 STATE'S EXHIBIT NUMBER 1

7 MARKED FOR IDENTIFICATION

8 (REPORTER'S NOTE: State's Exhibit 1 published for the Court.
9 Audio not transcribed herein.)

10 MR. JEPERTINGER: That was it, Judge. I think that's
11 sufficient.

12 THE COURT: All right. Thank you very much.

13 Anything you want to add to that, Mr. Suggs?

14 MR. SUGGS: Judge, honestly, I only picked up on about
15 half of what was said and the jurors, of course, will be able
16 to listen to it as much as they want to. Me listening to this
17 really for the first time, I was only able to pick up about 50
18 percent of what was said. I would like to hear it again, if
19 the Court will indulge?

20 THE COURT: Can you play it one more time real quick?

21 MR. JEPERTINGER: If he wants to hear it again, he can
22 hear it again, Judge.

23 MR. SUGGS: Thank you, Judge.

24 THE COURT: I think it clearly comes in as an admission
25 by a party-opponent, no question.

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1 MR. SUGGS: I want to put on the record, Judge, I even
2 went to Office Depot and bought another set of external
3 speakers to hook to my laptop and I still had trouble
4 understanding the colloquy.

5 (REPORTER'S NOTE: State's Exhibit 1 published for the Court.
6 Audio not transcribed herein.)

7 THE COURT: All right. Any other motions from the state?

8 MR. JEPERTINGER: Judge, those are the only motions I
9 have. I know the defense may have some motions in term of
10 *Jackson v. Denno*, and I don't know what else.

11 THE COURT: All right.

12 Mr. Suggs?

13 MR. SUGGS: Judge, I do have a few, but it's been a while
14 since I've taken a break. Would it be all right if, and I'd
15 like to still try to find this young man's mother. She was --
16 I was told by the office that she was here earlier to bring my
17 client some clothing to dress out in. But I haven't seen her
18 since I've been here. She was told to meet me on the third
19 floor because I thought that was where we were gonna meet, but
20 I was texted by Mr. Jepertinger this morning that we would be
21 on first floor in the Jury Assembly Room, because I didn't
22 know, this was the first time, so I haven't had a chance to
23 run her down. And I would like to the bathroom and see if I
24 can find his mother. Would that be okay?

25 THE COURT: How about 15 minutes?

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1 MR. SUGGS: Yes, sir, that's more than a plenty.

2 THE COURT: All right. We'll take a 15-minute break.

3 MR. SUGGS: Thank you, Judge.

4 **RECESS - 10:59 A.M.**

5 *******OFF THE RECORD*******

6 **(On the Record - 12:20 P.M.)**

7 THE COURT: All right. Mr. Suggs, I'm ready when you
8 are?

9 MR. SUGGS: All right.

10 MR. JEPERTINGER: Your Honor, the astute -- I'm gonna let
11 Kay go back on the record -- the astute eye of Mr. Suggs
12 noted on the penalty section for 14 to 28 grams, it should
13 read (e) (3) (b) .

14 THE COURT: All right.

15 MR. JEPERTINGER: It won't be (e) (3) (a) (c), it will
16 (e) (3) (b) .

17 THE COURT: Okay.

18 MR. JEPERTINGER: And (a) (c) in fact was a scrivener's
19 error; it should have been (e) (3) (c) to begin with.

20 THE COURT: Okay.

21 MR. JEPERTINGER: But (e) (3) (b) is what it would ---

22 CLERK: Okay.

23 CLERK: All right. Mr. Suggs?

24 MR. SUGGS: Yes, sir. That is correct, Judge, what Mr.
25 Jepertinger said about the code section.

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1 Judge, we have a couple of motions. First, well, Judge,
2 my Rule 615 motion about sequestering witnesses, we would ask
3 for that.

4 THE COURT: Any objections from the state?

5 MR. JEPERTINGER: Judge, I guess not. Andron was the, I
6 guess, the chief cook and bottle washer and investigator in
7 this case, so, I'd ask that he remain in the courtroom.

8 MR. SUGGS: He would have the right to be here, I would
9 think, Judge.

10 THE COURT: That'll be fine.

11 MR. JEPERTINGER: And the other ones can enjoy the
12 beautiful building outside.

13 THE COURT: That'll be fine, I grant your motion.

14 MR. SUGGS: Thank you, Judge.

15 MR. JEPERTINGER: Your Honor, there was another
16 indictment on 2017-1535, that the state is not going forward
17 on in regards to this case and I'll be nolle prosequing that,
18 I'm tell you that as an officer of the Court.

19 THE COURT: All right. Good.

20 MR. JEPERTINGER: 2017-1535.

21 MR. SUGGS: Yes, sir, that's correct. It was actually
22 three indictments. The one we're here for now, which is 17,
23 2017-832; and then 2017-1270, which we're not dealing with
24 today; and the 2017-1535, which Mr. Jepertinger said he's
25 going to be dismissed no matter what the outcome of this case

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1 is, Judge.

2 THE COURT: That'll be good.

3 MR. SUGGS: Yes, sir, Judge.

4 Also, Your Honor, we have two additional motions that
5 we'd like to take up. One has to do with the search warrant.
6 There's a search warrant involved in this case and we'd like
7 to take that up, as well as a statement allegedly made by my
8 client at the time of his arrest, Judge, which was on January
9 the 5th of 2017, 6th.

10 THE COURT: 6th.

11 MR. SUGGS: 6th?

12 THE COURT: 6th.

13 MR. SUGGS: All right.

14 JACKSON V. DENNO:

15 MR. JEPERTINGER: We're ready to proceed, Judge.

16 THE COURT: All right. I'm ready when you are.

17 MR. JEPERTINGER: I'd call Officer Andron Brown to the
18 stand.

19 CLERK: Sir, if you'll please place your left hand on the
20 Bible and raise your right hand.

21 ANDRON BROWN, HAVING BEEN DULY SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Please be seated and state your full name for the
24 record.

25 MR. BROWN: My name is Andron Brown.

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ANDRON BROWN - DIRECT BY JEPERTINGER

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1 DIRECT EXAMINATION OF ANDRON BROWN BY MR. JEPERTINGER:

2 Q: Officer Brown, by whom are you employed?

3 A: The Florence City Police Department.

4 Q: Okay. How long have you worked there?

5 A: Going on 10 years. It'll be 10 years the end of this
6 year.

7 Q: And what are your special responsibilities at the Florence
8 Police Department?

9 A: Right now, I'm working in the narcotics division,
10 investigating vice infractions, drug infractions,
11 prostitution, and any gang investigations, also.

12 Q: Okay.

13 COURT REPORTER: Mr. Jepertinger, can you pull that
14 microphone down in front of him, please?

15 MR. JEPERTINGER: Okay. Yes.

16 COURT REPORTER: Thank you.

17 MR. JEPERTINGER: You're just like Johnny Cash ---

18 CLERK: Is the green light on?

19 MR. JEPERTINGER: No, it's not. Is it on now?

20 THE COURT: That's the key to these things is you don't
21 just hold it down and it automatically come back on. You have
22 to turn it on and off each time. I figured that out this
23 morning.

24 MR. JEPERTINGER: The green light is on.

25 THE COURT: Okay.

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1 MR. JEPERTINGER: I'm going to go up here so Kay can hear
2 me and ---

3 THE COURT: Thank you.

4 MR. JEPERTINGER: --- since the courtroom is a little bit
5 bigger.

6 BY MR. JEPERTINGER:

7 Q: Okay. Were you employed as a narcotics officer back on
8 January 6th, 2017?

9 A: Yes, sir; I was.

10 Q: Okay. Did you have an occasion with other officers to
11 execute a valid and legal search warrant at 805-A Commander
12 Street?

13 A: Yes, sir; that's correct.

14 Q: And that's here in the City of Florence?

15 THE COURT: Is your microphone --

16 A: Mine is green.

17 COURT REPORTER: The green light is on his.

18 A: Yeah, it's on.

19 THE COURT: It doesn't seem like it's doing anything, but
20 go ahead.

21 A: Okay. I'll speak a little bit louder.

22 THE COURT: All right. Go ahead.

23 BY MR. JEPERTINGER:

24 Q: Okay. Did you have an opportunity to go to 805-A
25 Commander Street with other officers of the narcotics unit?

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1 A: Yes, sir.

2 Q: And investigators of the Florence Police Department as
3 well, correct?

4 A: Yes, sir; they assisted.

5 Q: Okay. Can you tell how -- tell how you entered into the
6 courtroom -- I didn't mean courtroom -- now I'm confused with
7 these microphones. How did you get into 805-A Commander
8 Street?

9 A: We went to the rear of the residence due to the
10 information that we had saying that the rear is where most of
11 the traffic was used. We went there, because usually if
12 that's not the door they're using, sometimes it's barricaded.
13 So, we went to the residence, knocked, knocked and announced
14 police search warrant. Nobody responded to the door. I,
15 myself, forced the door open without police department issued
16 ram and that's when everyone made entry at that point.

17 Q: Okay. There's a front door as well at 805-A Commander?

18 A: There is a front door.

19 Q: Did you have policemen guarding that door?

20 A: Yes, sir.

21 Q: All right. When you entered 805-A Commander Street, who
22 was present?

23 A: The defendant, Mr. Gregg.

24 Q: Was he the only person at 805-A Commander Street?

25 A: He was the only person at that location.

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- 1 Q: Okay. Now, besides -- now, what time of day was this --
2 excuse me, I'm gonna back up a question. What time -- what
3 time was this, do you remember?
- 4 A: I can't remember exactly what time it was.
- 5 Q: If I showed you your incident report and it says 14:20 in
6 terms of the 24-hour clock, would that refresh your
7 recollection?
- 8 A: Yes, sir; 2:20 P.M.
- 9 Q: Okay. So, it was in the afternoon?
- 10 A: Yes, sir.
- 11 Q: All right. And when you got there and he was the sole
12 resident and how many other officers were there?
- 13 A: Three on entry I believe and we had -- we also had other
14 officers that were outside of the residence.
- 15 Q: Okay. When you got in there, did you see this defendant
16 right off the bat when you busted in with that ram?
- 17 A: Yes, sir, kind of out of my peripheral, because I hit the
18 door and then the way that we do it, whoever is hitting the
19 door, allows the others to go in. So, as I hit the door and
20 it came open, just as soon as it came open, I saw him run to
21 the corner of the kitchen kind of.
- 22 Q: Okay. And did you observe anything right off the bat?
- 23 A: Immediately, we observed marijuana and cocaine, what we
24 believed to be suspected cocaine base on the kitchen table.
- 25 Q: Okay. And did you recite to him that you had a search

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1 warrant for the residence?

2 A: Yes, we did. We advised him of his rights and also read
3 the search warrant to him.

4 Q: Okay. Before we get into the search warrant, we'll do
5 that here in a little bit, because I think Mr. Suggs is gonna
6 have a motion in terms of that. But you said, you read him
7 his rights?

8 A: Yes, sir.

9 Q: Are you referring to the Miranda warnings?

10 A: His Miranda, yes, sir.

11 Q: Okay. Did you quote them by memory or did you read them
12 off the card?

13 A: No, I carry a card with me, especially when we're doing
14 search warrants, so that I have it readily available to read
15 to any suspects at the locations?

16 Q: Okay. At that -- at that stage, was the defendant under
17 arrest when you read him his Miranda warnings?

18 A: At that time, yeah.

19 Q: He was?

20 A: Uh-huh, (affirmative response).

21 Q: Okay. Did he seem to understand what you were talking
22 about, about the search warrant and your Miranda warnings and
23 all the reasons for the police being there?

24 A: Yes, sir, he was very cooperative. He -- to me it seemed
25 he understood everything that was going on.

1 Q: About far were you away from him when you were reading his
2 Miranda warnings?

3 A: From me to you.

4 Q: Would you say within five feet?

5 A: Yes, sir, closer than that.

6 Q: Did he smell like he had been drinking, that he was under
7 the influence of alcohol or any drugs at the time when you
8 were speaking with him?

9 A: No, sir.

10 Q: All right. Did he seem to understand everything that you
11 were talking about, that maybe -- you know, like some guys,
12 you talk and then you can tell they're a little off kilter.

13 A: Yes, sir.

14 Q: Did he seem he was off kilter or did he seem to
15 understand?

16 A: He seemed like he understood everything I said to him, to
17 me.

18 Q: Okay. Now, you said you read the Miranda warnings to him,
19 can you tell the Court and read what you read to Mr. Gregg on
20 January 6th, 2017 off your issued card?

21 A: You have the right to remain silent. Anything you say can
22 and will be used against you in court. You have a right to an
23 attorney and to have that attorney present during questioning.
24 If you cannot afford an attorney, an attorney will be provided
25 at no cost. You can decide at any time to exercise these

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1 rights and not answer any questions or make any statements.

2 And after I'd given that warning, I asked him, Do you
3 understand each of these rights that I've explained to you? I
4 wait for them to respond, which Mr. Gregg responded yes. And
5 having these rights in mind do you wish to talk with us? And
6 said he didn't have a problem talking with us.

7 Q: Okay. What did he tell you about what you observed once
8 you went into the house and saw those drugs?

9 A: He told us that everything in there belonged to him. He
10 also told us that the suspected cocaine that was sitting on
11 the kitchen in plain view was there because he was about to
12 leave and go make a sale and that's why his vehicle was still
13 running. He also pointed out other drugs that we hadn't
14 found yet that were in the cabinets in the kitchen and also
15 around the house.

16 Q: Okay. What drugs are we talking about specifically?

17 A: He pointed out -- can I get a -- my report is right there;
18 can I have that report? Thank you, sir. All right. We
19 located -- at this location, we located approximately 320
20 Xanax pills or suspected Xanax pills at the time;
21 approximately 10.5 grams of cocaine; approximately eight
22 Ecstasy pills, and we said approximately on the pills because
23 it was -- they were broken up; approximately five and a half
24 grams of suspected cocaine base; approximately 33 grams of
25 suspected heroin; approximately 1,132 grams of marijuana; and

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1 four fire arms; and a total \$30,452.00 cash.
2 Q: Was that between the house and the car or just in the
3 house?
4 A: That was in between -- that was in the -- that was in the
5 house, all these items were found in the house.
6 THE COURT: How much cash?
7 A: \$38,452.
8 BY MR. JEPERTINGER:
9 Q: All right. And ---
10 A: I'm sorry.
11 Q: Go ahead.
12 A: There was also \$40 in quarters, so actually 38,492.00
13 Q: And he said right before you came, the car was running and
14 he was going to make -- he was cutting things up to make a
15 sale?
16 A: Yes, sir; that's what he told me.
17 Q: Did he have the implements there on the table to make the
18 sale?
19 A: Yes, sir, everything was there and it seemed like it was
20 being separated for -- to be distributed.
21 Q: Razor blades?
22 A: Razor blades, yes, sir, razor blades was there.
23 Q: Scales, all that stuff?
24 A: Yes, sir
25 Q: Okay. No one else was in the house?

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1 A: No one else was in the house.

2 Q: Okay. At any time did you deprive him of food, water, say
3 you're gonna talk to me whether you like it or anything of
4 that nature.

5 A: Never. I read him out his rights, asked him if he was
6 willing to talk and he agreed. I'd say he was very
7 cooperative.

8 Q: Obviously, he's an African American, you're an African
9 American?

10 A: Yes, sir.

11 Q: Was there other African Americans present that were with
12 the police department at this time?

13 A: Yes, sir, Corporal Spears at the time, he's Sergeant
14 Spears now; he was there also.

15 Q: All right. No racial overtones one way or the other?

16 A: No, sir.

17 Q: Okay. Thank you so much. Please answer any questions --
18 this is your report -- that Mr. Suggs may have for you in
19 terms of Miranda.

20 THE COURT: All right. Mr. Suggs?

21 MR. SUGGS: May it please the Court?

22 CROSS EXAMINATION OF ANDRON BROWN BY MR. SUGGS:

23 Q: Excuse me. Agent Brown, I'm trying to just get an
24 understanding in my mind about how these search and seizures
25 and things that go on after a home has been breached, the

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1 things that go on after that, I'm trying to get an idea in my
2 mind. Can you help me a little bit on that?
3 A: I'll try to.
4 Q: Okay. All right. In executing the search warrant, we'll
5 talk about that in a minute.
6 A: Uh-huh, (affirmative response).
7 Q: On the statement, how many officers along with yourself
8 participated in this -- in this breach of the home?
9 A: It was myself, Agent McKenzie, Corporal Spears, and I
10 believe we had two investigators that assisted.
11 Q: So, probably five people?
12 A: Five, yes, sir.
13 Q: Including yourself?
14 A: Yes, sir.
15 Q: Okay.
16 A: Now, we had other agents to come and assist after we got
17 started but, upon entry, it was just those five.
18 Q: All right. How many other agents eventually showed up at
19 the scene?
20 A: Two, three, I believe, three agents.
21 Q: All right. So, we had eight agents there, more or less,
22 at the same time?
23 A: Yes, sir.
24 Q: Okay. All right. And what time of day was it when the
25 search warrant was executed?

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- 1 A: 14:20, which is 2:20 P.M.
- 2 Q: In the afternoon?
- 3 A: In the afternoon, I'm sorry.
- 4 Q: Do you remember what day of the week it was?
- 5 A: I don't remember which day of the week, sorry.
- 6 Q: All right. Now, when the officers go to execute a search
- 7 warrant, is it some go to maybe a front door and others go to
- 8 back door; in other words, do y'all split up?
- 9 A: Yes, just depending on intel that we have. If we have
- 10 intel that they, like I said, if they're using the rear door,
- 11 then we went to the rear door and just to be sure that the
- 12 front door wasn't gonna be a means of exit or fleeing for
- 13 whoever is inside that location.
- 14 Q: In this case, who went to the back door, all the agents or
- 15 ---
- 16 A: No, everybody on scene didn't go to the back door. We had
- 17 some people at the front. I can't remember exactly who stayed
- 18 up front.
- 19 Q: All right.
- 20 A: But I know myself, McKenzie, and Spears made entry.
- 21 Q: All right. Entry was made through the back door?
- 22 A: Through the back door, yes.
- 23 Q: Okay. So, let's just talk about the back door. So, it
- 24 was you, Agent Spears, and who else?
- 25 A: Agent McKenzie.

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1 Q: McKenzie, okay. Now, did you knock first or did one of
2 your other agents knock first?
3 A: Yes, sir.
4 Q: Okay. And someone announced what?
5 A: Search warrant, police, search warrant.
6 Q: Just like that?
7 A: I mean louder, but police, search warrant.
8 Q: Police, search warrant?
9 A: Yes, sir.
10 Q: Just like that, loud?
11 A: Loud, yeah.
12 Q: How many times?
13 A: I don't know exactly how many times.
14 Q: It could be just one time?
15 A: Usually more than one; probably two at least.
16 Q: Well, in a case like this, based upon what you already
17 knew ---
18 A: Uh-huh, (affirmative response).
19 Q: --- it's reasonable, isn't it, that you would have
20 announced one time and then immediately gone in?
21 A: At least one -- at least we're gonna -- yeah, but I'm not
22 a hundred percent sure how many times we did it in this
23 incident.
24 Q: So, if I said, you just said it one time, you wouldn't be
25 in a position to dispute it?

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- 1 A: No, no, no.
- 2 Q: Is that fair to say?
- 3 A: Yeah.
- 4 Q: All right. And who -- who made entry into the home using,
- 5 I guess some sort of ramming device?
- 6 A: I made entry into the residence.
- 7 Q: All right. And then so you rammed the door and the door
- 8 came open?
- 9 A: Yes, sir.
- 10 Q: Is that the door to the kitchen?
- 11 A: That's the door that leads straight to the kitchen.
- 12 Q: All right. So, you don't know how much time elapsed
- 13 between police, search warrant, and the ramming of the door?
- 14 A: No, sir. I'm blocked in on my job of hitting that door.
- 15 Q: Of course, within seconds probably because you're
- 16 concerned about your safety and the safety of your other
- 17 agents, correct?
- 18 A: It's less than a minute, so that would be seconds still.
- 19 I'm not sure how long, but ---
- 20 Q: Well, you don't want to give the folks inside time to get
- 21 ready for you, do you?
- 22 A: Well, I mean, we've still got to give them reasonable time
- 23 to know that it's a search warrant that's being done and give
- 24 them a chance to open the door. That's what we normally do.
- 25 Q: All right. So, the door was open and then who -- did you

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1 go in first?

2 A: No, whenever I hit the door, I allowed -- the door comes
3 open and I move away because I'm still holding the ram. So,
4 other officers go in first; I can't remember who was point.

5 Q: All right. Anybody in that house other than Mr. Gregg?

6 A: Mr. Gregg was alone.

7 Q: Who encountered Mr. Gregg first?

8 A: I believe Sergeant Spears, but I can't be a hundred
9 percent sure.

10 Q: All right. And did he have -- y'all have guns drawn at
11 this time?

12 A: I'm not a hundred percent sure. I didn't have a gun
13 drawn; I had the ram.

14 Q: All right.

15 MR. JEPERTINGER: Judge, I don't mean to belabor this,
16 but we're getting a little far off of Miranda.

17 THE COURT: Right.

18 MR. SUGGS: Judge, we're going down the line getting to
19 it. I'm just trying to understand of the the -- the facts of
20 this particular arrest.

21 THE COURT: Are you doing the search warrant and the
22 Miranda at the same time?

23 MR. SUGGS: No, sir, I'm getting to the Miranda right now.

24 THE COURT: Well go ahead.

25 MR. SUGGS: Okay.

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1 THE COURT: This doesn't have anything to do with
2 Miranda.

3 MR. SUGGS: Yes, sir.

4 BY MR. SUGGS:

5 Q: You said that you didn't -- you were not the first agent
6 to encounter Mr. Gregg; is that right?

7 A: Yes, sir, that's right.

8 Q: All right. Who was the agent that encountered him and
9 then tell us what happened; do you immediately place him in
10 handcuffs?

11 A: Sergeant Spears encountered him first and told him to get
12 on the floor, which is normal practice, and the rest of the
13 location was cleared.

14 Q: All right. He got on the floor?

15 A: Uh-huh, (affirmative response).

16 Q: Is that a yes?

17 A: Yes, sir.

18 Q: And then which officer handcuffed him?

19 A: Sergeant Spears, I believe.

20 Q: All right. And you and the other agents were going
21 through the house to make sure everything was safe?

22 A: Yes, sir.

23 Q: Okay. And now at what point did the conversation take
24 place between you and Mr. Gregg, was that after the house was
25 cleared?

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1 A: Yes, we always -- before we do any talking, we make sure
2 that the house is safe to talk in.

3 Q: Okay. There's a lot of possibilities when you -- when you
4 breach a house, things that could happen, so you have to be
5 very careful; is that right?

6 A: Yes, sir.

7 Q: And you have to do things step by step by step; is that
8 right?

9 A: Yes, sir.

10 Q: Okay. And so, whenever the house was cleared, were you
11 the first one to talk to Mr. Gregg?

12 A: I'm not sure if something other outside of -- talk to him
13 about what?

14 Q: About anything?

15 A: Somebody may have said something to him, but nothing was
16 discussed in reference to the case until I came.

17 Q: Okay. So, Mr. Gregg did not respond to any other law
18 enforcement officer except for you?

19 A: In regards to his -- in regards to what was in the
20 location.

21 Q: Okay. Okay. So, you said you asked him, you read him his
22 Miranda rights after he was handcuffed and taken off the
23 floor; is that right?

24 A: Yes, sir.

25 Q: I mean, he wasn't on the floor handcuffed while you were

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1 readings his rights?
2 A: No. No.
3 Q: All right. He was made erect; is that right?
4 A: Yes, sir.
5 Q: All right. And you read him his constitutional right,
6 correct?
7 A: Yes, sir, his Miranda rights, yes, sir.
8 Q: Okay. And you read him his Miranda warnings by memory or
9 by a card that you use?
10 A: By a card.
11 Q: Do you have that card with you?
12 A: Yes, sir.
13 Q: Okay. And do you always use that card?
14 A: Yes, sir.
15 Q: All right. All right. And after you read the card to Mr.
16 Gregg, did you then ask him if he'd like to speak to you?
17 A: Yes, sir.
18 Q: All right. And he responded yes?
19 A: Yes, sir, he said he was fine with answering any questions
20 that I had.
21 Q: Okay. And without going through what Mr. Jepertinger has
22 already gone through, he admitted ownership of the drugs that
23 were on the table?
24 A: He admitted ownership of everything that we located in the
25 residence.

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1 Q: Okay.

2 A: And that was at the time that we asked him, he admitted to
3 everything that was in the location.

4 Q: Okay. I think that's where I'm going with this. There
5 was a search of the house done before the questioning of Mr.
6 Gregg?

7 A: No.

8 Q: Okay. All right. So, he just blurted out to the officer,
9 anything you find in the house is all mine?

10 A: He -- the stuff that was on the table, he initially
11 admitted to. The rest of the stuff, some stuff that we found
12 and brought forth to him, he admitted to and there were other
13 things that we didn't find that he showed us where it was and
14 admitted to.

15 Q: All right. When you say he showed you, did -- is that a
16 question that you asked him is there anything else in the
17 house we need to know about in that vein?

18 A: Yes, sir.

19 Q: Okay. And -- and he -- what were the items that ---

20 A: There was some, let me be sure ---

21 Q: Instead of enumerating, let me just ask you this question.
22 Are there items of evidence that were found in the house that
23 are not part of this particular case?

24 A: No, sir -- I don't understand the question.

25 Q: All right. And this is an eight-count indictment -- well,

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1 it's a seven-count indictment now?

2 A: Uh-huh, (affirmative response).

3 Q: So, my question is, the items that were found in the home,
4 either through the search or by him voluntarily telling you
5 where they are, any of those items not a part of this seven-
6 count indictment?

7 A: No, I don't think so. I'm still not really understanding
8 your question.

9 Q: All right. Now, you've testified that -- that you felt
10 that Mr. Gregg understood the Miranda warnings as you read
11 them to him?

12 A: Yes, sir.

13 Q: Okay. And did you -- did you or anyone else threaten him
14 in any way in order to get him to talk with you officers?

15 A: No, sir.

16 Q: There was no -- did anybody make any promises to him at
17 that time, that there would be leniency for him if he
18 cooperated with law enforcement?

19 A: No, sir.

20 Q: Were there -- was there a time where other officers
21 would've talked to Mr. Gregg and asked him questions when you
22 were not present?

23 A: Possibly.

24 Q: Okay. So, as to those conversations, you cannot testify
25 as to what was said?

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1 A: No, sir; I can't.

2 Q: You can't testify if anyone had threatened him or anybody
3 made him any promises?

4 A: In my presence, he wasn't threatened.

5 Q: All right. And he was not under the influence of any
6 alcohol, drugs or other intoxicants to your knowledge?

7 A: Not from what I could tell, he wasn't.

8 Q: All right. Now, let's talk about the search warrant for a
9 moment. Did you apply for one?

10 A: What's that? I'm sorry.

11 Q: Did you apply for the warrant?

12 A: Yes, sir.

13 Q: All right. And did -- are you the one who executed the
14 affidavit?

15 A: You mean typed up the affidavit?

16 Q: Signed the affidavit.

17 MR. JEPERTINGER: Your Honor, if we're going to refer to
18 this, let's make the warrant a Court's Exhibit?

19 THE COURT: Are done with the *Denno* hearing, Mr. Suggs?

20 MR. SUGGS: Sir?

21 THE COURT: Have you asked all the questions you want to
22 in regards to the *Denno* hearing?

23 MR. SUGGS: Yes, sir. Yes, sir, we're just about the
24 search warrant at this point.

25 THE COURT: All right. Well, I'm gonna make a finding

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1 that the defendant was properly Mirandized and that he gave
2 his statement freely and voluntarily.

3 MR. SUGGS: Yes, sir.

4 THE COURT: Now, let's move over to the search warrant.

5 MR. JEPERTINGER: If we're gonna do that, may I ask some
6 direct questions?

7 THE COURT: You may.

8 MR. SUGGS: That's fine, Judge.

9 THE COURT: That would be the appropriate way to do it.

10 MR. SUGGS: Okay.

11 MR. JEPERTINGER: I'm gonna have the search warrant
12 marked as a Court's Exhibit only.

13 COURT'S EXHIBIT NUMBER 1

14 MARKED FOR IDENTIFICATION

15 MOTIONS:

16 DIRECT EXAMINATION OF ANDRON BROWN BY MR. JEPERTINGER:

17 Q: I'm gonna show you Detective Brown what's been marked as
18 Court's Exhibit Number 1. Do you recognize this document?

19 A: Yes, sir.

20 Q: Can you tell His Honor what Court's Exhibit 1 is?

21 A: A search warrant for 805 Commander Street, Apartment A.

22 Q: All right. And can you go over the description of
23 property sought pursuant to that warrant?

24 A: A description of the property sought was marijuana,
25 illegal drugs, drug related items, monies, records of drug

1 sales, and associates, drug paraphernalia and any items used
2 or intended to be used to facilitate drug sales.

3 Q: Okay. And the place that you decided to search,
4 description of premises?

5 A: The description of the premises was the structure was
6 located at 805 Commander Street, Apartment A, which is in the
7 City of Florence, South Carolina. The structure in question
8 is described as a white structure with light blue trim. If
9 one drives east on West Booker Street and turns north onto
10 Commander Street, the structure in question will be the third
11 residence on the left. The structure with -- the structure is
12 split into two apartments. 805-A is clearly marked on the
13 front of the residence. This warrant is to include all
14 persons on the premises as well as any out buildings
15 associated with this apartment since these are often used to
16 store drugs away from the residence. Also, any vehicles
17 linked to the occupants of the residence or persons on the
18 property, since vehicles are the most common method of
19 transporting drugs from one place to another.

20 Q: All right. And the reason you sought this search warrant
21 was?

22 A: The reason we sought it because a confidential reliable
23 informant of the Florence Police Department reported to
24 narcotics agents that he or she had observed a quantity of
25 marijuana at 805-A Commander Street, 805 Commander Street,

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ANDRON BROWN - DIRECT BY JEPERTINGER

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1 Apartment A in the City of Florence, South Carolina within the
2 past 72 hours. This informant has proven to be reliable in
3 the recent past by providing information to agents, which
4 resulted in seizure of drugs and the arrests of drug dealers.

5 Q: And who's the affiant; who signed for this search warrant?

6 A: I am the affiant.

7 Q: Okay. And on what date did you sign for this?

8 A: January 5th of 2017 at approximately 3:47 P.M.

9 Q: And I see a signature of a judge; who is the judge?

10 A: Judge Jackson, Debra Jackson.

11 Q: All right. Did you in fact search this building pursuant
12 to this warrant on January the 6th of 2017?

13 A: Yes, sir.

14 Q: Okay. And you left a copy of this at the residence or
15 with Johnny Gregg pursuant to your return?

16 A: Yes, sir, everything that we took on the return, the
17 entire search warrant was left a copy at the location.

18 Q: Okay. I noticed that you returned it 11 days after you
19 served this search warrant, is there any reason you didn't do
20 it within the 10-day period?

21 A: Sometimes we run into issues with the Judge if she's -- if
22 there's a scheduling issue where she's not available or she's
23 off or not available at the time. Then I can't -- I can't
24 take it back myself, so we have to have her available to be
25 able to sign the return.

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ANDRON BROWN - CROSS BY SUGGS

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1 Q: Okay. And it was only one day in terms of the 10-day
2 rule?

3 A: Yes, sir.

4 Q: Okay. In terms of the -- this tipster, the informant has
5 provided, just like you read, information that's proven
6 reliable in the past?

7 A: Yes, sir, this particular informant has been with the
8 Florence Police Department for I believe in excess of 12 or 13
9 years and I've always has correct information once we
10 corroborate it.

11 Q: Okay. And that correct information, I take it, has led to
12 arrests and convictions of ---

13 A: Yes, sir.

14 Q: --- drug and narcotics?

15 A: Many arrests and convictions.

16 Q: All right. Thank you very much. Please answer any
17 questions that Mr. Suggs may have?

18 A: All right.

19 CROSS EXAMINATION OF ANDRON BROWN BY MR. SUGGS:

20 Q: Officer Brown, you applied for the search warrant on
21 January the 5th; is that right?

22 A: Yes, sir, that's correct.

23 Q: Okay. And that was the date of your signature on the
24 affidavit?

25 A: Yes, sir.

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- 1 Q: Okay. And it was presented to a City Court Judge, Judge
2 Jackson, who signed -- who signed off on the search warrant on
3 the same day; is that right?
- 4 A: Yes, sir.
- 5 Q: And I noticed that on the affidavit, that it says that --
6 that you signed on January the 5th, 2017, and underneath that,
7 do you have a copy of that, of the affidavit?
- 8 A: Uh-huh, (affirmative response). Say that again?
- 9 Q: Do you have a copy of the affidavit?
- 10 A: Yes, I do.
- 11 Q: All right. And it says 3:47 P.M. Is that when you signed
12 or is that when it was notarized?
- 13 A: That's the judge's handwriting. The judge did that when
14 she signed off on it is when -- is the time that she put down.
- 15 Q: All right. So, the Judge who -- Judge Jackson, who signed
16 off on the search warrant, is also the same person who
17 notarized your signature on your affidavit?
- 18 A: Who notarized my signature? Yes, sir, she signs all of
19 that; yes, sir.
- 20 Q: All right. So, according to the affidavit, you signed the
21 affidavit January the 5th, 2017 and the Judge notarized your
22 signature on that same date at 3:47 P.M.; is that right?
- 23 A: That's correct.
- 24 Q: And she also signed the search warrant the same day at
25 3:48 P.M.; is that right?

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- 1 A: Yes, sir.
- 2 Q: All right. Now, you say that you applied for the search
3 warrant based upon information received from a confidential,
4 reliable informant; is that correct?
- 5 A: That's correct.
- 6 Q: And is someone who has given you information in the past
7 that's been reliable?
- 8 A: That's correct.
- 9 Q: Okay. And how many -- how many arrests would you -- would
10 you say that have come from this confidential informant's
11 information to you?
- 12 A: I don't know. I couldn't count it. Like I said, it's in
13 excess of over 13 years.
- 14 Q: Do you know personally the confidential informant who's
15 mentioned in your affidavit?
- 16 A: I know.
- 17 Q: You do know this person?
- 18 A: I know them, yes, sir.
- 19 Q: Okay. And how long have you known this person?
- 20 A: My time within narcotics, which I've been in narcotics
21 five years now.
- 22 Q: For five years?
- 23 A: Yes, sir.
- 24 Q: Okay. All right. And Mr. Jepertinger raised an issue
25 that I was about to raise. You know you're required to submit

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ANDRON BROWN - CROSS BY SUGGS

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1 your return from anything obtained through your -- that search
2 warrant within 10 days of executing the search warrant; are
3 you aware of that?

4 A: Yes, sir.

5 Q: All right. But you did not do that; is that right?

6 A: It worked out that way that it didn't get within the 10
7 day frame.

8 Q: It was not much, but it was an extra day though, wasn't
9 it?

10 A: Yes, sir.

11 Q: All right. But the law clearly says that you are to issue
12 your return within 10 days; is that correct?

13 A: That's correct.

14 Q: Now, you said that there was some reason why you did not
15 issue -- why you issued your return late; what were those
16 reasons?

17 A: I don't know the specific reason on this, but nine times
18 out of 10, whenever we -- if we do pass the 10 days, it's
19 because we can't reach that judge. The same judge that signed
20 off on it has to sign off on your return.

21 Q: All right.

22 A: And if we can't make contact -- if that judge is off or on
23 vacation or something like that, we've got to wait for them to
24 return.

25 Q: So, is it your testimony that the return is late because

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1 Judge Jackson was unavailable for 10 days following the
2 execution of the search warrant?
3 A: No, I just said that I'm not a hundred percent sure on why
4 this one was a day late, but usually, that's the case. I
5 don't know if that was a 100 percent the case this time.
6 Q: All right. The officer who signs the affidavit, is that
7 usually the officer that completes the return?
8 A: No.
9 Q: It's usually someone -- or can be someone else?
10 A: A different officer executes the return.
11 Q: All right. Which officer executed the return in this
12 case?
13 A: I believe it's Usury, Corporal Usury from the signature.
14 Q: Okay. So, did you talk with -- with -- is the corporal
15 beneath -- are you his superior?
16 A: No, he's above me.
17 Q: He's above you?
18 A: Uh-huh, (affirmative response).
19 Q: Okay.
20 A: At the time, we -- at the time, we were the same.
21 Q: Okay. So, he's above you?
22 A: He's above me; yes, sir.
23 Q: Now, okay. All right. Did you talk with him about, you
24 know, why didn't you take this return in a timely manner for
25 the judge to sign; did you ever ask him that?

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- 1 A: No, I haven't.
- 2 Q: Okay. So, you really don't know the reason why the return
3 was executed late, do you?
- 4 A: Yeah, that's what I just said that I don't --
- 5 Q: You don't ---
- 6 A: I'm not a hundred percent sure on this one why.
- 7 Q: Okay. Are you also the officer who prepared the arrest
8 report in this matter?
- 9 A: Typed the report?
- 10 Q: Yes, sir.
- 11 A: Yes, sir.
- 12 Q: Okay. All right. Is there any reason why the incident
13 date on your report says January the 5th and the actual
14 execution of the warrant was on January the 6th?
- 15 A: I just noticed that, but that's an accident. The actual
16 incident narrative has January 6th, but I guess I made a
17 mistake in the report.
- 18 Q: All right, sir. Nothing further, Judge.
- 19 THE COURT: All right. Anything further from the state?
- 20 MR. JEPERTINGER: No, Judge, I would point out that I
21 think if you have a failure to return the warrant within a 10
22 day period, it's administerial or administrative error and I
23 don't think, unless the defendant can show some sort of
24 prejudice from that, I think that's harmless.
- 25 THE COURT: All right. And, Mr. Suggs, can you show me

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BY THE COURT

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1 any prejudice from that?

2 MR. SUGGS: Obviously, it's prejudicial, Judge, if ---

3 THE COURT: No, how is the 15 hours late prejudicial to
4 your client.

5 MR. SUGGS: Well, Judge, if the -- if the Court found
6 that it was improper for the affiant -- for the return to be
7 late as required by statute to be filed within or presented
8 and signed within 10 days, then it would be our argument that
9 the search warrant would be invalid.

10 THE COURT: All right. Mr. Jepertinger?

11 MR. JEPERTINGER: Judge, I think that there's various
12 case law in terms of this. I'd ask the Court to look at *State*
13 *v. Wise* cited at 252 S.E.2nd 294, and *State v. Miles*
14 (spelled phonetically), where it is basically the same
15 proposition I just brought forward here, that they return the
16 warrant within 10-day period -- list all items seized on the
17 return are administrative or ministerial errors and they do
18 not require suppression of evidence unless the defendant can
19 show prejudice and that's under *State v. Wise*, Your Honor.

20 BY THE COURT:

21 THE COURT: All right. I'm going to deny the defense
22 motion. I think the search warrant is valid.

23 MR. SUGGS: Judge, to make clear for the record, Judge,
24 we are making a motion that the search warrant be excluded and
25 that anything obtained by virtue of that search warrant be

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BY THE COURT

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1 excluded as fruit of the poisonous tree, so to speak, and
2 that's being denied.

3 THE COURT: That's being denied.

4 MR. SUGGS: And the Miranda statements ---

5 THE COURT: I've already ruled on that.

6 MR. SUGGS: --- are being accepted by the Court and the
7 statement that my client gave is being admitted into evidence
8 over objection?

9 THE COURT: That is correct.

10 MR. SUGGS: I just wanted to make sure the record is
11 clear, Your Honor.

12 THE COURT: Anything else?

13 MR. SUGGS: No, sir, Judge.

14 THE COURT: All right. Let's go get some lunch and be
15 back in 30 minutes.

16 MR. JEPERTINGER: Officer Brown, you may step down.

17 MR. SUGGS: Judge, you said -- you told the jury 1:30?

18 THE COURT: 1:30, yes.

19 MR. SUGGS: That's cutting it kind of close.

20 THE COURT: You're more longwinded than I remembered.

21 MR. SUGGS: All right.

22 THE COURT: You all have a good lunch.

23 MR. JEPERTINGER: Thank you, Your Honor.

24 **RECESS - 1:01 P.M.**

25 *****OFF THE RECORD*****

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1 **(On the Record - 1:43 P.M.)**

2 BY THE COURT:

3 THE COURT: All right. Let's go ahead and bring out the
4 jury.

5 MR. JEPERTINGER: Judge, I don't think the jury has been
6 sworn at this time. Your Honor, initially, I didn't go
7 through this whole thing, but Mr. Suggs wasn't this
8 gentleman's first attorney. He had Rose Mary Parham. There
9 was an offer trafficking in some amount of heroin for a 12-
10 year sentence. He didn't accept that. Mr. Suggs got on the
11 case, I reduced the time amount to 10 years, it was during the
12 March term that we talked and brought Mr. Gregg over and
13 explained to him that there was a mountain of evidence against
14 him, that the state would willing to take a trafficking in
15 heroin where he would be looking at 10 years. I said good
16 luck to you, you know, there's a lot of evidence against you
17 and looked at me and said, good luck to you, which I took as a
18 rejection of my offer. And I want the record to reflect that
19 he had been offered it, rejected that offer and here we are.

20 THE COURT: All right. Anything you want to put on the
21 record, Mr. Suggs?

22 MR. SUGGS: Yes, sir, Judge. Mr. Jepertinger is correct,
23 Rose Mary Parham initially represented Mr. Gregg and secured a
24 twelve year offer. When I was retained, Mr. Jepertinger was
25 gracious enough to reduce it to 10 years. It would've been

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1 to, of course, trafficking violent, which all trafficking drug
2 cases are violent, 85 percent non-parolable. So, it would've
3 boiled down to about eight and a half years with a two-year
4 period of community supervision following that. I did advise
5 Mr. Gregg of that. I went to the jail to see him twice. I
6 saw him -- not here but at the other courthouse about three
7 times and went over and he rejected it. I won't go into the
8 reasons why I think he did, I don't think that's important,
9 but we wanted to make certain that this was on the record and
10 I'm so grateful to you, Your Honor, for entertaining this
11 particular colloquy between the lawyers and making certain
12 that it is on the record.

13 THE COURT: That's fine. Good deal. Thank you.

14 MR. JEPERTINGER: Thank you, Your Honor.

15 THE COURT: All right. Let's go ahead and bring in the
16 jury.

17 (REPORTER'S NOTE: Jury enters courtroom @ 1:45 P.M.)

18 THE COURT: Ms. Moses, I'm going to make you the forelady
19 of the jury. If you don't mind, would you come take this very
20 first seat on the front row and if you would just switch with
21 her, please.

22 Madame Clerk, you can swear the jury.

23 CLERK: Yes, sir. If all of you would please stand and
24 raise your right hands.

25 (REPORTER'S NOTE: Jury is duly sworn.)

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BY THE COURT

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1 THE COURT: All right. Members of the jury, I'm going to
2 go over a few things with you before we begin this trial, just
3 to give you a little bit of working knowledge so that you'll
4 know what's going on and what is expected of you.

5 The first thing I want to explain to you is that the
6 burden of proof in this case is on the State of South Carolina
7 to prove this defendant guilty beyond a reasonable doubt. At
8 the very end of this trial, I'll explain that to you in great
9 detail. I'll read to you what a reasonable doubt is.

10 Furthermore, I want you to understand what your role is
11 and what my role is and how they differ. You all, as a jury,
12 are the judge of the facts. That means that you determine
13 what the facts of this case are, not me, not my clerk, not the
14 court reporter, nobody else in the courthouse, just you, the
15 jury. Well, you ask yourselves how do we do that? It's very
16 simple, you do that by looking at the evidence. Evidence is
17 made up of two things. It's made of the witnesses that come
18 over here, they take that witness stand, they're sworn in and
19 they testify. Furthermore, it can be made up of any exhibits
20 admitted into the record as evidence. That could be weapons,
21 that could be pictures, that could be drugs, reports, things
22 of that nature. That is where you all determine
23 what the facts of the case are.

24 I am the judge of the law. My job is to give these
25 people a fair trial. Furthermore, my job is to instruct you

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BY THE COURT

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1 on the law applicable to this case in great detail at the very
2 end of this trial. In that regard, I want you to understand
3 that you have to accept the law as I give it to you. If you
4 have any preconceived ideas as to what you think the law is or
5 what the law ought to be and it disagrees with what I tell you
6 the law is, you have to abandon those preconceptions and
7 accept the law as I give it to you. And that only when I tell
8 you to begin your deliberations will you start deciding the
9 facts of this case, then you will take the facts as you find
10 them, you'll put it together with the law as I give it to you,
11 and make a decision therefrom, a lot of common sense in that
12 process.

13 Another thing I want to tell you is that if we take a
14 break today or if we do not finish today and you go home
15 tonight and you have to come back tomorrow or any point in
16 time, do not discuss the case at all. It would be premature
17 to discuss this case until you've heard everything you need to
18 hear in this trial, including the law that I'm gonna give to
19 you in great detail at the very end of this trial. Well, you
20 ask yourselves, what can we talk about, talk about sports,
21 talk about the weather, talk about the new courthouse,
22 anything you want to talk about, but not this case until I
23 tell you to. All right?

24 I want you to sit back right now, I want you to relax and
25 I'm going to call on the state for his opening statement.

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OPENING BY JEPERTINGER

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1 MR. JEPERTINGER: Thank you. It please the Court?

2 THE COURT: Yes, sir.

3 MR. JEPERTINGER: Mr. Suggs?

4 MR. SUGGS: Yes, sir.

5 OPENING BY JEPERTINGER:

6 MR. JEPERTINGER: What you think of this new courtroom?

7 You're the first jury to try a case in this new courtroom.

8 The courtroom is new, the jury is new. We've got two old

9 battleaxes battling it out here today in front of you.

10 I suppose if I couldn't be here in front of you today and

11 you ask me, where would you want be? Well, I always love

12 England. I've been to England and I don't know, you know, you

13 hear the term anglophile, I guess I am one. You can go to the

14 heart of old England, City of London, there's Saint Paul's

15 Cathedral there. At Saint Paul's Cathedral, I remember back

16 in the early 80's because I got up at 2 o'clock in the morning

17 just like every other American to watch that wedding between

18 Prince Charles and Lady Diana. You can see where they got

19 married right in Saint Paul's Cathedral. If you go to one of

20 the galleries there, it's a museum, great artwork. You see a

21 famous Holman Hunt painting called Light of the World. Many

22 of you may be familiar with it by a different name, Jesus

23 Knocking at the Door. There are graves all around that

24 cathedral as well. You walk in and off to the left you see

25 Lord Kitchener, the Conqueror of the Sudan 120 or 130 years

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OPENING BY JEPERTINGER

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1 ago. You see Wellington's grave, the man that defeated
2 Napoleon at Waterloo. And then, if you go a little further
3 in, there's a grave with a name and the epitaph is written in
4 all Latin. Now, I'm not gonna recite Latin to you today,
5 because I'd probably fail and mess it up, but translated, it
6 says, Reader, if you need a monument, look all around you,
7 it's the grave of Christopher Wren, who designed the Saint
8 Paul's Cathedral. And history has judged, Christopher Wren,
9 one of the greatest architects in the history of this world,
10 it's massive and beautiful evidence. And he's telling the
11 reader in that epitaph to look all around, because the simple
12 principle is taken by that statement, that a man's work
13 defines the man.

14 Let's take another trip not too far away but to 805-A
15 Commander Street on January 6th, 2017. And we're not going to
16 go with the tour group, we're gonna go with officers from
17 Florence Police Department to that location and we're gonna go
18 into that house with them as they execute a lawful search
19 warrant. And in that house at 805-A Commander Street, they
20 find the defendant in this case, Johnny Nickolas Gregg, Jr. as
21 he's sitting at a kitchen table and all around him, if you'll
22 look all around, are illegal narcotics. What type of
23 narcotics, you may ask. Well, there's a lot of Xanax, there's
24 heroin, there's cocaine base, also known as crack, there's
25 powder cocaine, there's marijuana, a cornucopia of illegal

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OPENING BY SUGGS

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1 drugs. There are digital scales; there's a digital scale,
2 excuse me, razor to cut up the drugs, guns, ammunition,
3 everything that you could just imagine that would point to the
4 guilt of this accused.

5 As we judged Christopher Wren, the great architect, I'm
6 going to ask you to keep an open mind, listen to the evidence
7 from this witness stand, listen to and observe all the objects
8 of evidence that come into this trial, and then I'll ask you
9 to judge whether Johnny Nickolas Gregg is guilty of the crimes
10 accused against him. All you have to do is look around and
11 use your common sense.

12 THE COURT: All right, Mr. Suggs, you're recognized for
13 your opening statement.

14 OPENING BY SUGGS:

15 MR. SUGGS: Yes, Your Honor. Thank you and may it please
16 the Court and Mr. Jepertinger.

17 Ladies and gentlemen, thank you for volunteering to serve
18 as jurors in this case. And I kind of echo Mr. Jepertinger's
19 sentiment in that this is a brand new courthouse and, and he
20 and I have battled it out against each other for -- well,
21 personally, I've been practicing law for 28 years and when I
22 first started practicing law, I applied for a position with
23 the public defender's office here in Florence and that was
24 over that at the old courthouse on the 4th floor. And back in
25 those days, there was only -- there was one full-time public

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OPENING BY SUGGS

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1 defender named Ernest Monk Hinnant. I know y'all probably
2 don't remember who that was; he's passed away now, but his
3 picture is in the courthouse over there. They may move it
4 over here; they need to. And then John Jepertinger was the
5 other full-time public defender at that time and there was a
6 part-time public defender, Johnny DeBerry, who I think is
7 still practicing law here in town. I saw him at the post
8 office the other day and he looked like he had been out
9 playing golf rather than practicing law, but he -- he's earned
10 his stripes, so he deserves it. And Mr. Hinnant hired me
11 part-time as a public defender. So, that was it other than
12 our investigator, Solomon Eaddy, and our secretary, Gwen James
13 and Gwen is still with us. John has moved on since then, but
14 I used to admire the daylights out of John and I still do, but
15 one of the main reasons that I did, he was a year ahead of me,
16 but watching him in court, I was just simply amazed that he
17 could remember the penalties for any crime that you could give
18 him. I mean, he just knew in his head; he was like the
19 walking encyclopedia. In a lot of ways, he still is. You
20 could ask him what a particular offense would carry and he
21 would be able to tell you right away. And I tell you, that
22 impressed someone fresh out of law school like me. So, I was,
23 you know, I literally blessed the ground that John walked on.
24 And then I got to know him and became very good friends and
25 we've been very good friends since then.

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OPENING BY SUGGS

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1 But, yeah, this is the new courthouse and as many cases
2 as I've tried over at the other courthouse, if I'm not
3 mistaken, this may be the first general sessions case tried in
4 this new courthouse and I personally am proud to say that I
5 was one of the lawyers that participated in it as I'm sure
6 John is also.

7 That being said, I'm not gonna take up a lot of time in
8 my opening statement, but one of the things that I think is
9 just so important to keep in mind throughout the trial of this
10 case, even if you did everything else, is the concept of the
11 presumption of innocence, which is in our constitution, which
12 is an inherent part of our judicial system. A person is
13 presumed to be innocent of any and all charges unless and
14 until the state can prove to you, members of the jury, beyond
15 a reasonable doubt that a person is guilty of the charge or
16 charges he or he faces.

17 And in this case, I think we have a seven-count
18 indictment, which an indictment is just a -- it's not
19 evidence, it's just a piece of paper, which informs the person
20 who is charged or accused with a crime or crimes, exactly what
21 it is they're charged with. It's information. It tells the
22 client what they are dealing with, what the state is going to
23 try to prove to the Court or to the jury beyond a reasonable
24 doubt.

25 Now, in addition to proving that someone is guilty beyond

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OPENING BY SUGGS

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1 a reasonable doubt as to a particular charge -- now remember
2 we have seven charges, so the state has the burden on all
3 seven with you -- you have to also look at the charge or
4 charges themselves because each charge is made up of elements.
5 You know, the easiest way to think about it is that I've used
6 this analogy a good bit and sometimes people understand and
7 sometimes they don't. But if you ever bake or cook, you bake
8 a cake, a cake has ingredients, you know, butter, sugar, eggs,
9 flour, et cetera. If you leave out one of those ingredients,
10 then you're probably going to have a pretty nasty cake. All
11 right. Crimes or offenses don't have ingredients, but they do
12 have elements. And so the state has the burden of proving
13 beyond a reasonable doubt each and every element of each and
14 every offense or crime that a person is charged with, which is
15 a pretty heavy burden.

16 Now, the other thing that I wanted to mention was what
17 being presumed innocent really means because we hear it all
18 the time, but sometimes we really don't think about it like we
19 should. And in that sense, what I mean is that the state has
20 to prove a person guilty beyond a reasonable doubt. A person
21 never has to prove themselves innocent, and so that's the
22 difference. It seems rather simple and it seems almost
23 flippant to even mention because folks could understand that,
24 but you'd be amazed at folks that don't really understand that
25 concept. And that's the one concept that I want you to keep

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OPENING BY SUGGS

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1 in mind throughout the trial of this case, that when someone
2 is charged with a crime or crimes, the state has to prove them
3 guilty. They're not automatically guilty and they have to
4 come in here and prove to you they're innocent. It does not
5 work that way. It has never worked that way. So, if you
6 forget everything else, just remember that the state has the
7 burden of proof, not anybody charged with a crime, not Mr.
8 Gregg. Mr. Gregg has no burden to satisfy here. That's all
9 on the state and that never shifts, it never changes. Okay?
10 And that's the main thing I wanted to say in opening
11 statement.

12 I appreciate your attention to my statement and Mr.
13 Jepertinger's and your attention throughout this trial.

14 Thank you very much.

15 THE COURT: All right. State, call your first witness.

16 MR. JEPERTINGER: I call Kendrick Spears. And while
17 Officer Spears is going to the stand, I need to get an easel
18 from the back.

19 CLERK: Place your left hand on the Bible and raise your
20 right hand.

21 KENDERICK THOMAS SPEARS, HAVING BEEN
22 SWORN TESTIFIES AS FOLLOWS:

23 CLERK: Please be seated and state your full name for the
24 record.

25 MR. SPEARS: Kendrick Thomas Spears.

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1 DIRECT EXAMINATION OF KENDERICK THOMAS SPEARS BY MR.

2 JEPERTINGER:

3 Q: Officer Spears, how long have you worked with the
4 Florence Police Department?

5 A: For 15 years.

6 Q: Okay. And what are your responsibilities with the
7 Florence Police Department?

8 A: I'm a supervisor in the Special Investigations Unit,
9 which is otherwise known as the Narcotics and Gang Division of
10 the Florence Police Department.

11 Q: Were you so employed back on January 6th, 2017?

12 A: Yes, I was.

13 Q: Thank you. All right. And did you have an occasion to
14 go out to 805-A Commander Street?

15 A: Yes, sir, yes.

16 Q: At about 2:20 in the afternoon on that date?

17 A: Yes.

18 Q: Okay. And just, I know it sounds like a stupid question,
19 which county is 805-A Commander Street located in?

20 A: In the City of Florence, Florence County.

21 Q: All right. And what was your purpose for going out to
22 805-A Commander Street?

23 A: We had a search warrant for the property and it was for
24 searching for illegal drugs.

25 Q: All right.

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1 MR. SUGGS: Now, Your Honor, may we approach?

2 THE COURT: You may.

3 (REPORTER'S NOTE: Bench conference is held on the record in
4 the presence of but outside the hearing of the jury.)

5 MR. SUGGS: Your Honor, when would be the appropriate
6 time to renew my motion to -- as to search warrant; would it
7 be now?

8 MR. JEPERTINGER: You can do it now.

9 MR. SUGGS: Can we do it on the record.

10 THE COURT: We can do it right here. He's on the record
11 now, isn't he?

12 MR. SUGGS: Prior to this officer testifying, Judge, the
13 defendant would move again for a motion in limine concerning
14 the search warrant and, also, the Miranda of the statement
15 that the defendant gave at the time he was arrested. So, we
16 renew those motions at this time.

17 MR. JEPERTINGER: Let me ask you, since we're going to
18 put up other officers, can this just be a continued continuing
19 motion?

20 THE COURT: Yes.

21 MR. SUGGS: Thank you, Judge, and I think I may have to
22 renew it again at the time the state concludes if we decide to
23 put up evidence.

24 THE COURT: Okay.

25 (REPORTER'S NOTE: End of bench conference.)

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1 MR. JEPERTINGER: I want to show the aerial for you. Are
2 you all right with that aerial?

3 MR. SUGGS: Yeah, that's fine.

4 MR. JEPERTINGER: You okay with that.

5 MR. SUGGS: Yeah, do you want to mark it?

6 MR. JEPERTINGER: It's marked. Do you have a problem
7 with it going into evidence? Do you have a problem ---

8 MR. SUGGS: No, I have no objections to State's Number
9 ---

10 MR. JEPERTINGER: 2.

11 MR. SUGGS: --- Number 2, Judge.

12 THE COURT: All right. State's Number 2 into evidence
13 without objection.

14 MR. JEPERTINGER: Without objection.

15 THE COURT: Okay. Mr. Suggs, in evidence without
16 objection?

17 MR. SUGGS: Yes, sir, Judge.

18 THE COURT: All right. Number 2.

19 STATE'S EXHIBIT NUMBER 2

20 ADMITTED INTO EVIDENCE

21 BY MR. JEPERTINGER:

22 Q: I'm just gonna have you come off of the stand,
23 Investigator Spears, and then I'm gonna have you back on the
24 stand, but I just want to, if you'd just kind of explain the
25 neighborhood for us. I'm gonna show you what's been marked as

1 State's Exhibit 2. It's an aerial photograph, correct?

2 A: Correct.

3 Q: And if any of any of jurors have a problem seeing it --

4 yeah, we got one leg shorter than the other, but -- all right.

5 If anybody has a problem seeing it -- all right.

6 All right. Anybody have trouble seeing it? Everybody

7 see it? Okay. Now, you -- are you familiar with this area?

8 A: Yes, I am.

9 Q: Okay. And I think the street names are marked, correct?

10 A: Yes.

11 Q: Okay. I'm going to switch sides here because I want your

12 voice to carry towards, Kay, the court reporter. All right.

13 And can you show us where Commander Street is?

14 A: This is Commander Street right here.

15 Q: All right. And 805-A?

16 A: 805-A would be ---

17 Q: The house with the field right next to it?

18 A: Yes.

19 Q: And I don't know, can we just -- I'm gonna use your pen,

20 I guess, if you want to circle it?

21 A: Okay.

22 Q: Is that it?

23 A: Yes.

24 Q: All right. And is that home, I guess, what is it a

25 single-level duplex?

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1 A: Yes, it's a single-story duplex. You have Apartment A
2 and Apartment B in that structure together.

3 Q: Now, there are some buildings around this area. Is there
4 any sort of academic institution, elementary school, anything
5 around this area?

6 A: Yes, we have an elementary school, which is North Vista
7 Elementary, which is right here.

8 Q: Okay. Can you just put an X on that, please?

9 A: Okay.

10 Q: And from 805-A Commander Street to North Vista Elementary
11 School, as the crow flies, what is the approximate distance?

12 A: It's within a half-mile radius of 805 Commander.

13 Q: All right. All right. Now, how did y'all come to this
14 area, which -- did you just come up Commander Street or how
15 did you get to this location?

16 A: We came off of Irby Street onto Roughfork and we made a
17 right onto Commander to the location right there.

18 Q: And when we say we, how many folks are we talking about?

19 A: We had five agents within my unit and there were also
20 some investigators with the Florence Police Department that
21 assisted with us. So, it was a total of from making entry
22 into that apartment, it was a total of five law enforcement
23 officers.

24 Q: Okay. Now, does this -- obviously, the duplex has a
25 front door and back door?

1 A: That's correct.

2 Q: Okay. And do you recall where you went?

3 A: Yes, I went to the back door of the duplex.

4 Q: And who were you with?

5 A: It was myself, Agent Brown ---

6 Q: That's the gentleman sitting right there at the counsel
7 table?

8 A: Correct. And I think Agent McKenzie, Investigator
9 Banister, and Investigator John Davis.

10 Q: All right. Okay. Why don't we have a seat. Okay?
11 Thank you so much.

12 Now, where'd Kendrick go -- disappearing things. Holy
13 smokes. You about gave me a heart attack up here.

14 All right. Now, when -- when you got to the back door,
15 what in, as the supervisor, what is your normal protocol when
16 you guys have a search warrant? Do you just bust on in, do
17 you announce or what's the deal, tell the ladies and gentlemen
18 of the jury.

19 A: Yes, once we approach the door of the residence that
20 we're going to make entry to, we knock and announce police
21 search warrant and we give them the opportunity to respond.
22 If we don't receive a response, we have a department issue ram
23 that will force the door open for us to make entry. So, we
24 arrived at the location, we knocked and announced our presence
25 of being there, after no response, Agent Brown utilized our

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1 department issue ram to force the door open.

2 Q: All right. Now, I'm gonna show you what's been marked as
3 State's Exhibits 3, 4, 5, and 6, can you identify those
4 please? You got to show them to the jury?

5 A: Correct. I can.

6 Q: Just look at all -- all of them, please.

7 A: Okay, sir.

8 Q: What's -- what are the pictures, the photos picture of?

9 A: That's a picture of 805 Commander Street, Apartment A.

10 Q: And do these photos accurately portray the location as of
11 January 6th 2017?

12 A: Yes, it does.

13 Q: Okay. At this time, all these photos have been provided
14 to the defense. I would move them into evidence?

15 THE COURT: All right. What numbers is that?

16 MR. JEPERTINGER: 3, 4, 5, and 6.

17 THE COURT: Any objections from the defense?

18 MR. SUGGS: Just a moment, Your Honor.

19 THE COURT: All right.

20 MR. SUGGS: No objection from the defense, Your Honor.

21 THE COURT: All right. State's 3, 4, 5, and 6 are into
22 evidence without objection.

23 STATE'S EXHIBITS 3, 4, 5, AND 6

24 ADMITTED INTO EVIDENCE

25 MR. JEPERTINGER: Okay. And I -- state's, state's -- and

1 may I publish these to the jury?

2 THE COURT: You may.

3 BY MR. JEPERTINGER:

4 Q: Okay. State's 3 is what?

5 A: It's the Apartment 805, Apartment A, Commander Street.

6 Q: All right. And I guess State's 4, is that just a closer
7 view?

8 A: That's correct.

9 Q: Okay. Now, State's 5, can you tell us what this is?

10 A: That's going to be the back of the apartment where we
11 made entry into of 805-A Commander Street.

12 Q: Okay. And 6?

13 A: It's the open door of the apartment that we made entry to
14 at 805-A Commander Street.

15 Q: So, on 5 looking at the picture with the door you made
16 entry to would be to the right, correct?

17 A: Correct.

18 Q: Okay. And I think that's shown on State's 6; is that
19 correct?

20 A: Correct.

21 Q: All right. And when you got into 805-A Commander Street,
22 did you find anyone there?

23 A: Yes, we did. Once we made entry into the apartment, Mr.
24 Johnny Gregg was inside in the kitchen area.

25 Q: Now, one of the first things that you do probably is to

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1 make sure you know who you're dealing with when you go into a
2 residence; isn't that correct?

3 A: Correct.

4 Q: Okay. And did you find anyone there other than Johnny
5 Gregg at 805-A Commander Street?

6 A: He was the only person there.

7 Q: Okay. When you made entry through the back door, where
8 was Mr. Gregg located?

9 A: Once you go inside the apartment, he was to my right by a
10 refrigerator standing up.

11 Q: All right. And was there anything that you spotted upon
12 your entry to 805-A Commander Street?

13 A: The first thing that stood out to me was a kitchen table
14 and it was handgun on the kitchen table. At that time --
15 normally once we make entry anywhere we order everyone to the
16 ground for officer safety. So, once we made entry, he was
17 ordered to the ground and detained with handcuffs and I
18 immediately saw a handgun within reach of Mr. Gregg.

19 Q: All right. Did you see anything else on that kitchen
20 table?

21 A: Yes, it was -- it was cocaine base; I recall seeing that,
22 otherwise known as crack. Numerous -- a couple of digital
23 scales that are commonly used to weigh narcotics along with
24 several baggies that I saw used for packaging narcotics.

25 Q: Okay. I'm going to show you a series of photographs and

1 ask if you can identify these photographs without showing them
2 to the jury yet, please. State's Exhibit 18, can you identify
3 that for me, please?
4 A: Yes, I can.
5 Q: What is it?
6 A: That's the kitchen table inside the kitchen area of the
7 apartment.
8 Q: Is that at your point of entry?
9 A: Yes, that's at the point of entry.
10 Q: Okay. Go ahead.
11 A: This is another closer picture.
12 Q: Which number?
13 A: Exhibit 19, it's another picture of the kitchen table, a
14 closer version of it.
15 Q: All right.
16 A: Exhibit 20 is another picture of the kitchen table.
17 Q: All right.
18 A: Exhibit 21 is a closer picture of the kitchen table.
19 Q: All right. And the objects on it?
20 A: A digital scale, cocaine base, a razor, money, book bag
21 checked -- with a checkerboard design on it, a box of shotgun
22 shells.
23 Q: All right. All right. And the next one, that is Exhibit
24 22, same thing?
25 A: Yes, correct, it's the same thing, Exhibit 22.

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1 Q: All right.

2 A: Exhibit 23, it's a closer picture of the kitchen table
3 with the U.S. currency money on top of it and an open box of
4 ammunition.

5 Q: All right. That's State's Exhibit 23?

6 A: Yes.

7 Q: Which number do you have there?

8 A: 24. Exhibit 24 is a digital scale with cocaine base on
9 top of it, a razor, a baggie with cocaine base inside of it
10 and a container with looks like cocaine base inside of it and
11 a pill bottle that had a white substance inside of it as well.

12 Q: Okay. And your years as a narcotics officer, what's
13 another name for cocaine base that we commonly use?

14 A: Crack cocaine.

15 Q: Okay. Next picture, can you identify the number?

16 A: Exhibit 37, it's an open baggie with a razor with white
17 residue on the razor as well as cocaine base, otherwise known
18 as crack cocaine.

19 Q: Okay.

20 A: Exhibit 38 is a container, beige container with cocaine
21 base inside of it and another bag, which contains a powder
22 substance believed to be cocaine as well.

23 Q: All right. Next one?

24 A: Exhibit 39 is that same container with the cocaine base
25 and powder substance in it, believed to be cocaine.

1 Q: All right. Next?

2 A: Exhibit 40 is going to be another picture of the table,
3 which has a shotgun on it, a heat sealed bag, containing and a
4 large amount of white pills, the handgun, which is, I think it
5 was a .38. There was a handgun revolver on the table.

6 Q: Uh-huh, (affirmative response).

7 A: A jar of marijuana, the checkered design book bag, baking
8 soda, looks like a glass beaker in the back and a box of --
9 three boxes of shotgun shells.

10 Q: All right.

11 A: Exhibit 41 is another closer picture of the heat sealed
12 bag which contains numerous white pills that I believe were
13 Xanax bars.

14 Exhibit 42 is the jar, two jars containing marijuana, two
15 boxes of ammunition, the revolver and the shotgun.

16 Q: Okay. Now, do all these photographs that you just
17 mentioned, do they fairly and accurately portray what you saw
18 on January 6th, 2017 after you made entry into 805-A Commander
19 Street on the kitchen table?

20 A: It does. Correct.

21 MR. JEPERTINGER: At this time, I would move those photos
22 into evidence.

23 THE COURT: And those numbers are?

24 MR. JEPERTINGER: Your Honor, we'll have State's Exhibit
25 42 -- State's Exhibit 42, State's Exhibit 41, State's Exhibit

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1 18, State's Exhibit 19, State's Exhibit 20, 21, 22, 23, 24,
2 37, 38, 39, and 40.

3 THE COURT: Any objections from the defense?

4 MR. SUGGS: Judge, may I look at the photos. I don't
5 know just numbers that the state has assigned to each photo?

6 THE COURT: Take your time. Let me know when you're
7 ready.

8 MR. SUGGS: Thank you, Judge. The defense would object
9 to some of these photographs and -- may we approach?

10 THE COURT: Yes.

11 (REPORTER'S NOTE: Bench conference is held on the record in
12 the presence of but outside the hearing of the jury.)

13 MR. SUGGS: As I understand it, Count 2 in the indictment
14 is being dismissed. I think it's a stolen handgun. So, any
15 photographs which would depict the stolen handgun, which -- I
16 would object to those going into evidence. There's plenty of
17 photos that don't have the stolen gun in them that they can
18 use.

19 MR. JEPERTINGER: Part of Count 1 is possession of a
20 weapon during the commission of a violent crime.

21 MR. SUGGS: Well, there's a shotgun there. I mean I've
22 got no problem with that, but ---

23 MR. JEPERTINGER: -- they won't know it's stolen.

24 MR. SUGGS: Well, it's still being taken out of the
25 indictment as being dismissed and I don't think evidence

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1 should be shown if it's not in the case. Any photos that
2 depict the pistol.

3 THE COURT: So, you're talking about 42, 40, 18, 19, 20,
4 and 21; is that correct?

5 MR. SUGGS: Yes, sir. Yes, sir.

6 THE COURT: I'm going to overrule the objection. I don't
7 see where it makes any difference. He's charged with
8 possession of a weapon during the commission of a violent
9 crime. It shows weapons. The fact that it may or may not be
10 stolen is irrelevant and they're not moving forward with
11 possession of stolen pistol. So, it's really irrelevant.

12 MR. JEPERTINGER: We're not mentioning anything ---

13 THE COURT: They're not gonna say anything about it being
14 stolen.

15 MR. SUGGS: All right. So, if I could protect it on the
16 record, Judge.

17 THE COURT: You are. That's why she stood up. Okay.

18 MR. SUGGS: Thank you, Judge.

19 (REPORTER'S NOTE: End of bench conference.)

20 THE COURT: All right. 42, 41, 18, 19, 20, 21, 22, 23,
21 24, 37, 38, 39, and 40 are in evidence.

22 STATE'S EXHIBIT NUMBERS 18, 19, 20, 21, 22, 23, 24, 37, 38,

23 39, 40, 41, 42 ADMITTED INTO EVIDENCE

24 MR. JEPERTINGER: I'm going to ask to publish these to
25 the jury?

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1 THE COURT: You may.

2 MR. JEPERTINGER: But before I do, I have one question or
3 I have a couple of questions.

4 BY MR. JEPERTINGER:

5 Q: When you saw the digital scale, what are digital scales
6 commonly used for if you've dealing with some narcotics,
7 officer?

8 A: They normally weigh the product that they're selling, the
9 narcotic that they're gonna be selling to a customer, that
10 determines the price that they will sell it to the customer
11 for, based upon the weight of the product.

12 Q: Okay. And I -- you happen to -- I noticed that there was
13 baking soda, what is baking soda used for with cocaine or
14 cocaine base?

15 A: Baking soda is normally used to convert with cocaine to
16 produce crack cocaine. It's used to what they call cook,
17 cooking cocaine into crack cocaine to sell.

18 Q: All right. I'm going to ask you some questions, so, I'm
19 going to ask the jury to pay, you know, to listen well and
20 they make look at the photographs at the same time. When you
21 saw all that on the kitchen table, was that the only stuff
22 that you found in the kitchen that was of interest to you?

23 A: No, it was other narcotics found as well in the kitchen.
24 Once we made entry into the residence, Mr. Gregg was detained,
25 like I said. The search warrant was read to him and then he

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1 was read his Miranda rights by Agent Brown.

2 Q: When you say the Miranda rights and that -- is that what
3 you hear on television, you have the right to remain silent?

4 A: That's correct. That's correct. He was read those
5 rights and he stated to Agent Brown that he understood them.
6 We continued a search of the Apartment And, during the search,
7 Mr. Gregg admitted that he had some, what he called, synthetic
8 morphine in a top cabinet above the refrigerator that he
9 pointed out to us. The morphine was, the suspected morphine
10 which we believed was heroin, it was later tested, which came
11 back for heroin. Also, a quantity of pills was found, I
12 believe, in that cabinet as well. I think it -- I can't
13 testify what kind of pills it was, but Agent Brown will be
14 able to do so with that.

15 Q: Okay. Now, what did you do with all these drugs, did --
16 did the police officers seize these drugs?

17 A: Yes, they were removed from the location by Agent Brown
18 and then they were transported to our office, where we
19 conducted -- we logged them into evidence for the most part.
20 All the narcotics that needed to be tested, they were sent to
21 the South Carolina Law Enforcement Division to confirm that
22 they were, you know, the suspected crack cocaine, the
23 suspected cocaine, the suspected heroin, for further testing.

24 Q: Okay. Did Officer Brown give you the stuff to check into
25 evidence?

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1 A: Yes, he did, he surrendered to myself.

2 STATE'S EXHIBIT NUMBER 59

3 MARKED FOR IDENTIFICATION

4 Q: Okay. I'm going to show you what we're going to mark as
5 State's Exhibit 59. Can you tell us a little bit about the
6 packaging and what you do when you have suspected narcotics?

7 A: Whenever we receive narcotics, like I said, we take it,
8 we bag it up, and we log it in to the Florence Police
9 Department Evidence Room. Anything that we need for further
10 testing, such as cocaine base, crack cocaine, pills, heroin,
11 they are placed in a bag, which is called a BEST pack, which
12 is this container, this clear package with letters on it.
13 That is sent to Columbia to the South Carolina Law Enforcement
14 Division. We have a -- one of the investigators in crime
15 scene, they normally receive it from our evidence custodian
16 that we log it into, the person that receives it in evidence,
17 who we give it to, they receive it from the evidence custodian
18 and they take it to Columbia to SLED for them to test and
19 analyze everything.

20 Q: Now, was that the stuff in the kitchen area?

21 A: Yes, that's correct.

22 Q: And that would be inclusive of the cocaine, the cocaine
23 base, the pills, the heroin, all the stuff; is that correct?

24 A: That's correct.

25 Q: Is that the only package you received back from SLED?

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1 A: That's correct.

2 Q: Okay. Now, now, later in your search, okay, did you find
3 a quantity of marijuana?

4 A: Yes, it was the quantity that was on the kitchen table
5 and there was a quantity of marijuana in a back bedroom of the
6 location.

7 MR. JEPERTINGER: And 59 for identification.

8 THE COURT: Did you say 59 or 60?

9 MR. JEPERTINGER: 59 for identification only at this
10 stage.

11 STATE'S EXHIBIT NUMBER 60 AND 61

12 MARKED FOR IDENTIFICATION

13 BY MR. JEPERTINGER:

14 Q: Okay. All right. I'm going to show you what's going to
15 be marked as State's Exhibit 60 for identification only at
16 this time.

17 A: Okay.

18 Q: Can you identify what's in State's Exhibit 60, and
19 State's Exhibit 61 and 62? 61 will be the bag and 62 will be
20 the contents of that bag unless you want to mark them
21 individually.

22 COURT REPORTER: I don't know how to ---

23 MR. JEPERTINGER: Judge, I don't -- whatever you suggest?

24 THE COURT: Why don't you mark them individually, that
25 way we get it exactly right.

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1 MR. JEPERTINGER: She can only do one photo at the time.

2 BY MR. JEPERTINGER:

3 Q: Can I just -- in terms of empty bags, does it have any
4 significance in this case?

5 A: This shows that what's being packaged, whatever is in the
6 ---

7 Q: Is it just empty packaging?

8 A: --- it's empty packages, yes, with residue in it,
9 marijuana residue.

10 Q: Okay. All right. I'm not -- what we'll do is just -- we
11 don't -- we don't need -- we just -- in the bag, you can mark
12 that. All right. We'll just take out 61, which is the bag
13 and these residue bags that have no significance. If we can
14 remove 61. Is that okay?

15 COURT REPORTER: You're gone take that ---

16 MR. JEPERTINGER: Yes, sticker off. All right.

17 STATE'S EXHIBIT NUMBER 60, 62, 63, 64, 65, 66, 67

18 MARKED FOR IDENTIFICATION

19 BY MR. JEPERTINGER:

20 Q: Now. Now, as -- I'm gonna show you State's 66, 65, 64,
21 67, 62, and 63. All right. Can you identify all those
22 objects?

23 A: Yes, we have a container that was on the table that in
24 the picture it had a rock like substance believed to be
25 cocaine base along with a powder substance. It had the two

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1 jars, which is 65 and Exhibit 64, that were on the table,
2 which contained marijuana. And you also have other packages
3 of marijuana that was recovered off the table as well.
4 Q: Now, who seized all that stuff?
5 A: At the scene, Agent Brown seized everything and it was
6 later surrendered to me for -- to be logged into evidence.
7 Q: And did you do that?
8 A: Yes, I did.
9 Q: Now, as it -- as it relates to marijuana, did -- does
10 SLED do your testing or do you own in-house testing?
11 A: For marijuana we do it in house. It's logged in and
12 crime scene takes possession of it to analyze the marijuana
13 and give the exact weights of it.
14 Q: Okay. That's all I have in regards to items 60, 67, 64,
15 65, 66, 63, and 62 -- and all that was seized from your house
16 -- from 805-A Commander Street?
17 A: That's correct.
18 Q: All right. All right. Now, you say that Officer Brown
19 gave this gentleman his Miranda warnings?
20 A: That's correct.
21 Q: Okay. As a result of those Miranda warnings given, did
22 the defendant in this case decide to speak with you guys?
23 A: Yes, he did.
24 Q: Okay. And did you explain to him why you were there and
25 what you had observed and all that?

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1 A: Yes, he was explained of the search warrant and
2 everything that was seized to be listed on the search warrant.
3 He was told that.

4 Q: Well, what did he tell you in regards to the marijuana
5 and all these drugs seized?

6 A: He admitted that it was his. Agent Brown, it was Agent
7 Brown was the case agent, so, he had, you know, more of a
8 conversation with Mr. Gregg than I did, but being at the
9 location, I did hear him admit that everything was his.

10 Q: Okay. Now, out -- outside of that residence, was there
11 any sort of vehicle?

12 A: Yes, it was a -- when we arrived it was a Buick Regal
13 that was parked at the back of the apartments and the vehicle
14 was running. I remember doing a conversation, he and Agent
15 Brown and Mr. Gregg's talk that he was getting ready to leave
16 in that vehicle before we arrived to meet with a customer to
17 distribute narcotics.

18 STATE'S EXHIBIT NUMBER 7 THROUGH 15

19 MARKED FOR IDENTIFICATION

20 Q: All right. And I'm going to show you State's Exhibit 7,
21 8, 9, 10, 11, 12, 13, 14, and 15. See if you can identify
22 those, please?

23 A: Okay. Yes, Exhibit 7 is the passenger seat of the
24 vehicle that was outside running, which shows a picture of
25 money, which later was found to be counterfeit money.

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1 Exhibit 8 is another passenger -- driver and passenger
2 side seat showing it's in the console of the vehicle with
3 money being shown.

4 Exhibit 9 is a photograph of the driver's side of the
5 vehicle with the door open.

6 Exhibit 10 is a baggie, which I -- contained an unknown
7 substance, unknown white substance.

8 Q: Did you see -- did you see that?

9 A: Yes, yes. Exhibit 11 is a picture of the driver's side
10 door pocket with several unknown pills inside of a baggie,
11 which was seized as well. Exhibit 12 is another inside
12 picture showing the driver's side. Exhibit 13 is a photograph
13 of the driver's side rear of the vehicle. Exhibit 14 is
14 another rear photograph of the vehicle. Exhibit 15 is the
15 passenger side rear of the vehicle, a photograph of it.

16 Q: All right. Does all these photographs -- do all of these
17 photographs fairly and accurately portray that vehicle outside
18 of 805-A Commander Street on January 6th of 2017?

19 A: It does.

20 MR. JEPERTINGER: Okay. At this time, I would move those
21 into evidence.

22 THE COURT: All right. Any objections, Mr. Suggs?

23 MR. SUGGS: Just for clarification, Judge, we're talking
24 about 7 through 15 at this time?

25 THE COURT: That is correct.

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1 MR. SUGGS: May I see them, so I'll know.

2 THE COURT: You may.

3 MR. SUGGS: And, Judge, if in the future, would it be
4 easier if I go up there, so I can write the numbers ---

5 THE COURT: Whatever suits you is fine with me.

6 MR. SUGGS: Thank you, Judge, to save time.

7 (REPORTER'S NOTE: Bench conference is held on the record in
8 the presence of but outside the hearing of the jury.)

9 MR. SUGGS: The state doesn't have any objections to the
10 photographs that 7 through 14 except ---

11 THE COURT: 7 through 15?

12 MR. SUGGS: 7 through 15, except the photograph which
13 depicted counterfeit money because there was no allegation of
14 any counterfeit money in the indictment and I think the
15 officer said that -- is that your Number 7 -- anything with
16 the counterfeit money.

17 THE COURT: Any objections to that?

18 MR. JEPERTINGER: I'm going to -- 7, 8, 9, or 10 -- 12 --
19 - 7, 8, 9 and 12.

20 THE COURT: All right. I'll note your objections.

21 MR. SUGGS: Thank you, Judge.

22 (REPORTER'S NOTE: End of bench conference.)

23 THE COURT: 10, 11, 13, 14, 15 are in evidence ---

24 MR. JEPERTINGER: Yes, sir.

25 THE COURT: --- without objection.

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1 STATE'S EXHIBIT NUMBER 10, 11, 12, 13, 14, AND 15

2 ADMITTED INTO EVIDENCE

3 BY MR. JEPERTINGER:

4 Q: All right. Now, officer, what -- what else did y'all do
5 in that house -- you're in the kitchen area, what else did you
6 see of any evidentiary value?

7 A: We went to one of the bedrooms. Inside the bedroom, it
8 was a large amount of marijuana located in the closet of that
9 bedroom. Under a mattress of that same bedroom, was a .22
10 caliber revolver that was recovered from under the mattress.
11 Behind the dresser under the bottom drawer, it was a large
12 amount of U.S. currency. I think it was around \$38,000 that
13 was found under the dresser bottom drawer that was recovered
14 out the same bedroom.

15 Q: Okay. I'm gonna show you State's Exhibit 46, 47 and 48.
16 Can you identify those photos?

17 A: Exhibit 46 it's a picture of the mattress in the bedroom
18 along with the bags of marijuana that was recovered out of the
19 -- out of it, on top of the mattress.

20 Exhibit 47 is a closer picture of the mattress with the
21 marijuana on top of it.

22 And Exhibit 48 is the same closer picture for the -- the
23 marijuana on top of the mattress.

24 Q: And do those fairly and accurately portray what you found
25 in the bedroom on that date?

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1 A: That's correct, it does.

2 MR. JEPERTINGER: Okay. At this time, I'd move 46, 47,
3 and 48 into evidence?

4 THE COURT: Any objection?

5 MR. SUGGS: None, Your Honor.

6 THE COURT: All right. 46, 47, and 48 are in evidence
7 without objection.

8 STATE'S EXHIBIT NUMBER 46, 47, AND 48

9 ADMITTED INTO EVIDENCE

10 BY MR. JEPERTINGER:

11 Q: And, were you aware of that marijuana being in that
12 bedroom or did someone tip you off of that marijuana being in
13 the bedroom?

14 A: Yes, it was discovered and as I went in there, it was
15 being retrieved by other officers at the scene.

16 Q: Did, did Mr. Gregg tell you there were drugs in ---

17 MR. SUGGS: Objection, leading.

18 BY MR. JEPERTINGER:

19 Q: What did Mr. Gregg tell you in terms of other drugs,
20 other than in the kitchen?

21 A: For me, he didn't say anything to me personally about any
22 other narcotics besides what was in the kitchen. I can't
23 speak for what other agents may have been told.

24 Q: Okay. Very good. All right. Now, what did you do with
25 that shotgun that was in the kitchen?

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1 A: We took possession of that as well along with the other
2 evidence and we logged that into evidence with everything else
3 that was taken off of the property at the Florence Police
4 Department.

5 Q: How many weapons did you recover at that location?

6 MR. SUGGS: Objection, Your Honor.

7 BY MR. JEPERTINGER:

8 Q: Did you recover any weapons?

9 A: Yes, we did. There was three handguns and one shotgun --
10 which ---

11 Q: We'll have to get these marked.

12 A: Okay.

13 MR. JEPERTINGER: There's a gun lock on the shotgun,
14 Judge. Okay?

15 BY MR. JEPERTINGER:

16 Q: Now, this is State's Exhibit 68 for identification. Can
17 you tell the ladies and gentlemen of the jury what this is?

18 A: It's a shotgun.

19 Q: And where did you recover it?

20 A: It was inside -- in the kitchen area as well.

21 Q: All right. I'm going to show you State's Exhibit 69, it
22 also has a -- can you identify this?

23 A: This is the .22 revolver, which was recovered out of the
24 bedroom where the large quantity of marijuana and money was
25 found.

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1 Q: Okay. And this box is sealed and I'll have this marked.
2 Let me show you State's Exhibit 70, 70 in this sealed box, can
3 you tell us what is in that, please, and let the record
4 reflect he's unsealing the box in the courtroom?
5 A: You have the revolver and this was another handgun. Both
6 of these were actually on the table with the narcotics in the
7 kitchen of the location.
8 Q: Okay. And they all have gunlocks on them, do they not?
9 A: And they're secured with gunlocks, yes, sir.
10 Q: Okay. All these items were in 805-A Commander Street?
11 A: That's correct.
12 Q: Was there anyone else present at that house when you
13 executed the search warrant and found these weapons?
14 A: Yes, there was.
15 Q: Who else?
16 A: Agent Brown.
17 Q: No, other than police?
18 A: Oh, oh, Mr. Gregg was the only person.
19 MR. JEPERTINGER: All right. I would move State's
20 Exhibit 70, 68, and 69 into evidence?
21 THE COURT: Objections?
22 MR. SUGGS: Not as to 68 or 69. I renew objections to 70
23 previous argued.
24 THE COURT: I understand. 68, 69, and 70 are in evidence
25 so long as we stay within the parameters ---

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1 MR. JEPERTINGER: And we are going to keep them here in
2 the courtroom, Judge.

3 THE COURT: All right.

4 MR. JEPERTINGER: I'll give them to Ms. Kay over here.

5 STATE'S EXHIBIT NUMBERS 68, 69, and 70

6 ADMITTED INTO EVIDENCE

7 (REPORTER'S NOTE: Bench conference is held off the record in
8 the presence of but outside the hearing of the jury.)

9 BY MR. JEPERTINGER:

10 Q: Did you find any -- I'm gonna ask you if you can identify
11 State's Exhibit 49, if you can identify it?

12 A: Yes.

13 Q: Okay. And can you -- does it fairly and accurately
14 portray what it looks like?

15 A: Yes, it does.

16 Q: Okay. And what is it?

17 A: It's an envelope that contained a letter written to Mr.
18 Johnny Nickolas Gregg.

19 MR. JEPERTINGER: Now, I would move State's 49 into
20 evidence?

21 THE COURT: Any objections?

22 MR. SUGGS: Yes, sir, we do object to that coming in.
23 You want to place it on the record?

24 THE COURT: Yes, sir.

25 (REPORTER'S NOTE: Bench conference is held on the record in

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1 the presence of but outside the hearing of the jury.)

2 MR. SUGGS: That letter is from the public defender's
3 office in North Carolina about that -- and I, you know, nobody
4 can stop the juror from looking at that name and they ---

5 MR. JEPERTINGER: We'll cross it out. Do we have a
6 Sharpie.

7 MR. SUGGS: No objection to it ---

8 THE COURT: You may have to make a copy of that to go
9 over it.

10 MR. SUGGS: So, they're gonna ---

11 MR. JEPERTINGER: We can do that; that's no problem.
12 I'll make a copy of it.

13 THE COURT: Thank you.

14 (REPORTER'S NOTE: End of bench conference.)

15 MR. SUGGS: There's no objections, Judge, on redacting
16 the exhibit, Judge.

17 THE COURT: Good, thank you.

18 STATE'S EXHIBIT NUMBER 49

19 ADMITTED INTO EVIDENCE

20 BY MR. JEPERTINGER:

21 Q: While we're waiting on that piece of evidence, let me ask
22 you, other than what we have been through, is there anything
23 else that you need to tell ladies and gentlemen of this jury
24 that I have asked you?

25 MR. SUGGS: I object to that open-ended question, Your

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1 Honor.

2 BY MR. JEPERTINGER:

3 Q: Okay. What else did you do in terms of this case?

4 A: I did a thorough search of the apartment. Besides the
5 narcotics that were found, there was a large amount of
6 ammunition that was found inside the kitchen area as well and
7 ammunition scattered throughout the residence. I also
8 conducted a search of that vehicle, which the counterfeit
9 money was recovered out of it.

10 MR. SUGGS: Objection, I move to strike?

11 THE COURT: Sustained. That has no bearing on this trial
12 at all. The jury is asked to totally ignore it.

13 BY MR. JEPERTINGER:

14 Q: Let's not mentioned counterfeit ---

15 THE COURT: Why don't you ask him concise questions
16 though, tighten it up a little bit.

17 MR. JEPERTINGER: Thank you, Judge.

18 THE COURT: And he's already testified to all of these
19 things.

20 MR. JEPERTINGER: Yes, Judge.

21 BY MR. JEPERTINGER:

22 Q: All right. Other than the ---

23 THE COURT: 49.

24 Q: --- 49, I have no further questions and I don't know if I
25 moved 49 into evidence with the redaction, but I would move in

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1 that piece of evidence and submit Mr. Spears ---

2 THE COURT: 49 as redacted is in evidence without
3 objection.

4 THE COURT: Mr. Suggs, you are recognized.

5 MR. SUGGS: Detective has been up there about an hour and
6 a half and ---

7 THE COURT: Let's take about a 10 or 15-minute break, use
8 the restroom, get something to eat or drink if you need it and
9 we'll come back and keep going.

10 MR. SUGGS: Thank you, Your Honor.

11 THE COURT: Do not discuss the case as I told you before.

12 (REPORTER'S NOTE: Jury exits courtroom @ 3:09 P.M.)

13 THE COURT: Mr. Spears, if you'd like to use the restroom
14 you can, but after you use it you can come back and have a
15 seat. You can't talk with your lawyers or anybody.

16 MR. SPEARS: Okay.

17 THE COURT: Okay. All right. We'll be back in about 10
18 or 15 minutes.

19 **RECESS - 3:09 P.M.**

20 *******OFF THE RECORD*******

21 **(On the Record - 3:28 P.M.)**

22 (REPORTER'S NOTE: The following takes place outside the
23 presence of the jury.)

24 MR. JEPERTINGER: They had difficulty copying State's
25 Exhibit 49. I told the Defense this. I took a scissors to

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1 State's 49.

2 THE COURT: Okay.

3 MR. JEPERTINGER: And we've arrived at the same solution.

4 THE COURT: Mr. Suggs, you okay with Number 49 being cut
5 off?

6 MR. SUGGS: Yes, sir, no objection.

7 THE COURT: 49 cut off is in evidence.

8 MR. SUGGS: So, it is redacted?

9 THE COURT: It's very redacted. Yes, sir.

10 Let's go ahead and bring in the jury.

11 (REPORTER'S NOTE: Jury enters courtroom @ 3:29 P.M.)

12 THE COURT: All right. Mr. Suggs, you may begin your
13 cross examination.

14 MR. SUGGS: Thank you, Your Honor. Judge, I may position
15 myself here and then move towards the witness if that's okay?

16 THE COURT: That will be fine.

17 MR. SUGGS: Thank you, Your Honor.

18 CROSS EXAMINATION OF KENDERICK SPEARS BY MR. SUGGS:

19 Q: Agent Spears, just a few questions, if you don't mind.
20 The photographic exhibits are where? Okay. Thank you.
21 How long have you been in law enforcement?

22 A: Fifteen years.

23 Q: All with the same county, Florence County?

24 A: That's correct.

25 Q: Okay. And in your 15 years as a law enforcement officer,

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1 occasionally, is it fair to say, that occasionally police
2 officers do make mistakes?

3 A: That's correct.

4 Q: Okay. When an officer makes a mistake, he or she usually
5 will admit to it; is that right, if they're good officers?

6 A: Correct.

7 Q: They want to keep the record straight and they want to
8 make sure that -- that there's a clear understanding of
9 everything that happens; is that a fair statement?

10 A: Yes.

11 Q: All right. Now, for example, the incident report and I'm
12 taking this for granted, but I'll ask you this. Is it common
13 for officers to prepare incident reports following the
14 investigation of a crime or the arrest of a suspect?

15 A: Correct, yes.

16 Q: And the agent, there may be reports, several reports
17 stimulated from that same incident, depending on the number of
18 officers involved; is that fair to say?

19 A: Yes.

20 Q: So, if you have one particular offense, but you have 10
21 officers and all of the officers played some role, then it's
22 common, is it not, for all the officers to submit a report?

23 A: In some cases, some cases.

24 Q: If it's -- if it's important on what that officer did or
25 failed to do, then it would be important to document that; is

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1 that a fair statement?

2 A: Yes, it helps a lot.

3 Q: Okay. Now, I'm looking at a City of Florence incident
4 report, it's not evidence, but it was provided to me as Mr.
5 Gregg's attorney, and indicates that what you said about the
6 date of the arrest, which was January the 6th, 2017; is that
7 right?

8 MR. JEPERTINGER: May I interject something?

9 THE COURT: Yes.

10 MR. JEPERTINGER: I think if Mr. Suggs will read it, I
11 think it's Andron Brown's report, not Spears.

12 MR. SUGGS: I understand. I understand, Your Honor.

13 MR. JEPERTINGER: And I would object to any hearsay, Your
14 Honor.

15 THE COURT: Sustained to the hearsay.

16 MR. SUGGS: I won't get into anything objectionable,
17 Judge.

18 BY MR. SUGGS:

19 Q: Did you prepare your own report as a result of this
20 investigation or arrest?

21 A: No, I did not.

22 Q: Okay. But you played a pretty significant role in it
23 though, didn't you?

24 A: Yes, I was present.

25 Q: Okay. You didn't break down the door?

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- 1 A: No, I did not.
- 2 Q: That was Officer Brown?
- 3 A: Correct.
- 4 Q: Okay. But you did enter the residence; is that right?
- 5 A: That's correct.
- 6 Q: Okay. And you did have a conversation with, with Mr.
- 7 Gregg; is that right?
- 8 A: I did at some point.
- 9 Q: Okay. Inside the residence?
- 10 A: Yes.
- 11 Q: And you also recovered several items of evidence, which
- 12 have been talked about and looked at during your direct
- 13 examination; is that right?
- 14 A: I wouldn't say I recovered it, it was later surrendered
- 15 to me to log into evidence.
- 16 Q: You, you had it in your hands?
- 17 A: I was present.
- 18 Q: I'm sorry, I didn't mean ---
- 19 A: Yes, I was present for the collection of evidence.
- 20 Q: Okay. But you didn't do a report?
- 21 A: No, no, sir.
- 22 Q: All right. Now, the date of the arrest was January the
- 23 6th, 2017; is that right?
- 24 A: Yes, sir; it is.
- 25 Q: Okay. All right. Were you aware that Officer Brown

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1 prepared an incident report?

2 A: Yes, I am.

3 Q: Okay. Have you looked at the incident report?

4 A: Yes, I have.

5 Q: Okay. Did you see any inaccuracies in the incident

6 report?

7 A: No, I did not, no.

8 Q: All right. Well, if I told you that Officer Brown ---

9 MR. JEPERTINGER: That would still be hearsay. Officer

10 Brown will testify in this case, Judge.

11 THE COURT: Sustained.

12 BY MR. SUGGS:

13 Q: If someone indicated that this offense occurred on

14 January the 5th rather than January the 6th, you would dispute

15 that, wouldn't you?

16 A: Yes, if I had knowledge of that error.

17 Q: And when we are talking about this particular address,

18 [REDACTED] Commander Street, there's [REDACTED]-A and [REDACTED]-B, correct?

19 A: Correct.

20 Q: So, it's a duplex; is that right?

21 A: That's correct.

22 Q: Okay. Is it a -- and according to the photographs, it

23 looks like it's a side-by-side duplex?

24 A: That's correct.

25 Q: All right. And in this duplex, the way that the -- and

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- 1 we're talking about 805-A; is that right?
- 2 A: That's right.
- 3 Q: Okay. And you were inside 805-A, correct?
- 4 A: Correct.
- 5 Q: Okay. Is it fair to say that in this particular duplex
6 that the way it may be laid out by construction, A might be
7 like a mirror image say B, the other side?
- 8 A: Yes. Yes.
- 9 Q: That's pretty common for duplexes, isn't it?
- 10 A: Correct.
- 11 Q: Okay.
- 12 A: In most cases.
- 13 Q: And was it common in this particular case -- in other
14 words, 805-A, which is the apartment which was -- which was
15 breached, does it have a mirror image construction of the
16 other side of 805-B?
- 17 A: It does. Just A is posted on the door, but same side-by-
18 side apartment.
- 19 Q: Okay. And -- and you know this because of what reason?
- 20 A: I was present at the location.
- 21 Q: Okay. And you were also present in 805-B, weren't you?
- 22 A: No.
- 23 Q: You were not?
- 24 A: I did make entry into 805-B.
- 25 Q: 805-B was not breached first before 805-A?

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1 A: Correct, it was. We did both search warrants at the same
2 time.

3 Q: Okay. So, just so we're clear. When you executed the
4 search warrant that Officer Brown had obtained, the police
5 actually searched 805-B first, didn't they?

6 A: We went at the same time. Both locations were done at
7 the same time.

8 Q: Okay.

9 A: We had 2 teams; 1 team went to B, 1 team went to A.

10 Q: Okay. Well, did you have a search warrant for 805-B?

11 A: Yes, we did.

12 Q: Okay. Okay. All right. So, was 805-B entered and
13 breached in the same manner as 805-A?

14 A: I'm sure it was.

15 Q: Well, you were present?

16 A: I wasn't at 805-B; I was at 805-A.

17 Q: Well, let's take a look at the photos for example, so we
18 can get our bearings. Let me show you what has been marked as
19 State's 3, 4, 5, and 6, and I believe these four photographs
20 are already into evidence. And State's Exhibit 3, this is the
21 front door -- this is the front part of the duplex; is that
22 right?

23 A: Correct.

24 Q: Okay. And State's Exhibit Number 4 is also a photograph
25 of the duplex, but just a little closer view; is that right?

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- 1 A: That is correct.
- 2 Q: Okay. And the addresses appear to be clearly marked on
3 both photographs; is that right?
- 4 A: Yes.
- 5 Q: In other words, there's -- there's no confusion between
6 which one is 805-A and which one is 805-B, right?
- 7 A: That's correct.
- 8 Q: Now, let me show you State's Exhibit 5 and 6 for a
9 moment. 5 and 6, I'll take those back. Thank you. 5 and 6,
10 do they not depict the rear of the duplex?
- 11 A: That is correct.
- 12 Q: Okay. Now, the rear of the duplex doesn't have the same
13 address markings on the back as it does on the front, does it?
- 14 A: It doesn't.
- 15 Q: Okay. But I guess one could logically assume which is A
16 and which is B based upon the addresses on the front on
17 photographs 3 and 4; is that right?
- 18 A: That's correct.
- 19 Q: Okay. Now, if you say that you were present when the --
20 when the searches occurred, let's look at Number 6 -- for
21 example, the door that's open on State's Exhibit Number 6, is
22 that not 805 -- is that 805-A or 805-B?
- 23 A: That's gonna be 805-A.
- 24 Q: Okay. And 805-A is the one that is supposed -- is the
25 one that's -- why we're here today, right?

1 A: Correct.

2 Q: Okay. All right. Now, you say you were present when the
3 search warrants were executed simultaneously; is that right?

4 A: Correct.

5 Q: And both entries -- entries on both of these doors were
6 from -- from the back; is that right?

7 A: I know A was; I can't speak for B. I don't know if they
8 made a front door entry or rear entry. I can't recall.

9 Q: Okay. So, you're saying that there were two teams; one
10 entered from the front of B and one entered from the back of
11 A?

12 A: That's possible. I can't recall where they made entry at
13 in B, but we made entry at the rear.

14 Q: Okay. All right. Well, skipping through all of that and
15 forgetting about making mistakes and all of that stuff. 805-B
16 where entry was gained, was there anybody home?

17 A: In B; yes, I think there was someone in B.

18 Q: Who was home?

19 A: I couldn't tell you who was home in B; I wasn't over
20 there.

21 Q: I mean they are right there together, officer, there's
22 not -- y'all are not communicating with one another or
23 wouldn't you agree that A and B are right close together?

24 A: Yeah, but it's divided. I was concentrating on A.

25 Q: Okay. All right. Well, I mean, have you learned since

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- 1 that there were folks in 805-B?
- 2 A: I think it was one individual in B.
- 3 Q: All right. Did y'all find any drugs or any illegal
- 4 substances in -- in that -- in that part of the duplex?
- 5 A: In B?
- 6 Q: Yes, in B?
- 7 A: I can't say y'all, I wasn't over there, but I think maybe
- 8 something was recovered.
- 9 Q: Anybody arrested?
- 10 A: May've been issued a ticket if -- if anything, but no, no
- 11 one was transported from the location.
- 12 Q: Okay. Was -- do you know whether or not entry was gained
- 13 by force on 805-B?
- 14 A: I couldn't tell you that for B.
- 15 Q: Okay. Well, we're talking about search warrants, right?
- 16 A: Correct.
- 17 Q: Okay. And you testified that in a search warrant, it's a
- 18 general practice to, to knock on the door and announce
- 19 yourself as law enforcement; is that right?
- 20 A: That's correct.
- 21 Q: Okay. And then I don't think we established how much
- 22 time you wait for someone to come to the door, but I would
- 23 imagine it's mere seconds; would you agree with that?
- 24 A: Yes, we wait for a response and if we don't ---
- 25 Q: Well, you don't want to wait too long for somebody on the

1 other side to get cocked and ready for you, do you?

2 A: That's correct.

3 Q: I mean, so you want to try to get in as fast as possible

4 after you've announced your presence; isn't that fair?

5 A: That's correct, we do.

6 Q: Okay. All right. So, you say you weren't on; you didn't

7 make the entry on the B side, so you can't really testify as

8 to anything about that, right?

9 A: No, I can't.

10 Q: Well, who actually made the entry on B, which officers?

11 A: Lieutenant Nida, maybe ---

12 Q: Joe Nida?

13 A: Yes.

14 Q: Got it.

15 A: Agent Usury.

16 Q: Okay.

17 A: And some other investigators, I will say.

18 Q: How many? How many altogether?

19 A: Maybe five total for that apartment; five on Apartment A.

20 Q: So, we've got about 10 officers?

21 A: Yes.

22 Q: More or less?

23 A: Yes.

24 Q: Okay. Okay. But your side was strictly 805-A?

25 A: Correct.

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1 Q: No involvement with 805-B?

2 A: No.

3 Q: Okay. Okay. But it's your testimony that there was a
4 warrant secured for the search of 805-B ---

5 A: Yes.

6 Q: --- Commander Street?

7 A: There was one as well, correct.

8 Q: Okay. Did you get -- did you apply for that or did --
9 did Officer Brown apply for that or do you know?

10 A: I don't want to -- I don't want to say -- I don't know
11 the answer.

12 Q: It wasn't you?

13 A: It wasn't me. It might've been Agent Usury, I think.

14 Q: Okay.

15 A: For Apartment B.

16 Q: Okay. Well, would there be any reason for one officer to
17 sign an affidavit for a search warrant for one side of a
18 duplex and another agent apply for the same search warrant for
19 the other side, when we're talking about the same building?

20 A: Yes.

21 Q: Is that unusual?

22 A: No, it's not unusual.

23 Q: It's not unusual?

24 A: To have two different officers, no.

25 Q: Okay. All right. So, you're telling me, you're

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1 testifying that if you're gonna execute a search warrant at
2 the same -- on the same day at the same time at virtually the
3 same location, in this case a duplex, A and B, that it's
4 possible for two different officers to apply for two different
5 search warrants?

6 A: That's correct.

7 Q: Okay. Well, wouldn't it be easier for one officer just
8 to do the whole thing?

9 A: No, because you can't be at this place and that place at
10 the same time.

11 Q: What do you mean?

12 A: If we're doing search warrants at the same time, an
13 officer can't be at both places at the same time. So, if we,
14 you know, there's been times where we've done that and once
15 the officer finishes his location, then he can come and assist
16 at another location, but each location we do, we have a case
17 agent and that case agent is responsible for that location.

18 Q: Okay. But, if, if, if an officer is applying for a
19 search warrant and waiting on a judge to sign it, that same
20 officer can't be at the same time busting down that door; is
21 that what you're saying?

22 A: Repeat it again?

23 Q: If you've got an officer signing an affidavit ---

24 A: Uh-huh, (affirmative response).

25 Q: --- to present to a magistrate or city recorder ---

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- 1 A: Okay.
- 2 Q: --- to get that judge to authorize that search warrant
3 ---
- 4 A: Uh-huh, (affirmative response).
- 5 Q: --- that agent can't be doing that and simultaneously
6 busting down the door of the place that, that that officer is
7 applying to the court to search?
- 8 A: No, once a search warrant is signed -- it's a process to
9 go through, you know. You can get it signed this particular
10 day, but you have 10 days to do that search warrant.
- 11 Q: Sure, sure. Okay. All right. Now, you testified, I
12 think, that when you entered apartment 805-A, that Mr. Gregg,
13 I believe you said, was to your right; is that correct?
- 14 A: That's correct.
- 15 Q: Okay. Isn't it true that the way that these apartments
16 are laid out, that if you in fact entered 805-A that Mr. Gregg
17 would, would not've been on your right, but would've been on
18 your left?
- 19 A: From what I remember, he was on my right as I came
20 through the door.
- 21 Q: You testified though that the layout of duplexes is best
22 generally mirrored; is that right?
- 23 A: I wasn't in B.
- 24 Q: Okay.
- 25 A: So ---

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1 Q: And talking a little bit about this count of proximity, I
2 believe you testified that Commander Street, the 800 block of
3 Commander Street was near North Vista Elementary School?

4 A: That's correct.

5 Q: Okay. And did you actually measure the distance
6 yourself?

7 A: No, I did not.

8 Q: You didn't get into your car and drive to see if it was
9 within the distance required by statute?

10 A: No, I did not.

11 Q: Okay. So, you testified that was best -- to the best of
12 your knowledge that North Vista Elementary School was within a
13 half-mile radius of the 800 block of Commander Street, as the
14 crow flies, Mr. Jepertinger said?

15 A: Correct.

16 Q: Okay. Now, whenever Mr. Gregg was arrested, was he --
17 was he searched, was his physical body searched?

18 A: Yes, he was searched.

19 Q: Okay. Did you do it?

20 A: No, I just detained him.

21 Q: You handcuffed him?

22 A: I handcuffed him, yes.

23 Q: Okay. Okay. Was he handcuffed before or after he was
24 searched?

25 A: He was handcuffed first.

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- 1 Q: Okay.
- 2 A: Yes.
- 3 Q: And did he cooperate?
- 4 A: Yes, he did.
- 5 Q: He didn't put up a fuss?
- 6 A: No, he did not.
- 7 Q: It wasn't one of those Rodney King scenarios where y'all
- 8 had to -- to beat him into compliance, was it?
- 9 A: No, no.
- 10 Q: I mean, he's a pretty large fellow, isn't he?
- 11 A: Yes, could say that.
- 12 Q: So, if he had wanted to give you trouble, he probably
- 13 could, couldn't he, physically?
- 14 A: If he wanted to, yes. Size doesn't matter, but ---
- 15 Q: You look very fit, I'm sure you could handle it, but
- 16 still it would've been a struggle if he had wanted it to be?
- 17 A: Yeah, correct.
- 18 Q: And you handcuffed him and then he was physically
- 19 searched, but you didn't search him?
- 20 A: No, he was handcuffed, but I didn't conduct the actual
- 21 search of him.
- 22 Q: Were you present when he was physically searched?
- 23 A: Yes.
- 24 Q: Okay. And there was nothing found illegal on his actual,
- 25 physical person; is that correct?

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1 A: I don't think so, no.

2 Q: This is kind of important, Officer, to really know yes or
3 no to these things?

4 A: Yes.

5 Q: Okay. You understand?

6 A: Correct.

7 Q: Okay. So, I'll ask you that question again. When he was
8 physically searched, there was nothing illegal on his person;
9 is that right, yes or no?

10 A: I didn't recall, no.

11 Q: As important as this case is, you don't know that fact?

12 A: No, I don't think anything was removed from -- illegal.

13 Q: You don't think, okay. I'll accept that. Well, are we
14 talking about a two-bedroom duplex?

15 A: Correct.

16 Q: All right. So, two bedrooms, one bathroom?

17 A: Yes.

18 Q: All right. Square footage, any idea?

19 A: It was very small, straight shot apartment.

20 Q: Did it have an upstairs?

21 A: No, it did not. No, upstairs.

22 Q: So, in each -- in each apartment, we have two bedrooms
23 and one bathroom and a kitchen, and maybe a small den area?

24 A: Yes.

25 Q: Okay. Any laundry room, we used to call them mud rooms

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- 1 back in the day, mud room?
- 2 A: Yes, it was a laundry room, a small room on the left.
- 3 Q: A small laundry room?
- 4 A: Yes.
- 5 Q: A small mud room?
- 6 A: if you want to call it a mud room.
- 7 Q: Okay. Any other square footage, other than what I've
- 8 enumerated?
- 9 A: That's it.
- 10 Q: Okay. All right. Now, you testified that you found some
- 11 scales during your search; is that right?
- 12 A: That's correct.
- 13 Q: But there's nothing illegal about scales in and of
- 14 themselves is there?
- 15 A: No, it's not.
- 16 Q: I mean, I can go to the pharmacy right now and buy a set
- 17 of scales, can't I?
- 18 A: Yes.
- 19 Q: For any reason I want?
- 20 A: Correct.
- 21 Q: Okay. Same with the empty, I think bags, Glad Bags,
- 22 Ziploc Bags, there's nothing inherently illegal about those,
- 23 is there?
- 24 A: No, not at all.
- 25 Q: I mean, in fact, I would probably find some Glad bags in

1 your kitchen, wouldn't I?

2 A: Correct.

3 Q: Okay. You got to make sandwiches, what not, if you got a

4 dog, put dog treats in that sort of thing, right?

5 A: Yes, I guess.

6 Q: Snacks for the kids at school?

7 A: Correct.

8 Q: Now, you testified, I think, and if I'm wrong please

9 correct me -- I beg the Court's indulgence, Your Honor?

10 In your testimony, did -- I was trying to find my notes

11 -- what kind of car did you say was at the scene?

12 A: It was a Buick, Buick Lacrosse, I believe.

13 Q: A Buick Lacrosse?

14 A: A Buick Regal or Buick Lacrosse. Yeah, it was a

15 Lacrosse.

16 Q: And did you search the vehicle?

17 A: That's correct.

18 Q: You did?

19 A: Yes, I did.

20 Q: Okay. And did you take the photographs?

21 A: No, I did not take the photographs.

22 Q: Which investigator took the photographs?

23 A: It was Sergeant Jordan of crime scene.

24 Q: All right. And when -- when you arrived, was the vehicle

25 parked in the back of the apartments where, where y'all gained

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1 entry?

2 A: Yes, yes.

3 Q: It wasn't parked in the front?

4 A: It was parked at the rear of the apartment.

5 Q: At the rear. Okay.

6 A: And was running.

7 Q: Sir?

8 A: And it was running.

9 Q: Were all the doors open as seen in the photographs?

10 A: No, they were not.

11 Q: Okay. So, the doors were opened by the officers?

12 A: Correct.

13 Q: And when you -- when you say you searched the vehicle,

14 did you search the whole vehicle?

15 A: That's correct.

16 Q: Front and back?

17 A: That's correct.

18 Q: Okay. Did, did you move any of the evidence around?

19 A: I did to recover.

20 Q: I mean, other than to recover the evidence?

21 A: No.

22 Q: Okay. You didn't move any of the evidence around in the

23 car for purposes of more efficient photography?

24 A: Yes, it was moved for better photography, yes.

25 Q: Maybe I said the thing wrong. Whenever -- whenever you

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1 search a vehicle, do you photograph the inside -- in this
2 case, did y'all -- did the officer photograph the vehicle
3 while you -- while you were present?
4 A: Yes.
5 Q: Okay. All right. And did you tell the officer what to
6 photograph?
7 A: That's correct.
8 Q: Okay. All right. I'm just a little confused. I wanted
9 to show you State's Exhibit 10 and 11 and I show you 10 first
10 and what does that depict?
11 A: Some unknown pills in a plastic baggie by the door
12 pocket, window control by the door pocket.
13 Q: The -- so, I don't mean to sound ignorant, but where the
14 driver's controls are, where he or she can raise the windows
15 up and down?
16 A: Correct.
17 Q: Okay. And that's -- that's State's Number 10?
18 A: Yes, it is.
19 Q: What is that blue item that appears to be, it looks like
20 some rubber bands in there with the, a blue item of some sort;
21 what is that?
22 A: That blue item?
23 Q: Yes, sir?
24 A: I'm not sure exactly what that is, the blue item.
25 Q: Well, let me show you Number 11. Is this not -- does

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1 this depict the same thing as Number 10?

2 A: That's correct.

3 Q: Any reason why the evidence was moved?

4 A: After it was photographed, it's normally moved for a
5 better picture.

6 Q: So, how would you get a better -- what would you be
7 looking for as a better picture between 10 and 11?

8 A: The bag was, Exhibit 11, the bag is folded. Exhibit 10,
9 the bag is open, so it should've been a better picture, even
10 though the lightness.

11 Q: It didn't really turn out that way, did it?

12 A: Correct.

13 Q: Okay.

14 A: So, it's removed from that pocket for a better
15 photograph.

16 Q: Did you move it?

17 A: That's correct.

18 Q: All right. So, you moved evidence around inside Mr.
19 Gregg's vehicle so that the photographer could take better
20 pictures?

21 A: That's correct.

22 Q: Okay. Then was any other evidence moved around in Mr. --
23 in the -- in the car that was claimed along with Mr. Gregg?

24 A: It was some items, but I don't think anything in the
25 vehicle he was charged with, but it was some items of concern,

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1 so they were photographed. But ---
2 Q: Well, like Exhibit Number, Exhibits Number 14 and 15 show
3 a bag of charcoal, was that taken out of the vehicle?
4 A: I don't recall taking a bag of charcoal out the vehicle.
5 Q: Okay. But clearly, there's a bag of charcoal sitting on
6 the ground behind that vehicle; is that right?
7 A: That's correct.
8 Q: Or we're assuming it's charcoal in it, right?
9 A: Yes, it's a bag of charcoal, yeah.
10 Q: Okay. But you didn't -- you didn't move the charcoal?
11 A: I didn't personally.
12 Q: Okay.
13 A: It could have been another officer, but I didn't remove
14 that.
15 Q: Might not have even been in the car; is that right?
16 A: That's correct.
17 Q: Okay. Because it would be kind of silly to move it from
18 alongside the house and put it by the car to take a picture of
19 though, wouldn't it?
20 A: Correct.
21 Q: The vehicle in question, the Buick, registered to who?
22 A: I don't have that information.
23 Q: Okay. Do you need some time to look at your notes?
24 A: Let's see if it's in there. I know it wasn't registered
25 to him; I do know that, but I can't remember exactly who it

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1 came to, but it wasn't to him.

2 Q: All right. Now, you're looking at what, some personal
3 notes of yours or some notes of Officer Brown?

4 A: The actual incident report.

5 Q: Okay. The one that -- the one that says incident date
6 1/5/17?

7 MR. JEPERTINGER: Judge, I object. Officer Brown will
8 testify.

9 THE COURT: Sustained.

10 BY MR. SUGGS:

11 Q: Is it the report that Officer Brown prepared?

12 A: That's correct.

13 Q: Okay. And that's what you're looking at?

14 A: Correct.

15 Q: Because you testified you didn't make a report?

16 A: No, I did not.

17 Q: Did you make any notes?

18 A: No, I did not.

19 Q: Handwritten notes?

20 A: I did not.

21 Q: All right. So, the vehicle was not registered in Mr.
22 Gregg's name; he was not the registered owner?

23 A: That's correct.

24 Q: But you don't remember who it was?

25 A: I do not.

1 Q: Now, the duplex itself, is it -- is it owned by someone,
2 I'm assuming it is?

3 A: Yes, it's -- it's being rented by the individual Mr.
4 Gregg was staying with. So ---

5 Q: Well, let's back up. I'm assuming, correct me if I'm
6 wrong, the person that owns the duplex, owns A and B; that
7 makes sense, doesn't it?

8 A: It does.

9 Q: All right. Well, do you know who the owner of the actual
10 duplex is?

11 A: No, I do not.

12 Q: We did not search the county tax records or tax rolls,
13 tax assessor's office to identify the owner of that duplex?

14 A: Not to my knowledge.

15 Q: Okay. All right. But you feel that each side is being
16 rented out, A and B?

17 A: Correct.

18 Q: Okay. And do you know whose name is on the lease for
19 805-B, the one that you didn't go into?

20 A: No, I do not.

21 Q: And do you know whose name is on the lease for 805-A, the
22 one where you made the arrest?

23 A: I can't testify that I do.

24 Q: Okay. Can you testify that Mr. Gregg's name is not on
25 the lease for either A or B?

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1 A: That's correct.

2 Q: Okay. And can you also testify that Mr. Gregg does not
3 own the duplex?

4 A: Yeah, yeah, correct.

5 Q: Okay. So, what we've got is we've got -- we've got a
6 duplex where drugs were located, correct?

7 A: That's correct.

8 Q: But it's not owned by Mr. Gregg, correct?

9 A: Correct.

10 MR. JEPERTINGER: That's been asked and answered, Judge,
11 I object.

12 THE COURT: Sustained.

13 BY MR. SUGGS:

14 Q: Once -- you testified that marijuana was found in a
15 bedroom; is that right?

16 A: That's correct.

17 Q: All right. Now, we did say that there were two bedrooms.
18 Anything found in the other bedroom of importance, or value,
19 illegally, anything like that?

20 A: Not to my knowledge. I think the shotgun was actually
21 recovered out of a bedroom, but not the first bedroom where
22 the marijuana and money was at.

23 Q: All right. So, you think that the shotgun was recovered
24 in one bedroom and the marijuana was recovered in another?

25 A: Yes, sir. I can't quite testify to that, but -- because

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1 everything was being surrendered to Agent Brown, but from my
2 understanding, yeah, the shotgun was found in the second
3 bedroom.

4 Q: Okay. Now, on State's Exhibit Number 21, I see a
5 picture, I see a shotgun in that picture; is that right?

6 A: That's correct.

7 Q: Is that the same shotgun that was taken from one of the
8 bedrooms?

9 A: That's correct.

10 Q: Okay. So, did you take the shotgun and put it on the
11 table?

12 A: No, I did not.

13 Q: Do you know who did?

14 A: I'm not sure exactly who surrendered that.

15 Q: Okay. Aside from State's Exhibit -- well, State's
16 Exhibit Number 49, that's -- that's an envelope isn't it,
17 addressed to -- to a Mr. Gregg; is that right?

18 A: Yes, it is.

19 Q: All right. And where was that found?

20 A: I'm unsure.

21 Q: Okay. But you feel like it was found in the -- in the
22 duplex?

23 A: That's correct.

24 Q: Okay. But you didn't find it?

25 A: No, I did not find it.

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KENDRICK THOMAS SPEARS - REDIRECT BY JEPERTINGER

1 Q: Okay. All right. Aside from this, in State's 49,
2 anything else found in the duplex that had Mr. Gregg's name on
3 it?

4 A: I can't testify that I know. I think it was
5 miscellaneous paperwork may have been recovered, but I -- that
6 was -- I can't testify to say that.

7 Q: Okay. Do you know an individual named -- and I'm just
8 asking if you know him -- Randolph McLain?

9 A: No, sir.

10 Q: You don't know him?

11 A: No.

12 Q: Okay.

13 MR. SUGGS: Just a moment, Your Honor?

14 THE COURT: Uh-huh, (affirmative response).

15 MR. SUGGS: I don't have anything further. Thank you,
16 Your Honor.

17 THE COURT: Redirect?

18 REDIRECT EXAMINATION OF KENDERICK SPEARS BY MR. JEPERTINGER:

19 Q: Did you ever find a Randolph McLain in 805-A on January
20 6th, 2017?

21 A: No, I did not.

22 Q: Who is the only person you found in that apartment on
23 January 6th, 2017?

24 A: Mr. Johnny Nickolas Gregg.

25 Q: Okay. And he's the gentleman sitting at the defense

1 table?

2 A: That's correct.

3 Q: All right. Mr. Suggs asked you about the Ziploc bags and
4 all sorts of things and scales and that sort of thing. How in
5 the world does one ingest or consume crack cocaine?

6 A: They smoke it normally through a pipe or a tube.

7 Q: In recovering all this stuff, did Agent Brown hand you
8 any tube or pipe?

9 A: No.

10 Q: All right. How do you -- how do you smoke marijuana?

11 A: Normally through cigars or rolling papers. It's rolled
12 and smoked like a cigarette or cigar.

13 Q: Did Agent Brown hand you any cigars or rolling papers in
14 this case?

15 A: No.

16 Q: All right. Thank you. That's all I have.

17 THE COURT: All right. Anything further, Mr. Suggs?

18 MR. SUGGS: No recross, Judge, but thank you for asking.

19 THE COURT: You may step down.

20 MR. JEPERTINGER: I'd call Frank Mizell to the stand.

21 COURT REPORTER: Mr. Jepertinger, are all of the pictures
22 off of that podium?

23 MR. JEPERTINGER: Yes, I will do that.

24 THE COURT: The Clerk of Court has informed me that at 5
25 o'clock, they're going to have to do some sort of security

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KENDRICK THOMAS SPEARS - REDIRECT BY JEPERTINGER

1 whatever with all the keys, so we have to be out of here
2 before 5:00, if that's possible.

3 MR. JEPERTINGER: Judge, I'm going to be ---

4 THE COURT: Take your time, I'm just letting you know,
5 she's gonna run us out of here.

6 MR. JEPERTINGER: --- as quick as possible. Well, that's
7 good.

8 MR. SUGGS: Judge, I don't mind. We can leave right now;
9 it'd be all right with me.

10 THE COURT: If you have a short witness that'd be good.

11 MR. JEPERTINGER: I have a couple of short witnesses,
12 Judge.

13 CLERK: Put your left hand on the Bible and raise your
14 right hand.

15 MR. JEPERTINGER: Mr. Suggs, you didn't take any objects
16 back to your table, photographs?

17 MR. SUGGS: I left them right there. I'm sorry. I
18 apologize, Madam Court Reporter.

19 FRANK MIZELL, HAVING BEEN SWORN
20 TESTIFIES AS FOLLOWS:

21 CLERK: Please be seated and state your full name for the
22 record.

23 MR. MIZELL: Frank Mizell with the Florence City Police
24 Department.

25 DIRECT EXAMINATION OF FRANK MIZELL BY MR. JEPERTINGER:

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FRANK MIZELL - DIRECT BY JEPERTINGER

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1 Q: How long have you worked for the Florence City Police
2 Department?

3 A: Almost five years.

4 Q: Okay. What are your responsibilities there?

5 A: Right now I am the evidence custodian.

6 Q: Okay. As part of your duties as evidence custodian, do
7 you often have to take trips to SLED with items?

8 A: Yes, sir; I do.

9 Q: Okay. I'm gonna show what's been marked as State's
10 Exhibit 59 for identification; can you identify that?

11 A: Yes, sir; this is the BEST pack that I took to SLED back
12 in 2017.

13 Q: All right. Other than doing that, have you had any
14 responsibilities in this case other than bringing evidence to
15 court today?

16 A: No, sir, all I do is maintain the property until it goes
17 to court or to SLED and back.

18 Q: Okay. And when you say you maintain property, just
19 explain very quickly, as quickly as possible what you do. I
20 mean, is it -- can the general public go back to where you
21 keep evidence?

22 A: No, absolutely not. It is a secure location. When
23 evidence is logged in by the officers, it comes in, it gets
24 placed in lockers, which are secured, I retrieve all the
25 evidence, I log them into our system, they're maintained in a

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1 secure location until either the evidence goes to SLED or goes
2 to court or if the case is dismissed, the evidence is either
3 returned to the owners or it's destroyed.

4 Q: Very quickly, in terms of marijuana, do you test
5 marijuana in house?

6 A: It is tested, but not by me.

7 Q: Okay. I understand that.

8 A: Yes, sir.

9 Q: But another officer can come and get the ---

10 A: Yes, sir.

11 Q: --- the marijuana?

12 A: Yes, sir.

13 Q: Okay. And they would get it from you?

14 A: Yes, sir; they would.

15 Q: Okay. I'm gonna to show you quickly what's been marked
16 State's Exhibit 60, 62, I guess, 67, 64, 65, I don't know what
17 that is, 66 and 63.

18 A: Yes, sir.

19 Q: Okay. In terms of those items, can you tell basically
20 what that stuff is?

21 A: Yes, sir.

22 Q: What is it?

23 A: It appears to be marijuana.

24 Q: Okay. Would you have retrieved that in this case had it
25 been checked into evidence?

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1 A: Yes, sir.

2 Q: Okay. And would you give that to another officer?

3 A: Yes, sir, one of our crime scene units would come to me,

4 they would actually sign for the evidence, take it, test it

5 and then they would bring it back and it would be signed back

6 into evidence to keep the chain of custody.

7 Q: Okay. Do you know the name of Stephen Starling?

8 A: Yes, sir; I do.

9 Q: And who is that?

10 A: He is one of our crime scene unit officers.

11 Q: Does he test marijuana?

12 A: Yes, sir; he does.

13 Q: Okay. Thank you very much. Please answer any questions

14 that the defense may have for you.

15 THE COURT: All right. Mr. Suggs?

16 MR. SUGGS: Yes, Your Honor; thank you.

17 CROSS EXAMINATION OF FRANK MIZELL BY MR. SUGGS:

18 Q: I'm sorry, I wanted to make sure I had your rank correct.

19 Is it Lance Corporal?

20 A: Yes, sir, it is.

21 Q: Okay. And that's with the sheriff's department?

22 A: No, sir; it's with the Florence City Police Department.

23 Q: Okay. Okay. How long have you been with the city police

24 department?

25 A: Approximately five years.

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- 1 Q: And you may have said that already ---
- 2 A: Yes, sir.
- 3 Q: --- and I was writing something. I apologize.
- 4 A: Okay. No problem.
- 5 Q: All right. Mr. Jepertinger referenced State's Exhibit 59
- 6 and those other exhibits that are in front of you?
- 7 A: Yes, sir.
- 8 Q: May I reach for something, would you mind?
- 9 A: Yes, sir, go ahead.
- 10 Q: Okay. I'm going to reach for a couple of things. I'm
- 11 going to reach for all of it.
- 12 A: That's okay.
- 13 Q: Thank you. All right. All right. Now, these items that
- 14 Mr. Jepertinger went over with you, if I can put them in some
- 15 sort of order, we have 59, 62, 63, 64, 65, 66, and 67; is that
- 16 right?
- 17 A: Yes, sir.
- 18 Q: Did 60, did he also mention 60?
- 19 A: Yes, sir; he did.
- 20 Q: Okay. And all of these items, were they all given to you
- 21 at the same time?
- 22 A: Yes, sir; they were.
- 23 Q: All right. And were they all given to you by the same
- 24 individual?
- 25 A: They were all logged in by Officer Spears.

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FRANK MIZELL - CROSS BY SUGGS

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1 Q: Kendrick Spears?
2 A: Yes, sir.
3 Q: The officer who testified before you?
4 A: Yes, sir; I believe so.
5 Q: Well, you weren't in the room?
6 A: I wasn't in the room, sir.
7 Q: And what is normally the procedure when an officer gives
8 you items to, to safeguard. Are they already packaged the way
9 they're packaged now?
10 A: It all depends on what it is, sir.
11 Q: Okay.
12 A: Sometimes they're loose and they -- they put them
13 altogether in a locker and it's locked up and secured and then
14 I take it out and it depends on what it is, I may have to
15 separate the items because we have different rooms that
16 actually have to be secured for certain items. Firearms have
17 to be secured in a separate area from drugs and other -- other
18 items. Money has to be in a separate safe.
19 Q: All right. Well, in looking at something like Exhibit
20 Number 65, it looks to me to be a glass bottle with marijuana
21 in it; would you agree?
22 A: It appears that way, sir.
23 Q: Okay. But there's also appears to be a plastic bag with
24 the marijuana in it inside of this sealed jelly jar or
25 whatever it is; would you agree with that?

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1 A: It appears that way, sir.

2 Q: All right. Did -- did -- when you received State's
3 Exhibit 65 from Officer Spears, did you receive it in exactly
4 this condition or did you bag it?

5 A: Yes, sir. No, it was in that condition when I received
6 it.

7 Q: Okay. All right. In looking at items 60, excuse me, 59,
8 60, 62, 63, 64, 65, 66, and 67, did -- did you -- did you bag
9 these items up in anyway or were they given to you just like
10 they are look at -- just as they look now?

11 A: Just the way they are seen now is how I received them.

12 Q: All right. You made absolutely no changes to the
13 exhibits that we just referenced by number?

14 A: No, sir; I didn't.

15 Q: Okay. All right. And as soon as you received those from
16 Officer Spears, you had to sign for them, I'm sure?

17 A: Yes, sir.

18 Q: All right. And when you sign for something, do you -- I
19 mean, do you know what you're signing for?

20 A: No, sir, I am -- the only thing I am in charge of is
21 actually maintaining the objects. I do not test them, so
22 there is no way for me to say that yes, that is marijuana or
23 no, it's not. That is what other officers are for.

24 Q: Well, what -- what protects you for example, if an
25 officer gives you something to, to secure and then later on

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1 when it's retrieved, it's not the same thing; wouldn't that
2 cause you some problems?

3 A: It potentially could. That is why we have a chain of
4 custody to maintain who actually has access to the items and
5 it's also personal duty to maintain what we're supposed to be
6 doing.

7 Q: It's kind of an honor system in a way, isn't it?

8 A: It's integrity, sir.

9 Q: Okay. But not everybody has that unfortunately, is that
10 fair to say?

11 A: That's probably fair to say.

12 Q: All right. So, for example, if someone gave you
13 something and said here, this is, in this case, State's
14 Exhibit Number 63, and it's a bag of marijuana and you didn't
15 test it but you stored it away, and then later on, when it's
16 time to bring it out, it turns out not to be marijuana; it
17 turns out to be oregano.

18 A: Yes, sir.

19 Q: I mean, you -- you might -- people might look cross-eyed
20 at you, wouldn't they?

21 A: Well, sir, that's when we log it in, it's logged in as
22 suspected marijuana.

23 Q: Okay. All right. Same with the -- with the pills, I
24 would guess and anything that looks like cocaine or cocaine
25 base?

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1 A: Yes, sir.

2 Q: Okay. Do you weigh any of it?

3 A: No, sir.

4 Q: Okay. All right. So, when it's given to you, you just

5 hold it until you're called upon to surrender it or do

6 something else with it?

7 A: Yes, sir.

8 Q: All right. Thank you. No further questions.

9 THE COURT: All right. Any redirect?

10 MR. JEPERTINGER: No further questions and I'd ask that

11 Frank Mizell can be excused?

12 MR. SUGGS: No objection, Your Honor.

13 THE COURT: You have a good day.

14 MR. MIZELL: Thank you.

15 MR. JEPERTINGER: I call Stephen Starling to the stand.

16 CLERK: Step around and place your left hand on the Bible

17 and raise your right hand.

18 STEPHEN STARLING, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: Please be seated and state your full name for the

21 record.

22 MR. STARLING: Stephen Starling.

23 COURT REPORTER: Can you spell that, please?

24 MR. STARLING: S-T-E-P-H-E-N, S-T-A-R-L-I-N-G.

25 DIRECT EXAMINATION OF STEPHEN STARLING BY MR. JEPERTINGER:

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1 Q: Okay. Best be to start with where do you work?

2 A: City of Florence Police Department.

3 Q: Okay. What do you do there?

4 A: I'm a crime scene technician.

5 Q: How long have you been a crime scene technician?

6 A: Almost six years now.

7 Q: Okay. As part of your responsibilities as a crime scene
8 technician, do you have to analyze suspected marijuana?

9 A: Yes, sir; I do.

10 Q: And what special training have you had in the analysis of
11 marijuana?

12 A: In 2013, after I had been with the crime scene unit for
13 approximately eight months to a year, I went to SLED and took
14 their Marijuana Analysis School, which is a two-day training
15 where they teach in the analysis, what you need do, the
16 processes involved in that and once you're done, you're
17 certified to train that. There are certain types that do not
18 qualify us to train and, in those situations, we would send it
19 to SLED to be tested.

20 Q: Okay. Have you -- have you ever testified before in
21 court as an expert in the area of marijuana analysis?

22 A: Not as an expert, no, sir.

23 Q: Okay. Well, there's a first time for everything.

24 MR. JEPERTINGER: At this time, I would move to have
25 Agent Starling qualified as an expert in the field of

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1 marijuana analysis.

2 THE COURT: Any objections?

3 MR. SUGGS: As long as proper foundation is laid, I
4 wouldn't object.

5 THE COURT: I think that's what he just did.

6 MR. SUGGS: Educational, experience, is that ---

7 THE COURT: You want to go over that?

8 BY MR. JEPERTINGER:

9 Q: Other than the two-day course, what else have you done?

10 A: In the last six years, I've probably tested approximately
11 over a thousand samples of marijuana, if not more, hundreds of
12 cases. I've never, in any situation, had anything that I've
13 had sent to SLED discredit what I have tested or disagreed
14 with my findings. Other than that, it's -- the basic
15 principles of testing marijuana are fairly simple.

16 MR. JEPERTINGER: I would move to have qualified as an
17 expert in the field of marijuana analysis?

18 THE COURT: Any objection?

19 MR. SUGGS: No objection.

20 THE COURT: All right. Go ahead.

21 MR. JEPERTINGER: Okay. He's qualified?

22 THE COURT: He is qualified.

23 MR. JEPERTINGER: Thank you.

24 STATE'S EXHIBIT NUMBERS 60, 62, 63, 64, 65, 66,

25 AND 67 MARKED FOR IDENTIFICATION

1 BY MR. JEPERTINGER:

2 Q: I am going to show you what's been marked, several items
3 here, Item 60, 62, 63, 64, 65, I think this was 66 was
4 included in the box, and 67, can you look at everything and
5 tell us what you got?

6 A: Yes. I'm not sure on some of the number 67 appears to be
7 some type of pills, nothing that I would have ever had any
8 kind of interaction with.

9 Q: Okay. We will not do anything with 67.

10 A: It's possibly -- 66, a container that may have contained
11 some marijuana at some point. However, during my process, I
12 do repackage and seal these. So, it is possible that
13 marijuana was in that; I cannot recall.

14 Q: I'll withdraw 66 out of an abundance of caution.

15 A: I believe all the rest would be samples of suspected
16 marijuana that I received from the evidence room.

17 Q: Okay. Quickly, if you can tell the ladies and gentlemen
18 of the jury, how you determine if something is marijuana or
19 not?

20 A: The basic process is a two-part test. It's a microscopic
21 test and then a chemical test. I use a compound microscope to
22 view the suspected marijuana. There are three different types
23 of characteristics I'm looking for when doing that. They're
24 distinguishable features, which again, the more and more
25 samples you do, the quicker your eye is trained to catch them,

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1 but they are distinguishable features. Once those three are
2 identified through the microscope, the chemical test begins.
3 It is also a three-part test in itself where different
4 chemicals are used and it presents color changes and there are
5 physical properties that change in the chemicals as well.
6 Once I've identified those two identifiers in that chemical
7 test, then that would prompt me to a positive response of THC
8 being involved which would identify the plant as marijuana.

9 Q: All right. And THC is what, please?

10 A: The chemical compound is Tetrahydrocannabinol and that is
11 the psychoactive ingredient or compound that's in marijuana,
12 which causes those psychoactive, you know, issues.

13 Q: Okay. So, you analyzed the substances in the exhibits
14 that I have given you and that have not been withdrawn; is
15 that correct?

16 A: Correct. I had 23 samples on my list. So, it should be
17 all or most of what's here.

18 Q: I'm gonna to show you what's been marked as State's
19 Exhibit 71; can you identify that, please?

20 A: I can. This is my laboratory report and should also be
21 my lab worksheet, which I handwrite while I'm doing my
22 testing.

23 Q: Okay. And that is -- who's the subject in regards to
24 this matter, please?

25 A: Johnny Nickolas Gregg, Jr.

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1 Q: All right. And when did you test the substances?

2 A: On the 27th of February, 2017.

3 Q: Okay. I see a date tested 3/1/17?

4 A: That's the date it's returned to the evidence room after
5 I've tested it.

6 Q: Okay.

7 A: I have three dates. I have a received date, where I do
8 withdraw it from evidence and then I have certain duties and
9 responsibilities that I fall under, so sometimes I have a
10 chance to test it immediately, sometimes I don't. I have a
11 secured evidence locker in our secured crime scene lab where
12 only I have access to. So, once it's logged out, which I did
13 on the 24th of February, on the 27th which would've been the
14 following Monday, the 24th was a Friday. On the following
15 Monday I tested it and then I did not return it until
16 Wednesday the 1st.

17 Q: Okay. And who did you receive the evidence from?

18 A: From Officer Mizell, our Evidence Technician.

19 Q: All right. Now, can you tell the ladies and gentlemen --
20 before we start, I would move your report into evidence.

21 THE COURT: And what number is that?

22 MR. JEPERTINGER: 71.

23 THE COURT: Any objections?

24 MR. SUGGS: Which one; I have two reports?

25 MR. JEPERTINGER: State's 71.

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1 MR. SUGGS: What page?

2 MR. JEPERTINGER: Actually, it's 1, 2, 3, 4 pages. It
3 contains his report and his marijuana analysis worksheet.

4 MR. SUGGS: No objection.

5 THE COURT: 71 is into evidence without objection.

6 STATE'S EXHIBIT NUMBER 71

7 ADMITTED INTO EVIDENCE

8 MR. SUGGS: 71?

9 THE COURT: 71.

10 MR. SUGGS: 71?

11 THE COURT: 71.

12 BY MR. JEPERTINGER:

13 Q: Okay. Very good. Can you tell the ladies and gentlemen
14 of the jury what you found in terms of weight and what you
15 found?

16 A: Upon testing the 23 separate samples, which I collected,
17 based on their packaging, I separate them out into separate
18 samples. I had 23 samples that I identified, tested all 23
19 samples. Based on microscopic and chemical tests, I got
20 positive results for all samples, microscopically and
21 chemically, which led me to find all 23 samples contained THC
22 or were marijuana as suspected. Total weight of the samples
23 was 696.8 grams or 24.57 ounces.

24 Q: All right. Thank you. Please answer any questions that
25 the defense may have for you.

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1 THE COURT: All right. Mr. Suggs?

2 MR. SUGGS: Thank you, Your Honor.

3 CROSS EXAMINATION OF STEPHEN STARLING BY MR. SUGGS:

4 Q: Agent -- just a few questions, Agent Starling. You
5 tested 23 samples?

6 A: Yes, sir.

7 Q: All right. And you have -- you've itemized the samples 1
8 through 23 and have made some comment about the substance, the
9 weight in grams, the weight in ounces, and whether it's
10 positive or negative as it relates to microscopic result,
11 chemical result and final result; is that right?

12 A: Yes, sir.

13 Q: All right. And out of the 23 samples that you tested, I
14 believe you said it added up to 696.8 grams?

15 A: Yes, sir.

16 Q: Okay. And just to educate us all, there are 28 grams in
17 an ounce; is that right?

18 A: Yes, sir.

19 Q: Okay. And there are 16 ounces in a pound; is that right?

20 A: Yes, sir.

21 Q: Okay. So, in these 23 samples, 24.57 ounces is just --
22 just a little bit more than a pound and a half; is that right?

23 A: Approximately.

24 Q: That's about right, isn't it? And where do these names
25 come from, Big Bubba Diesel, Indoor Blue Dream, Speak Cush,

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1 Bubba Cush, Cheese OG, Super Sour Diesel, Purple Dream?

2 A: Some fun ones.

3 Q: Are these common street names for these items?

4 A: From my experience in testing, that is what we commonly
5 come across is street names, what they consider different
6 types and potencies and flavors of marijuana.

7 Q: All right. So, if you were to give this to a 16-year-old
8 boy, he might test it a little different than you; is that
9 right?

10 A: He might; I don't know the boy.

11 MR. SUGGS: Nothing further, Your Honor.

12 THE COURT: All right. Anything further?

13 MR. JEPERTINGER: Thank you, Judge, that will be it for
14 Officer Starling and ask if he could be excused from his
15 subpoena?

16 MR. SUGGS: No objection.

17 THE COURT: All right. You have a good day. You want a
18 break at this point?

19 MR. JEPERTINGER: Yeah, the next witness might be longer.

20 THE COURT: Members of the jury, you are excused until
21 9:30 in the morning. As I've told you before, when you get
22 home, everybody is gonna ask you what did you do, what kind of
23 case you on, what's it about; tell them you can't talk about
24 it until it's over and don't talk about it among yourselves.

25 Everybody else remain seated and you are excused and be

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1 back at 9:30.

2 (REPORTER'S NOTE: Jury exits courtroom @ 4:40 P.M.)

3 THE COURT: We'll see you back at 9:30 in the morning.

4 MR. SUGGS: Thank you, Judge.

5 THE COURT: Thank you.

6 **RECESS - 4:40 P.M. - END OF DAY ONE**

7 *****OFF THE RECORD*****

8 **APRIL 17, 2018 - DAY TWO**

9 **(On the Record - 9:52 A.M.)**

10 THE COURT: State ready?

11 MR. JEPERTINGER: State's ready, Your Honor.

12 THE COURT: Defense ready?

13 MR. SUGGS: Yes, sir, Judge.

14 THE COURT: Thank you. Let's go ahead and bring in the
15 jury.

16 (REPORTER'S NOTE: Jury enters courtroom - 9:54 A.M.)

17 THE COURT: All right. The state will call your next
18 witness.

19 MR. JEPERTINGER: Yes, sir, if it would please the Court,
20 the state would call Agent Lynn Black from SLED.

21 CLERK: Ma'am, if you'll step around and place your left
22 hand on the Bible and raise your right hand.

23 LYNN BLACK, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated and state your full name for the

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1 record.

2 MS. BLACK: My name is Lynn Black.

3 DIRECT EXAMINATION OF LYNN BLACK BY MR. JEPERTINGER:

4 Q: By whom are you employed?

5 A: I work in the Forensic Services Laboratory at the South
6 Carolina Law Enforcement Division commonly known as SLED.

7 Q: How long have you worked for SLED?

8 A: I've worked there approximately nine and a half years.

9 Q: Okay. What are your responsibilities at the Forensics
10 Division of SLED?

11 A: I'm a drug chemist and I routinely receive and analyze
12 substances brought in by law enforcement personnel and I
13 determine whether they are controlled substances or not.

14 Q: Okay. Do you have any specialized training in terms of
15 being able to do your job?

16 A: Yes, I have successfully completed training at SLED.
17 Also before I worked at SLED, I worked for the Georgia Bureau
18 of Investigation in Atlanta, Georgia for about eight years and
19 I received training in drug analysis there as well.

20 Q: Educational background?

21 A: Educational background, I have a Bachelor of Science
22 Degree in Chemistry from Kentucky Wesleyan College, a
23 Certificate of Medical Technology from the University of
24 Louisville, and a Master of Science Degree in Forensic Science
25 from Marshall University.

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1 Q: Okay. And have you ever been qualified as an expert
2 before?

3 A: Yes, I have.

4 Q: In what -- in which field, ma'am?

5 A: Drug chemistry.

6 Q: Okay. And you've testified before in Court obviously?

7 A: Yes, sir.

8 Q: At this time, I would move Agent Black as an expert in
9 the field of drug analysis?

10 THE COURT: Mr. Suggs?

11 MR. SUGGS: We don't have any objection and, in fact, we
12 were going to stipulate to that, Your Honor.

13 THE COURT: Your motion is granted.

14 MR. JEPERTINGER: All right.

15 BY MR. JEPERTINGER:

16 Q: I'm going to show you what's been marked for
17 identification as State's Exhibit Number 59. Can you tell us
18 how you got a hold of this whole package, please?

19 A: The piece of evidence that I received in this case and I
20 recognize it by this barcode, which is a unique crime lab case
21 number that was assigned to this case when it was received in.
22 And typically how evidence or at least drug evidence is
23 received at SLED, SLED has come up with a way to streamline
24 drug evidence submissions and they've come up with something
25 called a BEST kit and BEST is an acronym for Best Evidence

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1 Sample Testing, and what it is is a manila envelope that has a
2 tamper evidence bag inside and then all the paperwork that the
3 law enforcement agency needs to fill out to submit that drug
4 evidence. And so, they will place the evidence in the tamper-
5 evident bag, seal it up, fill out the paperwork. They usually
6 put that all back in the manila envelope and they -- and also
7 in the manila envelope and the tamper-evident bag is a barcode
8 that is called a BEST number. It just starts with a B and has
9 like, I believe, it's 7, 6 or 7 different numbers on it and
10 that's a way to track that evidence for them. And then also,
11 so, they will submit all of that to our Evidence Control
12 Department and a forensic technician in that department will
13 either -- they either submit it in a locker or in person;
14 they'll give it to the actual forensic technician and that
15 person will log in the information into our computer system
16 and that's where they'll generate this unique crime lab case
17 number that's assigned to it and it's got a bar code with it.

18 So, then the forensic technician will take that bar code
19 and scan that bar code to themselves. Then when we look in
20 the computer system, you can see that this piece of evidence
21 is in their custody. So, once they do that, then they'll put
22 it back in the vault in a special section and they'll scan it
23 to that place in the vault so then they know where it is and
24 they can retrieve it. So, this bar code system is how we keep
25 track of evidence at SLED; it's our chain of custody.

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1 So, when I'm ready to come down and get some evidence, I'll
2 come down and get a box of evidence and they'll scan each
3 piece to me. So, then in then in the computer system, that
4 piece of evidence will show that it's in my custody and I
5 usually take it upstairs and we have a vault in the drug
6 department and that's where I will keep my evidence until I'm
7 ready to test it.

8 Q: Specifically, in this case, based on the chain of
9 custody, who brought it in from the Florence Police
10 Department?

11 A: If I may refer to my records here, according to that,
12 Frank Mizell of the Florence Police Department brought it in
13 on January 26th of 2017 and do you need to know who he gave
14 that to?

15 Q: Please, I think you've explained it generally, but if you
16 could ---

17 A: Right. So, he brought it in as I said on January 26th,
18 2017, and Doris Yarbrough logged it in and then it was placed
19 into the vault in the intake -- drug evidence intake storage
20 area and then Forensic Technician Jackie Davis on February
21 15th of 2017 retrieved it and then scanned it to me.

22 Q: Okay. And when you received that particular piece of
23 evidence and I think it's number, State's Exhibit 59 and you
24 received -- did you see any evidence of tampering whatsoever
25 in terms of any of that, that the bag had been broken into or

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1 ripped or torn or anything?

2 A: No, sir. The seal was intact and it had not been
3 tampered with when I received it.

4 Q: All right. Now, when you gave one of these drug evidence
5 -- kind of walk through the jury through, if you can,
6 especially -- specifically in regards to State's Exhibit 59,
7 what did you do?

8 A: In this particular case, when I received it, I, like I
9 said, I took it upstairs and I'll refer to my notes for that.
10 Yes, I did not immediately test it. I took it and placed it
11 in the drug vault and then later on in March, specifically
12 March 12th, I took it out of the vault and then that's when I
13 did my analysis. And typically, what I'll do is I'll do a
14 batch of cases at once. I will take, but I would only open
15 one piece of evidence at the time. So, I opened this one and
16 generally, with one that has so many -- this one has multiple
17 items and so I will kind of take an inventory of the items and
18 depending on how many suspects or, or some of the
19 circumstances of the case that I can tell from the paperwork
20 that I receive, then I would determine what I'm going to test.

21 So, in this particular case, I believe, you know, do you
22 want me to go ahead and specifically ---

23 Q: Just specifically tell the jury what you found in terms
24 of your analysis?

25 A: Okay.

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1 MR. SUGGS: Your Honor, excuse me. I don't mean to
2 interrupt, this podium is kind of in the way. I can hear a
3 little bit, but I can't see the witness.

4 THE COURT: Can you move that podium?

5 CLERK: It doesn't move.

6 THE COURT: It doesn't move. How about that.

7 MR. SUGGS: It's got wheels on it.

8 CLERK: It doesn't move but that far.

9 MR. SUGGS: Okay.

10 THE COURT: If you would like to move so you can see, you
11 do whatever you need to do.

12 MR. SUGGS: Thank you, Judge. I'm sorry to interrupt.

13 THE COURT: No problem.

14 BY MR. JEPERTINGER:

15 Q: Okay.

16 MR. SUGGS: Can I sit right here?

17 MR. JEPERTINGER: Absolutely.

18 BY MR. JEPERTINGER:

19 Q: All right. Now, specifically, seriously, ma'am, what --
20 tell us about your analysis and how you kind of broke this all
21 down because I know there were a lot of, I think you said
22 there were a lot of substances in State's Exhibit 59?

23 A: Correct.

24 Q: Yes, ma'am, go ahead.

25 A: So -- so, the first piece of evidence that I wrote down

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1 about was a Ziploc bag that had a plastic bag with 358 white
2 tablets. Those I took out, I had to count them and then I
3 took a part of one for analysis and I performed gas
4 chromatography mass spectrometry on that and that's GCMS for
5 short because those other words are a mouthful. Also, we also
6 for tablets like that that are pharmaceutical kind of tablets,
7 we have published literature that we can look up and compare
8 markings on them. These had specific markings on them and we
9 compare that to published literature, which will also help us
10 in identifying what the substance is and the one that I
11 tested, I found to have Alprazolam, which is C-4 substance.

12 Q: Now, C-4 is another word for Schedule IV?

13 A: That's correct.

14 Q: Under the drug control statute?

15 A: Yes, sir.

16 Q: Okay. Now, Alprazolam has, I guess, a common name in
17 everyday usage and I think you ---

18 A: That's correct, it's Xanax, maybe y'all are familiar with
19 it. It's a common drug that's prescribed for anxiety or
20 sometimes sleep. It just depends on, you know, what the
21 doctor is looking to help you with, but it's a very commonly
22 abused drug as well.

23 Q: Okay. So, you found 358 tablets in that first one; is
24 that correct?

25 A: That's correct.

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1 Q: Okay. What else did you find?

2 A: There's also an orange plastic bottle, which is, you
3 know, like a prescription bottle. It contained 20 white
4 tablets and actually had the same markings as the first one.
5 So, since I had already had 358 of the same tablets, the
6 second item, I just indicated, which per our policy at SLED,
7 we're able to just say that things are -- that based on the
8 pharmaceutical markings and the published literature that we
9 can reference, that we would just indicate that that's
10 Alprazolam. We did not test it, so it's not got confirmation
11 on that one.

12 The third item had several things in it. I broke them
13 down into three different -- excuse me, well actually more
14 than that. It got broke down into various components and I'll
15 just go through them one by one, I suppose. There were three
16 clear plastic bags that contained powder substance in that
17 item, I ended up finding cocaine, which is a C-2, Schedule II.
18 That net weight was 6.66 grams. I tested only one of those
19 bags. Again, because the other two, the net weight of those
20 two together was not gonna bring it up to a weight that was
21 gonna be over some statutory threshold, which is a weight that
22 is in the law that we are -- that we either need to be over or
23 just under depending on what the substance is and how much we
24 have. So, I only needed to test one, because I had 6.6 grams
25 of that.

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1 Q: Let me stop you one second.

2 A: Certainly.

3 Q: You mentioned cocaine and I know there may be something
4 else here that you found later, but I don't want to steal your
5 thunder.

6 A: Certainly.

7 Q: What is the difference between cocaine and crack cocaine?

8 A: Well, cocaine is really the -- the hydrochloride, it's
9 the, the soft version of cocaine. It's the -- it's the kind
10 of cocaine that they get straight from cocoa leaves when
11 they're making -- when they're doing the production of it and
12 it's the kind that people will snort or they will also inject.

13 Now, crack, on the other hand, is also called cocaine
14 base. So, it's the basic form of cocaine and it's the kind
15 that people smoke. It's a hard, that's what they call it
16 crack, well, that's one of the reasons, also because when they
17 make it, it makes a crackling sound, but it's a hard substance
18 and so, you can't snort it and you can't really inject it, but
19 it's the smokeable form of cocaine.

20 Q: If you know this, do you know what maybe any household
21 items that you can use to make from cocaine to crack cocaine?

22 A: Yes, sir. Generally, they use baking soda. They'll put
23 the cocaine like in a pot or something on the stove with some
24 water and they throw some baking soda in it and that -- that
25 baking soda causes the -- baking soda is a basic compound and

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1 so it will make the cocaine turn into the basic form of
2 cocaine, which is crack.

3 Q: Thank you. Thank you for taking time to explain that.
4 Will you go on to your next finding, I think you just said
5 cocaine 6.66 grams?

6 A: That's correct.

7 Q: And go on to the next item?

8 A: The next item was five white plastic bags that contained
9 powder substance. And in this one I found furanylfentanyl,
10 which is a Schedule I. The net weight of that was less than
11 0.10 grams. And again, I only tested one of those
12 furanylfentanyl does not have any weight threshold at all.
13 So, it doesn't really matter how much you have, just having a
14 little bit of it is -- one bag was enough for me to test. The
15 remaining substance had a gross weight of 0.52 grams.

16 Q: Are you aware if people that, I guess, in the illegal
17 drug business, do they mix fural -- I'm not pronouncing it
18 correctly?

19 A: Furanylfentanyl.

20 Q: Furanylfentanyl, do they mix that with anything normally
21 that you've seen?

22 A: I have seen that. I have seen it with cocaine, I've seen
23 it with heroin, I've seen it with methamphetamine, it's --
24 they just mix it with a lot of things. It's -- I don't see it
25 by itself as often. So, yeah, this is kind of unusual for me

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1 to see that.

2 Q: Okay.

3 A: The next item was just a Ziploc bag that had powder
4 substance and again furanylfentanyl was found. This one
5 weighed 0.64 grams.

6 The next item was a plastic bag containing a rock
7 substance. And this one, excuse me, came back to be cocaine
8 base, also known as crack. The net weight of this was 4.01
9 grams.

10 Also in the next item was just rock substance. It was a
11 plastic bag that contained that first plastic bag with the
12 rock substance, but it also contained just loose rock
13 substance, which again, as I said like before, I did not need
14 to test that. I had already met a threshold, a weight
15 threshold. So, based on that, the item was not -- I did not
16 do a confirmatory test, but it was -- it did give the same
17 indicative test that the crack from the item before did.

18 Q: Okay. Then what did you analyze?

19 A: Then another bag, a Ziploc bag contained a plastic bag
20 with 11 whole pink tablets, tablet fragments, and powder
21 substance. And I tested one of these tablets and it came back
22 to be, the short name is MDMA, which Ecstasy, maybe some of
23 y'all maybe have heard of that. The big chemical name is 3,
24 4-methylenedioxy-methamphetamine. Another street name they
25 call it is Molly these days. It -- it's a stimulate, kind of

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1 an hallucinogen. It was really big with RAVE parties back,
2 probably back in the 90s or early 2000s, yeah. This had a
3 weight, net weight of 4.96 grams.

4 Q: Did you find anything else in that sample?

5 A: Thank you. I did not read the next one. It also had
6 methamphetamine in it as well. So, both MDMA and
7 methamphetamine were found in these pink tablets.

8 Q: All right.

9 A: The next item was three Ziploc bags that contained powder
10 substance. This time I found heroin, which is a Schedule I.
11 The total net weight was 24.15 grams. And also another Ziploc
12 bag that had three glassine bags and that's basically kind of
13 like a little wax packet, that's what we mean by glassine, and
14 that contained powder substance and again, I found heroin,
15 Schedule I, and I tested all three of those and the total net
16 weight was 0.084 grams.

17 Let's see. Then I have, had a Ziploc bag that contained
18 a compressed powder substance, but I found no controlled
19 substance in that one.

20 Another item had four glassine bags, those little wax
21 packets kind of description that contained a powder substance
22 and again, I found furanylfentanyl, again the Schedule I drug
23 with the net weight was 0.064 grams. I tested one bag and
24 then the remaining three bags, the gross weight was 0.621
25 grams.

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1 Then I had two pieces of folded wax paper that contained
2 a dark brown tacky substance. This contained heroin, Schedule
3 I. The net weight was 0.080 grams. I tested one of those.
4 The net weight of the remaining substance was 0.063 grams.
5 Again, I didn't test the second part because I had already met
6 the weight threshold.

7 Finally, the last item was a plastic bag containing
8 powder substance and I found heroin, Schedule I, and
9 furanylfentanyl, Schedule I as well. The net weight of this
10 one was 0.59 grams.

11 Q: I think you discussed this before, that it is not
12 uncommon to mix furanylfentanyl, I guess with heroin, cocaine,
13 crack?

14 A: Correct. That's correct.

15 Q: Is that what may be referred to on the street as a cut or
16 something you cut the drugs with?

17 A: When -- when you -- when you have two different schedule
18 drugs together, I don't -- I don't normally think of that as a
19 cut. When I think of a cutting agent, I think of something
20 that's added to the drug just to help give it bulk and stuff
21 and it might be something like even sugar, flour. I've seen
22 that. I've seen, you know, over the counter drugs, you know
23 aspirin, acetaminophen, even dextromethorphan, different
24 things like that. But generally, when you have two Schedule I
25 drugs, I don't know. I don't consider that a cutting agent,

1 but ---

2 Q: Okay.

3 A: --- they may think of that as that.

4 Q: What would the effect, if you know, what the effect of
5 mixing furanylfentanyl and heroin?

6 A: It would be a deadly combination from what I understand,
7 from what I've read and studies I've looked at.
8 Furanylfentanyl is many times more potent than heroin and
9 furanylfentanyl is like a derivative of fentanyl, which is,
10 fentanyl, some of y'all may know, that it is a product that is
11 used, you know, in medicine. It's usually a patch that people
12 have on their arm; it's for pain killing. But furanylfentanyl
13 is -- is much more potent than that. It can get in the blood
14 stream, from studies that I've read, so much faster, so it's
15 very dangerous, and to combine that with heroin, I think that
16 would be a very dangerous combination.

17 Q: All right. Now, you -- you prepared a report in this
18 case, did you not?

19 A: Yes, sir.

20 Q: I'm going to show you State's Exhibit 72 and see if --
21 for identification. Is that the report that you prepared in
22 this case?

23 A: I'm comparing it to the report I brought with me. So,
24 give me a second. Yes, that looks to be a copy of the report
25 that I generated, yes.

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1 MR. JEPERTINGER: I would move State's Exhibit 72 into
2 evidence? I provided a copy to the defense attorney.

3 THE COURT: Any objections?

4 MR. SUGGS: May I see it to be sure?

5 MR. JEPERTINGER: You may.

6 MR. SUGGS: Without objection, Your Honor.

7 THE COURT: 72, State's is in evidence without objection.

8 STATE'S EXHIBIT NUMBER 72

9 ADMITTED INTO EVIDENCE

10 BY MR. JEPERTINGER:

11 Q: And finally, all the analysis that you did on the
12 substances, are they to a reasonable degree of chemical
13 certainty?

14 A: Yes, sir, they are. The procedures and techniques that I
15 used are -- have been deemed reliable in the forensic
16 community and, you know, I stand behind them.

17 Q: Thank you so much. Answer any questions that the defense
18 attorney may have for you.

19 MR. SUGGS: Good morning, ladies and gentlemen.

20 CROSS EXAMINATION OF LYNN BLACK BY MR. SUGGS:

21 Q: Good morning, Dr. Black?

22 A: Good morning, but doctor is not my title. Thank you.

23 Q: Okay. What is your title?

24 A: Just Ms. Black is fine.

25 Q: Could you be like Agent Black or is that appropriate?

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1 A: I'm sort of an agent, but that's not really what I go by
2 either, just Ms. Black will be just fine.
3 Q: Okay. All right. And you do work for SLED?
4 A: That is correct.
5 Q: South Carolina Law Enforcement Division?
6 A: Yes, sir.
7 Q: Do you have a particular rank?
8 A: I'm just a forensic chemist.
9 Q: You're not in the law enforcement part of SLED, but in
10 the -- in the forensic analysis part of SLED?
11 A: That's correct.
12 Q: Okay. Do you wear a sidearm?
13 A: No, sir.
14 Q: You went to school to train with a firearm and that sort
15 of thing; is that right?
16 A: No, sir.
17 Q: That wasn't required?
18 A: No, sir. Not when I came on board at SLED, no; they had
19 stopped that.
20 Q: You didn't have to run through the tires?
21 A: No, sir, thankfully.
22 Q: All right. Thank you. Now, just to be -- just so I
23 understand and the jury does, too, what's been marked as
24 State's Exhibit Number 72 is a copy of your report analyzing
25 all the items contained in State's Exhibit 59?

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1 A: I believe so. I don't have that exhibit up here, but I
2 think that's the number he gave -- is it over there?
3 Q: Was there a box that all that came in, which was marked
4 59; do you know?
5 A: No, sir, this came -- it came in a BEST kit. So, this is
6 the tamper-evident bag that it came in is actually this bag
7 that's inside here. And, once I'm done with my analysis, I
8 placed in this bigger bag, which is called a KPAK. It's just
9 what the manufacturer calls it.
10 Q: All right.
11 A: This is what I placed it in.
12 Q: So, let's just move all of this out of the way for just a
13 second and that way we won't get mixed up. So, everything --
14 may I see that?
15 A: Sure.
16 Q: Everything that's in this BEST pack?
17 A: BEST kit.
18 Q: BEST kit that's marked State's Exhibit Number 59 is also
19 everything that you included in your report, which is marked
20 State's Exhibit 72?
21 A: Correct.
22 Q: Now, you testified that there is no point or reason to
23 test every single item that's presented to you; is that right?
24 In other words, if you get a batch of things like the 358
25 white tablets, it would not be necessary to test every single

1 tablet; is that right?

2 A: That's correct. Per our policy at SLED, we've -- it's
3 based on historical data over the years prior to when I came
4 there that, you know, testing one, when they all look the same
5 is sufficient.

6 Q: Well, that would take a lot of time if you had to test
7 every one, wouldn't it?

8 A: It certainly would and a lot of resources. So ---

9 Q: So, the -- do you have your report in front of you?

10 A: I do.

11 Q: Good. So, the Ziploc bag which contained 358 white
12 tablets, you have marked that as Item 1.1 on your report?

13 A: Yes, sir.

14 Q: Okay. And you testified that out of the 358 of those
15 white tablets, you only tested a portion of one of those?

16 A: Correct.

17 Q: Okay. And your conclusion that all 358 of the white
18 tablets were Xanax based upon your testing of one of those 358
19 or a portion of one of those 358?

20 A: And based on the fact that they all had the same
21 markings, same color, that as well.

22 Q: Sure. Okay. Well, you've run across in your testing in
23 the past, haven't you, counterfeit drugs, counterfeit
24 substances, whether it be in the form of pills or marijuana or
25 base or powder?

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1 A: Yes, sir.

2 Q: Okay. I don't have to go through the list, but you've
3 come across counterfeit drugs in the past?

4 A: Yes, I have.

5 Q: All right. And so, again, testing all 358 would be an
6 enormous amount of time and take up a lot of resources, so
7 your conclusion that all 358 of the pills from Item 1.1 were
8 Xanax; is that right?

9 A: That's correct.

10 Q: All right. And counterfeit pills, when you run across
11 those, it's -- it's fair to say, isn't it, that if someone is
12 going to market and try to sell a counterfeit pill to someone,
13 it would make sense for them to try to make that pill look as
14 close to the real thing as possible; is that right?

15 A: That's correct.

16 Q: So, in terms of color and size and in shape and any kind
17 of markings, if I were to sell you, want to sell you
18 counterfeit Xanax, it probably would be a good idea to make it
19 look as real as possible?

20 A: That's correct.

21 Q: Okay. Now, Item 1.2 on your report was an individual
22 orange plastic bottle containing 20 white tablets and your
23 testimony was that they were similar the pills in Item 1.1?

24 A: That's correct.

25 Q: Okay. So, you only tested one of the items in that 20 or

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1 not?

2 A: No, I did not.

3 Q: So, that wasn't even tested?

4 A: Correct.

5 Q: Okay. And when -- when you say you test a portion of one
6 tablet, how -- how much portion was necessary to -- for you to
7 obtain in order to get an accurate test?

8 A: It depends on the tablet. For Alprazolam tablets, these
9 are generally, this particular one is about 2 milligrams of
10 Alprazolam in that tablet. So, I'll take half of it; that's
11 my general practice. So, some people take more, some people
12 take less, but for me, I take about half the tablet. You
13 know, but like I said, it depends on what the dosage is of
14 that compound that I'm looking for. So ---

15 Q: All right. Were these a specific milligram?

16 A: Yes, sir, like I said, these Xanax, they're marked Xanax
17 on one side and has the number 2 on the other and that 2
18 generally represents the milligrams that it is. So, 2
19 milligrams of Alprazolam in that tablet.

20 Q: All right. In terms of dosage, maybe from a physician,
21 is a dosage of 2 milligrams, is that -- is that a lot of that
22 particular drug or not?

23 A: I really don't know. I've not had any personal
24 experience and I, you know, am not a pharmacist nor a doctor.

25 Q: Okay. So, you wouldn't be able to testify what --

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1 whether 2 milligrams is sufficient to put somebody to sleep or
2 -- or whatever it would do?
3 A: No, sir. No, sir.
4 Q: All right. So, the 20 tablets that were in Item 1.2,
5 were they -- were they dumped in the same bag as Item 1.1?
6 A: No, sir. I believe that they are still in the -- they're
7 still in ---
8 Q: Orange ---
9 A: --- the orange plastic bottle; yes, sir.
10 Q: So, we're talking 378 tablets total; is that right?
11 A: Yes, sir.
12 Q: And out of the 378, you tested a portion of one?
13 A: That's correct.
14 Q: And do you get the portion by breaking or do you shave
15 some of it with a tool; how do you get the sample?
16 A: I break it in half.
17 Q: Just snap it?
18 A: Uh-huh, (affirmative response).
19 Q: All right. Is that a yes?
20 A: Yes, sir.
21 Q: Are these people scored?
22 A: Yes, sir.
23 Q: So, when a pill is scored, it indicates generally that
24 they're intended to be broken in half, which make it easier
25 for the consumer to break it in half?

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1 A: Correct.

2 Q: Now, moving on to Item 1.3. You just have a Ziploc bag
3 containing and then you dot, dot, dot all the items under that
4 .1, .2, .3, .4 -- excuse me -- 1.31, 1.32, 1.33 were all part
5 of Item 1.3?

6 A: That's correct.

7 Q: Thank you. Now, in Item 1.3, there were three separate
8 items. The first 1.3.1 contained three clear plastic bags
9 containing a powder substance. You only tested one of -- you
10 only took a sample out of one of those three bags?

11 A: That's correct.

12 Q: And again, how much of the sample would you take from the
13 bag that -- well, how much of a sample would you need to
14 conduct the test for cocaine?

15 A: You don't need very much at all. You know, a few grains
16 really to get enough for the instrument to respond. You don't
17 want to overload it, so I just take a very small portion.
18 It's a representative sample of, you know, the entire bag.
19 So, that's plenty to do.

20 Q: Okay. And out of the three plastic bags that were part
21 of 1.3.1, the sample that you took came out of the bag that
22 weighed how much?

23 A: 6.6 grams.

24 Q: Okay. So, the sample that you analyzed came from one of
25 the three bags, and that particular bag had contents 6.66?

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- 1 A: Correct.
- 2 Q: Okay. The other two bags were not weighed?
- 3 A: They were. I have a net weight of both of them together
- 4 on here, 1.16 grams.
- 5 Q: Well, I see 6.66 +/- something; what does that mean?
- 6 A: That is the measurement uncertainty. In all
- 7 measurements, there's some uncertainty. Even, you know, with
- 8 a ruler, with a balance, even like your odometer of your car.
- 9 You know, if you drive a mile and your odometer says you went
- 10 a mile, did you really go exactly a mile? You know, there's
- 11 some uncertainty there. So, as in that, there's such a thing
- 12 in weighing, too. So, we've determined at SLED, for the
- 13 balances that we use, that our uncertainty is plus or minus
- 14 0.01 grams. So, that means that the weight, the actual weight
- 15 of the substance could be like for instance in this case, I've
- 16 got -- the weight that I got was 6.66 grams. So, it actually
- 17 could be 6.67 or it could be as low as 6.65. So, that's -- it
- 18 gives you a range so the actual true weight is probably
- 19 somewhere in there, but the weight that I got when I placed
- 20 the substance on the balance was 6.6 grams.
- 21 Q: Okay. Thank you for explaining that. So, the samples,
- 22 the other two bags weren't tested, but the -- the one bag that
- 23 was tested had 6.66 +/- a hundredth of a gram?
- 24 A: Correct.
- 25 Q: Okay. Now, Item 1.3.2, again, running into the same

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1 scenario, we have five white plastic bags and your testimony
2 was again that with five bags, you would just simply test a
3 portion of one of the bags?

4 A: That's correct, because this item or this substance does
5 not have a weight threshold. So, the weight is not a -- not a
6 concern according, you know, per our policy at SLED.

7 Q: But for -- for our purposes here today of the five bags,
8 is there -- is there test that you used to determine which one
9 of those five bags to test. Is just I'll just pick this one
10 or I'll pick the one with the most in it or the one with the
11 least in it or how do you go about doing that?

12 A: I generally try to find the one with the most in it.
13 Sometimes you can't really tell if they're, you know, if the
14 packaging is very similar and the amount looks the same. But,
15 you know, like the one before that, the cocaine, I definitely
16 picked the larger bag that had more. In this one, I think
17 they probably weighed very similarly. So, I just picked
18 whichever one.

19 Q: All right. And so, out of the five bags, the one bag you
20 did test was less than 0.10 grams?

21 A: Yes, sir.

22 Q: Okay. Moving on to 1.3.3, one -- just one Ziploc bag
23 containing a powder substance, just one bag only?

24 A: Correct. Yeah, that one is distinguished because it's a
25 Ziploc bag. The others were just plastic bags. What we

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1 really call corner bags, but I just call them plastic bags, so
2 -- it just looked different, so it was separated out.

3 Q: You anticipated my follow-up question. So, there's no --
4 with one bag, there's no -- no reason to try to figure out
5 which one to test because you only had one, right?

6 A: Correct.

7 Q: And that net weight was 0.641 +/- one hundredth of a
8 gram?

9 A: Yes, sir.

10 Q: All right. Now, in Item 1.3.4, you have two samples that
11 are under that particular item; is that right?

12 A: Yes, sir.

13 Q: All right. And 1.3.4.1, again, just one plastic bag?

14 A: Yes, sir.

15 Q: Okay. And so, you took a small amount from that and
16 determined the weight to be just about 4 grams?

17 A: Yeah, 4.01 grams.

18 Q: All right. And that was, you testified to be cocaine
19 base or crack?

20 A: Yes, sir.

21 Q: Now, when -- when you mentioned the Fentanyl, F-E-N-T-A-
22 N-Y-L, there's a word before it furanyl, if I'm pronouncing it
23 right, F-U-R-A-N-Y-L; is that the entire name for that
24 particular substance or is that -- is that two different names
25 for the same thing; what does that mean?

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- 1 A: That is the name of the substance, furanyl, furanyl,
2 different ways to say it, but furanylfentanyl is, you know,
3 that is the substance. You know, that's the whole name for
4 it; yes, sir.
- 5 Q: Okay. And that's not a product that you just buy in the
6 grocery store, is it?
- 7 A: No, sir, it's a synthetically made substance, from what
8 I've read, DEA claims that -- that this stuff is coming from
9 China, that they're mass producing the stuff and somehow it
10 gets over here and into our, you know, the drug system here.
- 11 Q: Is it a powder form?
- 12 A: That's how I have found it, yes, sir.
- 13 Q: White, off-white?
- 14 A: It's various colors. I'm not sure what color this one
15 was. I can look and see if I've got any notes. Yeah, this
16 was a fine white powder, but I've seen it, you know, gray,
17 tan, you know, when it's mixed with other things, it's just
18 hard to say.
- 19 Q: All right. Well, help me a minute. When you say
20 synthetic, that would be something as opposed to something
21 that's natural?
- 22 A: Correct.
- 23 Q: So, synthetic is something that's manmade?
- 24 A: Yes, sir.
- 25 Q: And it's manmade from a, a natural product?

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1 A: Manmade from chemicals that -- that -- that are produced
2 in factories or somebody's backyard lab or something, but,
3 yeah, I don't know that the very original components would be
4 something natural, but I know, you know, to get to that actual
5 furanylfentanyl, you know, you're using stuff that people have
6 made.

7 Q: All right. And it's something that -- that has a medical
8 usage; is that right?

9 A: Furanylfentanyl does not, no. It's a Schedule I.
10 Schedule I drugs have no current medicinal value or, yeah,
11 medicinal value and they are highly addictive sorts of things,
12 so, you know, but furanylfentanyl -- now, fentanyl, like I
13 said before, is it's a C-2, it's a Schedule II drug, so it
14 does have medicinal value. Like I said, it's used in patches
15 for pain killers. Furanylfentanyl is a derivative of that.
16 It's fentanyl with extra things on it and it makes it more
17 potent and more dangerous and there is no current medicinal
18 value, you know, or use for it.

19 Q: All right. That cleared up a lot for me. So, fentanyl
20 is -- does have medical usage as a pain killer?

21 A: Correct.

22 Q: And it's used by doctors and -- and prescribed by doctors
23 through pharmacists who can dispense this?

24 A: Yes.

25 Q: All right. And it is found in patches where folks can

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1 where those for ---
2 A: Correct.
3 Q: --- for pain or relief of pain?
4 A: Yes, sir.
5 Q: And it -- the body would absorb it over a period of time;
6 is that right?
7 A: That's right.
8 Q: All right. Now, when you say furanylfentanyl, that's the
9 natural, excuse me, the -- the medically recognized substance
10 with something else mixed in that's not medically approved?
11 A: It's a -- it's a derivative or analog, it's just, you
12 know, the fentanyl compound with other things attached to it
13 that makes it a different compound that they call
14 furanylfentanyl. So, it -- it's similar to, but still totally
15 different than fentanyl.
16 Q: What would be the compounds mixed in this particular case
17 under Item 1.3.3 with the medically recognized fentanyl?
18 A: I'm not sure I understand your question, can you ---
19 Q: Well, you see 1.3.3?
20 A: Yes, sir.
21 Q: Okay. And it says furanylfentanyl?
22 A: Correct.
23 Q: Okay. I guess what I'm saying is the first part of that
24 word is no medical recognized use. The second part of that
25 word medically recognized usage. What is in the first word --

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1 the first word, what is in that, that's mixed with the
2 fentanyl, which makes it medically not a product to use?
3 A: I do not know the specific structure of furanylfentanyl
4 and what, you know, fentanyl -- so, I don't know exactly what
5 has been added to fentanyl to make furanylfentanyl, but I just
6 know that when this was -- when I ran this substance, we have
7 published literature, we have libraries that are -- that would
8 show -- show to me that this substance was furanylfentanyl and
9 not just plain fentanyl. So, based on my instrumental data
10 and also a chemical color test, you know, I'm confident that
11 that is furanylfentanyl and not fentanyl.
12 Q: All right. So, it's your testimony then that -- that
13 what you tested in 1.3.3 was not one hundred percent medically
14 recognized fentanyl, but has something else in it, you don't
15 know what it is that makes it illegal?
16 MR. JEPERTINGER: Judge, I think she's asked ---
17 THE COURT: Sustained.
18 MR. JEPERTINGER: It's been asked and answered, Judge.
19 THE COURT: I agree, many times.
20 MR. SUGGS: All right, Judge, I'll move on.
21 BY MR. SUGGS:
22 Q: We touched on, I believe, 1.3.4.1 already, have we not?
23 A: Yes, sir.
24 Q: All right. Now, 1.3.4.2, that was not in any sort of
25 container or was that the material that was in a bag within a

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1 bag that you testified to earlier?

2 A: Yes. Yeah, it gets a little convoluted with all of these
3 points.

4 Q: Yes, it does.

5 A: Because the original bag, which was Item 1.3, that was a
6 Ziploc bag containing, and as you said dot, dot, dot. So, it
7 had inside of it, three plastic bags with powder substance and
8 it had the five plastic bags with powder substance. The first
9 three were cocaine, the five were furanylfentanyl, and then it
10 had the Ziploc bag with powder substance that was
11 furanylfentanyl. So, the fourth bag in the original Ziploc
12 bag was the plastic bag, again, containing dot, dot, dot, and
13 so, inside that plastic bag, there was another plastic bag
14 with the rock substance, which we already referred to as
15 crack, and then in that plastic bag also was just loose rock
16 substance. So, it was a bag that had a bag with rock
17 substance and it also had loose rock substance. So, we
18 distinguished that the bag that had rock substance did not --
19 was not opened, it was not leaking, so I did not attribute the
20 loose stuff to that bag. So, that's why it is separated out.
21 It's very confusing. If you could see the report, it would
22 make a lot more sense, but, yeah, it was just loose rock
23 substance.

24 Q: And it was not tested?

25 A: It was not tested. I did a preliminary test or an

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1 indicative test, but not a confirmatory test.

2 Q: Yes, ma'am.

3 Now, on Page 3 of your report, Item 1.4 contained 11
4 whole pink tablets, tablet fragments, and powder substance; do
5 you see that?

6 A: Yes, sir.

7 Q: All right. Now, out of the 11 pink tablets, again we
8 only tested one of those 11?

9 A: That's correct.

10 Q: All right. And so, no point testing the other 10,
11 correct?

12 A: The statutory weight threshold had already been met. So,
13 no.

14 Q: Do those contain markings on them as well?

15 A: I don't believe they did. If I may refer to my notes, I
16 can ---

17 Q: Yes, ma'am.

18 A: Oh, actually they did. They had Harley Davidson
19 motorcycle on them. They were shaped in the logo of Harley
20 Davidson, which I can't even describe, because it's not round,
21 it's not squares, it's a funny shape, but it has Harley
22 Davidson in the middle and then motorcycle is on the bottom of
23 it. So ---

24 Q: And that's not something that you would typically pick up
25 at your local pharmacy?

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- 1 A: No, sir.
- 2 Q: So, in terms of -- of determining whether -- strike that.
3 It would be easy to counterfeit these types of drugs; is that
4 not a fair statement?
- 5 A: I'm not sure I get what you mean.
- 6 Q: Well, we're talking about -- are we talking about
7 methylenedioxy-methamphetamine, are we talking Ecstasy, are we
8 talking about methamphetamine?
- 9 A: Typically, you know, methamphetamine, which is a Schedule
10 II and does have medicinal value, but it doesn't normally come
11 in a pill form like that, and MDMA is strictly Schedule I, so,
12 it's definitely not something that you're gonna find from a
13 pharmacist or a doctor or something that's ---
- 14 Q: The Harley Davidson logo on the -- that would be on the
15 pink tablets, right?
- 16 A: That's correct.
- 17 Q: Okay. And that would be the methylenedioxy-
18 methamphetamine or the Ecstasy; is that your testimony?
- 19 A: Yes, 3,4 methylenedioxy-methamphetamine.
- 20 Q: All right.
- 21 A: Uh-huh (affirmative response).
- 22 Q: And so, that would be something that -- that could vary
23 on the streets from any sort of markings or any sort of color;
24 is that right?
- 25 A: That's correct. I've had tablets that -- that look the

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1 same, that may be just be a different color; they have the
2 same markings and they're totally different things. So, yeah,
3 the clandestine tablets like this, you just never know what
4 you're going to get. You know, in the past, MDMA has been
5 very popular in these kind of tablets, but more and more
6 recently methamphetamine has been the drug that's been inside
7 these tablets. I don't know why the switch is, but that's
8 what we're seeing.

9 Q: Yes, ma'am. So, these -- these particular tablets could
10 be -- could be counterfeit with the exception of the ones that
11 you tested, which did give the positive results?

12 A: Well, I consider all of these clandestine tablets and --
13 and counterfeit tablets in a way.

14 Q: Yes, ma'am. Now, getting on to item 1.5, the Ziploc bag
15 contained -- plastic bag containing Items 1.5.1 and 1.5.2; you
16 see that?

17 A: Yes, sir.

18 Q: All right. And 1.5.1, there was three, three bags in
19 that sample, correct?

20 A: Yes, sir.

21 Q: And you only tested one of those bags, correct?

22 A: No, sir. I tested all three of those.

23 Q: You tested all three. Any particular reason of testing
24 -- when you have multiple samples like that, for example,
25 we've already been through testing one bag, rather than

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1 testing all of them?

2 A: In this case, it was to meet a weight threshold, because

3 all three of them ended up weighing 24.15 grams.

4 Q: Well, did you -- when you tested, you tested all three;

5 is that right?

6 A: Yes, sir.

7 Q: Okay.

8 A: Each bag separately, but all three.

9 Q: Well, do you remember the weight of each individual bag?

10 A: I do have that written down.

11 Q: All right.

12 A: Would you like to know the weights then?

13 Q: Yes, ma'am, if you don't mind?

14 A: Excuse me. The first bag weighed 13.74 grams; the second

15 bag weighed 8.33 grams; and the third bag weighed 2.08 grams.

16 Q: 13.74, 8.33, 2.08?

17 A: Yes, sir.

18 Q: All right. The confidence level for the weight was less

19 than a hundred percent; is that right?

20 A: It's 99.7. That's, again, that has to do with the

21 measurement uncertainty. That's -- the calculations that

22 we've done at SLED in the drug department that, you know, for

23 the measurement uncertainty that we report, the confidence for

24 that is 99.7 percent.

25 Q: Thank you. And on 1.5.2, three glassine bags, did you

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1 again test all three?

2 A: I did; yes, sir.

3 Q: Okay. And the last part, 1.6, which contains 1.6.1,
4 1.6.1.1, the last one being 1.6.1.1, no substance detected
5 there; is that correct?

6 A: Yeah, no controlled substance was detected; yes, sir.

7 Q: All right. There's some other items on Page 4, but they
8 basically include the same materials that we've already talked
9 about; is that right, just different weights?

10 A: Yes, sir; they have the same substances that we've had
11 before.

12 Q: And running into that same furanylfentanyl conversation
13 that we had earlier on 1.6.1.2; is that right?

14 A: Yes, sir.

15 Q: Let's not get into that again, all right? Now, you said
16 that you received State's Exhibit 59, which includes
17 everything that's listed on State's Exhibit Number 72 --
18 excuse me -- from -- you say Frank, Frank Mizell delivered it
19 on January 26th, 2017?

20 A: Yes, sir.

21 Q: All right. But, you did not receive it directly from
22 him, it was received by Joyce Yarbrough; is that right?

23 A: Doris Yarbrough.

24 Q: Doris, I'm sorry. Does she work for SLED?

25 A: She does. She's a forensic technician in the Evidence

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1 Control Section.

2 Q: Does she do the same job as you?

3 A: No, sir.

4 Q: She doesn't do any testing?

5 A: No, sir, she just receives evidence, enters information

6 in our computer system and -- and places it in the vault.

7 Q: All right. So, you never received anything personally

8 from Frank Mizell, you received it from -- excuse me -- Frank

9 Mizell delivered these items to Doris Yarbrough; is that

10 right?

11 A: That's correct.

12 Q: All right. Again, on January 26th, 2017?

13 A: Yes, sir.

14 Q: And then I believe you said that Jackie Davis was the

15 next person to have his or her hands on State's Exhibit 59?

16 A: Correct. And in between, Doris Yarbrough put it in the

17 drug evidence intake storage area in the vault at SLED.

18 Q: You said Doris Yarbrough did?

19 A: Yes, she placed it in the vault, and then Jackie Davis

20 retrieved it to give to me.

21 Q: And who is Jackie Davis?

22 A: She is another forensic technician in the Evidence

23 Control Section. She does the same job as Doris.

24 Q: That was my next question. So, she retrieved from the

25 vault where Doris Yarbrough had placed it?

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- 1 A: Correct.
- 2 Q: All right. And that's in a secure locker at SLED?
- 3 A: Yes, sir.
- 4 Q: And she retrieved it on February the 15th, 2017; is that
- 5 right?
- 6 A: That's correct.
- 7 Q: Now, but you didn't test it until a month later,
- 8 approximately?
- 9 A: Approximately, yes, sir.
- 10 Q: So, what reason would Jackie Davis have to remove the
- 11 items from the vault?
- 12 A: None that I know of. Besides to give it to me? I think
- 13 I misunderstood your question.
- 14 Q: Well, and your testing, I think you said was on March the
- 15 12th, 2017?
- 16 A: Correct. Yes, sir.
- 17 Q: And that's a little bit less than a month from the time
- 18 that Jackie Davis had taken it out of the vault; is that
- 19 right? So, you didn't test it for almost a month after she
- 20 removed it from the vault?
- 21 A: After she removed it from the vault, she gave it to me
- 22 and then I placed it in the drug evidence vault. So, it was
- 23 in the drug evidence vault for a month before I tested it.
- 24 Q: All right. So, on February the 15th, when Jackie Davis
- 25 retrieved it, she gave it to you, but you just didn't test it

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1 until March?

2 A: Correct.

3 Q: All right. So, that material was in your custody and
4 your responsibility from 2/15/17 until 3/12/17?

5 A: Yes and beyond.

6 Q: Anybody tamper with it during the time that you had
7 custody of State's Exhibit 59, to your knowledge?

8 A: Not to my knowledge, no, sir; it was not tampered with.

9 Q: All right. And it was in the same condition as you
10 received it?

11 A: It is not, because when I received it, it was in, as I
12 explained before, the bag that's inside here, that's the BEST
13 evidence bag. So, when I take it out, I took everything out,
14 did my analysis, I placed it back in this bag, which is called
15 a KPAK and then I sealed it, my initials and the date are on
16 the bottom here from when I sealed it. So, this is -- this is
17 how it went back, you know, this is how I ended up with it at
18 the end and sent it back to the agency.

19 Q: So, when it came to you, it was in a different form than
20 it is now, because you had to test it -- the packaging, I
21 mean.

22 A: Yes, sir.

23 Q: Okay. Now, is that -- is that -- is that locker at SLED,
24 is it a safe? Is it just a door that has a code on it? How
25 -- describe to me where the evidence is stored and how it's

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1 stored.

2 A: In the drug lab or in Evidence Control?

3 Q: Let's start with Evidence Control?

4 A: It's a very large room that is, yes, locked, kept locked
5 and the only people who have -- who are allowed access to it
6 are the Evidence Control, the forensic technicians in Evidence
7 Control. Also, of course, our Director and the Captains have
8 access to it if they need to, but generally it's locked during
9 the day, or excuse me, locked after the, you know, the
10 forensic technicians go home for the night, but it's a secure
11 area that I think they need keys and a key card to get in as
12 far as I know. That's how the drug evidence locker or vault
13 is also. To get into our department you have to have a key
14 card and a key, and to get into that vault you need the key
15 card, and the only people who have access to that are other
16 forensic scientists in that department, and our direct -- my
17 direct supervisor and her direct supervisor.

18 Q: So, folks like your boss, bosses and other chemists,
19 those who do testing ---

20 A: Correct.

21 Q: --- are the only ones to have access to, to, to the
22 vault?

23 A: To the drug vault, yes.

24 Q: To the drug vault. But, the evidence control room, would
25 it be fair to say that the level of access to that area is

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1 less restricted?

2 A: It's more restrictive because I'm not allowed in there.

3 Q: You're -- you test and you put your hands on these
4 products and you're not allowed access to that area?

5 A: I'm not allowed in the main vault; no, sir.

6 Q: Okay. But folks who do not do any testing of any kind,
7 do have access to the evidence control room?

8 A: That is their job to retrieve evidence and organize the
9 evidence for the entire laboratory.

10 Q: Which is pretty big?

11 A: Yes, sir.

12 Q: Do y'all have a backlog on testing?

13 MR. JEPERTINGER: Your Honor, I don't see the relevancy
14 in terms of that question at all, I object.

15 MR. SUGGS: And I withdraw my question.

16 That's all the questions I have, Your Honor.

17 THE COURT: Any redirect?

18 MR. JEPERTINGER: Very -- yes.

19 REDIRECT EXAMINATION OF LYNN BLACK BY MR. JEPERTINGER:

20 Q: When you weigh the substances that we see in State's
21 Exhibit 72 -- I don't know where I put 72.

22 COURT REPORTER: It's right here.

23 MR. JEPERTINGER: Gotcha.

24 BY MR. JEPERTINGER:

25 Q: When you weigh it -- and for example, we look at, we'll

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LYNN BLACK - REDIRECT BY JEPERTINGER

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1 just look at Items 5.1, which is on Page 3, just as an
2 example?

3 A: Uh-huh, (affirmative response).

4 Q: Three Ziploc bags containing powder substance, heroin
5 found in sample testing, three tested, total net weight 24.15
6 grams. For clarification, you don't weigh it in the bag?

7 A: No, sir.

8 Q: Okay. You take it out and put whatever substance on your
9 scales; is that correct?

10 A: That's correct. These are net weights, substance only.

11 Q: All right. That's it. Thank you. Thank you so much.
12 I have nothing further.

13 THE COURT: All right. Anything further?

14 MR. SUGGS: Just one follow-up question, Judge.

15 RE CROSS EXAMINATION OF LYNN BLACK BY MR. SUGGS:

16 Q: On the -- let me find it.

17 MR. JEPERTINGER: He said one question, right, Judge?

18 THE COURT: Oh, yeah.

19 BY MR. SUGGS:

20 Q: The item that Mr. Jepertinger was referring to just a
21 moment ago, 1.5.1, where you testified and -- and again -- on
22 cross and again on direct that you tested all three bags; is
23 that right?

24 A: Yes, sir.

25 Q: All right. And my question is, did you test -- did you

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1 take a sample from each individual bag and test or did you
2 combine the contents of all three bags into one pile and then
3 conduct your test from that?

4 A: No, sir; I tested each individual bag.

5 Q: So, you took a sample from each bag?

6 A: Yes, sir.

7 Q: Okay. But then you combined, had to take it out of the
8 bag ---

9 MR. JEPERTINGER: Objection, this has gone through
10 already. I would object.

11 THE COURT: Your recross should be in reply to his
12 redirect only.

13 MR. SUGGS: Yes, sir, Judge.

14 THE COURT: Anything further?

15 MR. SUGGS: No, sir, Judge.

16 THE COURT: All right. You may step down. Thank you.

17 MS. BLACK: Thank you.

18 MR. JEPERTINGER: I'd ask that Ms. Black be excused.

19 THE COURT: Any objection?

20 MR. SUGGS: No objection.

21 THE COURT: You have a good day.

22 MS. BLACK: Thank you, sir.

23 THE COURT: Jurors, let's a 15-minute break before our
24 next witness. We'll be back and continue in 15 minutes.

25 (REPORTER'S NOTE: Jury exits courtroom @ 11:03 A.M.)

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1 THE COURT: All right. We'll take a 15-minute break.

2 RECESS - 11:04 A.M.

3 *****OFF THE RECORD*****

4 (On the Record - 11:19 A.M.)

5 THE COURT: Let's go ahead and bring in the jury.

6 (REPORTER'S NOTE: Jury enters courtroom @ 11:20 A.M.)

7 MR. JEPERTINGER: Judge, may we approach?

8 THE COURT: Yes.

9 (REPORTER'S NOTE: Bench conference is held on the record in
10 the presence of but outside the hearing of the jury.) (

11 MR. SUGGS: I'm sorry, new courtroom and all, but where's
12 the foreman sitting?

13 THE COURT: On the front row ---

14 MR. SUGGS: Closest to the door over there?

15 THE COURT: Yes.

16 MR. SUGGS: Okay. Thank you, Judge.

17 (REPORTER'S NOTE: End of bench conference.)

18 THE COURT: The state will call your next witness?

19 MR. JEPERTINGER: The state would call Andron Brown to
20 the stand.

21 CLERK: Sir, if you'll please place your left hand on the
22 Bible and raise your right hand.

23 ANDRON BROWN, HAVING BEEN DULY SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated and state your full name for the

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1 record.

2 MR. BROWN: Andron Brown.

3 COURT REPORTER: Can you spell your first name, please?

4 MR. BROWN: First name, A-N-D-R-O-N; Brown last name,
5 common spelling.

6 DIRECT EXAMINATION OF ANDRON BROWN BY MR. JEPERTINGER:

7 Q: Detective Brown, which department are you assigned to?

8 A: Florence City Police Department.

9 Q: All right. Are you with the Special Investigative Unit,
10 the narcotics officers?

11 A: Yes, sir, Special Investigations Unit.

12 Q: Okay. How long have you been working for them?

13 A: Five years.

14 Q: All right. Were you the, what we call, case agent in
15 terms of this particular case dealing with Johnny Nickolas
16 Gregg, Jr. on January 6th, 2017?

17 A: Yes, sir, I was the case agent.

18 Q: All right. Now, you -- what did -- what did you get in
19 order to go to 805-A Commander Street to get into this house;
20 did you get a search warrant or did you just bust in or how --
21 just run us through that.

22 A: Yes, sir. I obtained a search warrant for the location.

23 Q: Okay. Now, this Commander Street address, did I ask you
24 driving wise, how far you are away from North Vista Elementary
25 School; did I ask you to do that?

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1 A: Yes, sir; you did.

2 Q: And how far driving, not as the crow flies, but just
3 driving, how far is North Vista from 805-A Commander Street?

4 A: Driving, I actually took two different routes -- one was a
5 shorter route, one was a longer route -- but the shorter route
6 was .2 miles and the longer route was .4 miles. So, both were
7 under half a mile radius actual driving.

8 Q: All right. Now, on January 6th, 2017 -- and I know this
9 jury has heard from Officer Spears already. Can you kind of
10 give us what you did on that particular date, what your role
11 was as being, I guess, agent in charge?

12 A: We had the warrant in hand. I went to the location, went
13 to the rear of the location, 805-A, because the information
14 that we had was that drugs were being sold through that door.
15 So, a lot of times, if you don't go to the door that's being
16 used, they have the other ones barricaded. So, in order to
17 make quick entry if we needed to, we used the back door. We
18 had agents or investigators on the front part just in case
19 somebody tried to flee out of the front door. Went to the
20 back, I was the agent, I'm usually the agent that rams the
21 door, if that's necessary. Agents approached, knocked on the
22 door, announced, police, search warrant, after a reasonable
23 time with no answer, no response, I forced the door open with
24 our department issued ram. Went inside, well I wasn't the
25 first agent inside, not a hundred percent sure who went inside

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1 first, but I know Agent Spears made contact with the defendant
2 and he was ordered to the ground and the rest of the officers
3 or agents cleared the residence.

4 Q: Okay. And when you affected entry, did you affect entry
5 through the front door or the back door?

6 A: It was through the rear of the back door.

7 Q: Okay. And then you entered into the back door. What room
8 are you in in that 805-A Commander?

9 A: As soon as we came through the back door, that -- that's
10 the kitchen. The back door is located in the kitchen. So,
11 were in the kitchen when we made entry.

12 Q: Okay. And what did you observe there?

13 A: Immediately when -- once I made it in, I observed what I
14 believed ---

15 MR. SUGGS: Your Honor, at this time, we'd renew our
16 objections that we made previously concerning this matter.
17 Just wanted to make sure it's on the record.

18 THE COURT: You're protected on the record.

19 MR. SUGGS: Thank you.

20 BY MR. JEPERTINGER:

21 Q: I'm sorry, go ahead. Tell the jury what you observed.

22 A: I immediately observed what I believed to be crack cocaine
23 on the kitchen table. Also, there were was a firearm on the
24 table and there was a book bag or so, a backpack, I guess you
25 would say, was what my immediate observation.

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1 Q: All right. And did you check or other officers check, to
2 your knowledge, whether anyone else was in that residence?

3 A: Yes, sir, when I said that we cleared it, that's what
4 we're searching for. We're making sure that there's no one
5 else in the location and possibly no one else there to
6 possibly harm us or anything like that.

7 Q: Okay. And was there anyone else there other than the
8 defendant?

9 A: No one else was found to be in the apartment.

10 Q: Okay. When you saw the crack cocaine, what state was it
11 in; was it lying on top of anything, were there any
12 instruments?

13 A: There was -- when I saw it initially just from, I guess,
14 dealing with it on a regular basis, it looked like it was
15 being prepared to be packaged and sold. There was rock-like
16 substance or crack cocaine on top of a digital scale, there
17 was a razor blade beside it with a baggie there. So, it just
18 looked to me like it was being prepared to be sold.

19 Q: I'm gonna show you what's in evidence, State's Exhibit 38.
20 Is that what you're testifying to?

21 A: Yes, sir, that's it; a digital scale, crack of top of the
22 scale, like five pieces, I believe, razor blade right beside
23 it used to cut it up to separate it.

24 Q: Okay. Now, when you saw all that and you have one
25 defendant in there, what -- what is your next step, what was

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ANDRON BROWN - DIRECT BY JEPERTINGER

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1 your next step in this matter?

2 A: At that point, well, he was detained. And at that point,
3 he was, I guess placed under arrest, he was advised of his
4 Miranda rights and a copy of the search warrant was read at
5 that time.

6 Q: Okay. Now, when you advise someone of Miranda rights, do
7 you it off the top of your head or do you read it off of a
8 card?

9 A: No, just so that we do it the same way each time, we
10 usually try to keep a card, I know I keep a card with me, and
11 I read it from that card each time.

12 Q: Do you have your card with you today?

13 A: I do.

14 Q: Can you, just for the jury's sake, can you read what you
15 read to him on January the 6th, 2017?

16 A: You have the right to remain silent. Anything that you
17 say can and will be used against you in court. You have the
18 right to an attorney and to have that attorney present during
19 questioning. If you cannot afford an attorney, an attorney
20 will be provided at no cost. You can decide at any time to
21 exercise these rights and not answer any questions or make any
22 statements. And once I ask them if they understand that, do
23 you understand each of these rights I have explained to you
24 and then I say, having these rights in mind, do you wish to
25 talk to us or answer any questions that we may have.

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- 1 Q: Okay. And what was his response to you when you read him
2 that card?
- 3 A: He advised me that he understood his rights first and he
4 said he didn't have any problem answering any questions.
- 5 Q: Okay. Now, about what time of the day was this when you
6 affected this search warrant?
- 7 A: Between 2:00 and 3:00, about 2:47, I believe was the exact
8 time.
- 9 Q: In the afternoon or in the morning?
- 10 A: In the afternoon, 2:20.
- 11 Q: All right. Now, did he appear sleepy to you when you read
12 him his rights?
- 13 A: Not at all. He seemed very alert.
- 14 Q: Did he seem high or drunk when you read him his rights?
- 15 A: No.
- 16 Q: Did he seem like he had any, you know, off kilter in the
17 head when you read him his rights?
- 18 A: No, he was very cooperative with everything we asked.
- 19 Q: Okay. Did he ask, you know, I want to talk to you
20 privately or anything like that?
- 21 A: No.
- 22 Q: Okay. Did he express any fears to you other than being in
23 the house with a bunch of cops in the house?
- 24 A: Nothing, nothing out of the norm.
- 25 Q: Okay. So, what did you ask him?

1 A: I asked him if he had anything illegal in the residence
2 outside of what we actually saw there and we also asked him
3 was, you know, was anybody else there, which we knew already.
4 He, what we found, once we searched the place, was what we
5 found, but he also advised us of more drugs that we hadn't
6 found that was hidden on top of the kitchen cabinets.
7 Q: What did you find on top of the kitchen cabinets?
8 A: Xanax. There was -- well, he gave us an estimate of 300.
9 He said when he got it, it was about 350, but now there was
10 only 300 up there and we retrieved it.
11 Q: Where did you find the cocaine?
12 A: The cocaine was in the bag, I believe.
13 Q: In the kitchen area?
14 A: In the kitchen area on the table in the backpack or duffle
15 -- book bag that I was talking about earlier.
16 Q: Okay. I think we have a picture of that in State's
17 Exhibit 38. How about the heroin?
18 A: Heroin, there was a small amount of heroin in the
19 backpack, but also during the search of the kitchen, we
20 located there was a cabinet above the refrigerator and inside
21 there was Pyrex glass, some, what he referred to as cut and we
22 believed it to be heroin.
23 Q: Okay. And how, was it packaged in any foil or anything
24 like that?
25 A: No, it was in silver packaging.

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1 Q: Okay.

2 A: Silver foil packaging.

3 Q: I'm gonna show you State's Exhibit 38 again. Is that foil

4 ---

5 A: Yes, sir.

6 Q: --- represented on that photo?

7 A: Yes, sir.

8 Q: So, that foil would've been in the cabinet?

9 A: In the cabinet above the refrigerator.

10 Q: So, a police officer moved it from ---

11 A: From there to yeah.

12 Q: Could it have been you that did that or ---

13 A: Yes, sir, I moved it to there.

14 Q: Okay. So, the crime scene guy could take a photograph of

15 it, correct?

16 A: Yes, sir. We tried to get all the evidence together, so

17 that easily I can see all of it.

18 Q: Did you open up the foil to determine whether it was

19 heroin at that time?

20 A: No, we have kind of gotten away from opening up everything

21 because of the people getting infected, well not infected, but

22 I guess OD-ing on drugs that get into your skin and soak in.

23 So, kind of we don't open it. We'll just send it in as what

24 we suspect it to be and, once it's tested, then it'll be

25 confirmed at that point.

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1 Q: Did, did -- did he say what it was?
2 A: Yes, sir.
3 Q: What did he say it was?
4 A: He said that it was synthetic heroin.
5 Q: All right.
6 A: I think he said synthetic heroin. He said synthetic
7 morphine and then he said heroin and so he was all over the
8 place with it.
9 Q: All right. Now, so that -- we know about the heroin, we
10 know about the cocaine and was all the crack also on the
11 kitchen table?
12 A: Yes, sir, that was also on the kitchen table.
13 Q: Okay. There was also some marijuana found in the house?
14 A: Yes, sir.
15 Q: I think Officer Spears testified to that. Can you tell us
16 about that?
17 A: Marijuana was found in the bedroom behind -- there was --
18 a portion was found behind the bed. There was another portion
19 found in the closet, I believe, let me make sure I got that
20 correct. Yes, sir, there was approximately 800 grams behind
21 the bed and in the closet of that bedroom. And there was
22 also, while we were gathering all the evidence and writing all
23 our notes, marijuana was found in the kitchen on the floor
24 under like maybe something like you use in your kitchen that
25 you can put the microwave on or something like that. It was

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1 on the bottom shelf there in a postal box.

2 Q: All right. Now, once you got all the drugs, the
3 marijuana; how about the pills?

4 A: The pills, there were pills on the table and also the 300
5 pills that we found on top of the cabinets in the kitchen.

6 Q: How about pills in the car?

7 A: There were pills in the car. I think they -- I don't know
8 if they were found to be anything, but they were unknown at
9 the time.

10 Q: Okay. Did you get those, too?

11 A: Yes, sir, we collected all those and brought them inside.

12 Q: Now, when you got all the marijuana and everything that's
13 in State's Exhibit 59, did you BEST pack it there or how did
14 -- how did that situation work out?

15 A: Now, it's a crazy process. The amount of drugs that we
16 had at that location, we usually try to find a central spot
17 where anything that's found, they bring it to me or the case
18 agent, whoever the case agent may be, and we do our -- all of
19 our paperwork there. So, everything is brought to me. It's
20 not bagged into the BEST pack until we leave that location and
21 get to our own location, which is usually our office or either
22 the evidence room, and we put everything into the package, the
23 BEST pack then.

24 Q: Okay. And you were in charge of Item 65, 64, 63, 62, and
25 59; is that correct?

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1 A: Yes, sir; that's correct.

2 Q: Okay. And those items, did you turn them over to Kendrick
3 Spears?

4 A: Yes, sir, at the office. Like I said, dealing with a lot
5 of drugs like this, we usually work together because it's so
6 much evidence all in one central location on the table in our
7 office. We do paperwork and type up warrants and all of that,
8 everything was relinquished over to Sergeant Spears at that
9 time and he logged everything into evidence.

10 MR. JEPERTINGER: At this time, Your Honor, I would move
11 Item 65, 64, 63, 62, and 59 into evidence?

12 THE COURT: Any objections?

13 MR. SUGGS: Those numbers again, Judge?

14 MR. JEPERTINGER: 65, 64, 63, 62, and 59.

15 MR. SUGGS: No objection.

16 THE COURT: All right. 65, 64, 63, 62, and 59 State's
17 are into evidence without objection.

18 STATE'S EXHIBIT NUMBER 59

19 ADMITTED INTO EVIDENCE

20 BY MR. JEPERTINGER:

21 Q: All right. Now, getting back to the -- and Item 60 as
22 well?

23 THE COURT: Any objections?

24 MR. SUGGS: Is 60 just the box?

25 MR. JEPERTINGER: That's full of marijuana.

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1 MR. SUGGS: Were those individually marked?

2 MR. JEPERTINGER: No, just the box full.

3 MR. SUGGS: Okay.

4 THE COURT: 60 is in evidence as well without objection.

5 MR. JEPERTINGER: Thank you.

6 BY MR. JEPERTINGER:

7 Q: Now, I'm gonna put this over here. After you gave him his
8 rights, what specifically -- tell the jury what he told you
9 about whose drugs they were and what he planned to do with
10 them?

11 A: Okay.

12 MR. SUGGS: I'm going to object to the question, Judge.
13 I think it's leading. It's really a two-part leading
14 question.

15 THE COURT: What was your question again?

16 MR. JEPERTINGER: After he gave him the Miranda warnings,
17 what did he specifically tell you?

18 MR. SUGGS: That's fine, but the rest about this, that
19 and the other.

20 THE COURT: We'll begin with that one.

21 BY MR. JEPERTINGER:

22 Q: Specifically, tell the jury what he told you?

23 A: All right. He -- I asked him about the -- what I believed
24 to be the crack cocaine on top of the digital scale. He
25 advised that it was there because he was about to go make a

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1 sale and that's why his vehicle was running in the backyard,
2 which he had a vehicle that was in the backyard running. He
3 said he ran in and he was about to make a sale. He also
4 admitted that everything in the location belonged to him. And
5 he did advise us that he had keys to the location and that it
6 was his girlfriend's house, but he was left in control of it.
7 Q: All right. I think on State's Exhibit 49, there was -- I
8 show this to you. This is -- what is it?
9 A: It's a letter addressed to the defendant, Mr. Gregg.
10 Q: Yes, but on that letter, it has a Chisolm Trail address;
11 is that correct?
12 A: Yes, sir; that's correct.
13 Q: Okay. Was that letter there among just various pieces of
14 property there?
15 A: That letter, I believe, was found on the -- one of the
16 firearms that we found on top of the case, I believe, in the
17 bedroom.
18 Q: All right. And you say he had a key to the location; is
19 that correct?
20 A: That's correct.
21 Q: Okay. There -- there didn't seem to be any pry marks or
22 anything of him just having busted into this place?
23 A: No, not at all.
24 Q: All right. The weapons, do you know where you found
25 those?

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1 A: I know one of the weapons was on the kitchen table.
2 Another was found in the bedroom. The shotgun, I believe, was
3 found in the other bedroom in the closet. So, there was one
4 found in a separate bedroom in a closet, there was one found
5 in the bedroom where we located the marijuana, and there was
6 on the kitchen table.

7 MR. SUGGS: Objection to the matter involving the
8 handgun, Judge, we discussed, and move to strike any testimony
9 in response to any questions which we also move to strike
10 concerning that matter.

11 THE COURT: Has he made a response in that regard?

12 MR. SUGGS: Yes, sir, I think he was making ---

13 MR. JEPERTINGER: Judge, that's one issue we have already
14 taken up at the bench.

15 THE COURT: Come on up and let's make sure what he's
16 talking about.

17 (REPORTER'S NOTE: Bench conference is held on the record in
18 the presence of but outside the hearing of the jury.)

19 MR. JEPERTINGER: He's -- stolen pistol, but I mean, he
20 hasn't said the words ---

21 THE COURT: Okay. You just wants to make sure he doesn't
22 say it, is that ---

23 MR. SUGGS: There are so many guns, I don't know which
24 one is which, you know.

25 THE COURT: You're not ---

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1 MR. SUGGS: Yes, sir, Judge. Thank you, Judge.

2 THE COURT: Thank you.

3 (REPORTER'S NOTE: End of bench conference.)

4 BY MR. JEPERTINGER:

5 Q: Now, he was arrested, correct?

6 A: Yes, sir.

7 Q: This might be a question that the defense may ask you, was
8 he searched; is that normal protocol once a person is
9 arrested?

10 A: Yes, sir, he was searched to make sure he doesn't have any
11 weapons or any illegal drugs on his person also.

12 Q: Okay. There's nothing notated in your report that he had
13 any illegal drugs or anything on him?

14 A: No, he -- when I searched him, he didn't have anything
15 illegal on his person at that time.

16 Q: Okay. Now, did you find any rolling papers at the house?

17 A: No, not that I recall.

18 Q: Any blunts?

19 A: No, sir.

20 Q: Any crack pipes?

21 A: No, sir.

22 Q: All right. But you did or your officers did find
23 something of a large quantity in one of the bedrooms; is that
24 correct, Officer Bannister?

25 A: Yes, sir, searching the apartment, during the -- we were

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1 doing a thorough search, underneath the dresser in the bedroom
2 where the marijuana was located, there was a underneath the
3 dresser behind the bottom drawer, there was a package found
4 and inside that package was a large amount of cash, \$38,452 to
5 be exact.

6 Q: Okay. I noticed in State's Exhibit 38 that's in evidence
7 that there's some cash also on the kitchen table. That's --
8 is that independent of that 38,000?

9 A: Well, no, that would've been added into that also. I'm
10 sorry.

11 Q: I'm asking you though, the whole \$38,000 was not on this
12 kitchen table when you took the photograph?

13 A: No, it's not on there. It's not in that picture.

14 Q: Okay. What did y'all do, did you just take that money as
15 part of, I guess, a drug seizure?

16 A: Yes, sir. We seized the money and that was logged into
17 evidence, also.

18 Q: Okay. All right. After you arrested him and did whatever
19 you were gonna do at 805-A Commander Street, did you come back
20 to the police department?

21 A: We -- yeah, we went to -- we went to our office first and
22 that's where we prepared all the evidence and then we went to
23 the police department, too.

24 Q: Okay. Did you write an incident report in terms of this
25 issue?

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1 A: Yes, I did.

2 Q: Okay. Now, on your incident report, you listed the
3 incident date as being January 5th, 2017?

4 A: Uh-huh, (affirmative response). I did. Simply human
5 error. I made a mistake typing in the search warrant date.
6 On the narrative, I do have the -- on the narrative, I do have
7 the correct date.

8 Q: So, the narrative is the body of the report, you put
9 January the 6th?

10 A: That's where all of the details go and I've got the
11 correct date on there.

12 Q: Did you ever have an opportunity or did you go to 805-B
13 Commander Street that day?

14 A: No, I never went to 805-B.

15 Q: There were -- were there other police officers that went
16 to 805-B?

17 A: Yes, sir, there was. We did a simultaneous search warrant
18 on the -- it's a duplex, a totally independent apartment. So,
19 -- so, I had a search warrant for Apartment A and another
20 officer executed a search warrant for Apartment B. They made
21 entry on the front. We made entry on the back of our
22 apartment, but I never had any dealings with Apartment B.

23 Q: All right. And there was no -- was there any way to get
24 from Apartment A to Apartment B or B to A on the inside of
25 that house?

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1 A: No, they were totally closed off from each other.

2 Q: Please answer any questions that the defense attorney may
3 have for you.

4 A: Yes, sir.

5 THE COURT: Cross?

6 CROSS EXAMINATION OF ANDRON BROWN BY MR. SUGGS:

7 Q: Agent Brown, good to see you again today.

8 A: Same to you, sir.

9 Q: Mr. Jepertinger asked you about the incident report that
10 you prepared as it relates to this arrest; is that right?

11 A: Yes, sir.

12 Q: Okay.

13 A: You mean just now?

14 Q: Just now.

15 A: Yes, sir, that's correct.

16 Q: Okay. And he pointed out as we had previously discussed,
17 that you had made a mistake on your report as far as the date
18 is concerned; is that correct?

19 A: Yes, that's correct.

20 Q: Okay. So, whenever you prepared this report, you put down
21 that the incident date was January the 5th, 2017 at 2:20 P.M.
22 when in fact it was January the 6th, the following day; is
23 that correct?

24 A: That's correct.

25 Q: Okay. Now, did -- did you just now realize that mistake

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1 when it was brought to your attention yesterday?

2 A: I did.

3 Q: Okay. Didn't realize it before that time?

4 A: No, I didn't realize it.

5 Q: Okay. If you had realized it before yesterday, would it

6 be the policy of the police department to prepare or issue an

7 amended report of some kind?

8 A: Yes, sir, either that or type a supplemental report

9 indicating the mistake or it would've been corrected.

10 Q: Okay. Well, since you just found out about it yesterday,

11 there was really no time to do an amended report, was there?

12 A: No, sir.

13 Q: Unless you had done it yesterday after we concluded, which

14 is sort of pointless, isn't it?

15 A: Yes, sir, pointless.

16 Q: Okay. And you were the officer who applied for the search

17 warrant for Apartment A; is that right?

18 A: That's correct.

19 Q: A different officer applied for the search warrant for

20 Apartment B?

21 A: That's correct also.

22 Q: All right. And do you know which officer that was?

23 A: I believe it was Agent Ussery, not a hundred percent, but

24 I'm pretty sure it was Agent Ussery.

25 Q: Okay. And did -- did he -- did he execute his affidavit

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1 in support of his request for the search warrant on the same
2 day that you did, January the 5th?

3 A: I'm not sure. You'd have to ask Agent Ussery. I'm not a
4 hundred percent on that.

5 Q: Y'all work together, don't you?

6 A: We do work together.

7 Q: Okay. And, and I believe that you testified that the
8 search warrants were executed simultaneously?

9 A: They were.

10 Q: Okay. So, it would make sense, wouldn't it, that the
11 agent would've had to have gotten the search warrant before
12 the actual search occurred?

13 A: It's possible -- well, yeah, yeah, definitely before the
14 search warrant occurred.

15 Q: Okay. But you wouldn't know what day or what time?

16 A: It could vary. We could've gotten information at
17 different times ---

18 MR. JEPERTINGER: Your Honor, I don't know the relevancy
19 of 805-B, Judge, and I -- I question relevancy, I object to
20 it.

21 MR. SUGGS: Judge, this is cross examination.

22 THE COURT: I'm going to give you a little bit of room.
23 Go ahead.

24 MR. SUGGS: Thank you.

25 BY MR. SUGGS:

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1 Q: So, both 805-A and 805-B were searched; is that right?

2 A: By different agents, 805-B, but yes.

3 Q: You didn't participate in it, did you?

4 A: I didn't participate at all in Apartment B.

5 Q: Okay. Do you know if any drugs or anything were recovered
6 from B?

7 A: I don't. I didn't go in Apartment B.

8 Q: Did you discuss with Agent Ussery, his findings from his
9 executed search warrant of B?

10 A: Agent Ussery, no, I didn't. I had my hands full with all
11 of this stuff.

12 Q: Do you know whether anyone was arrested from B side?

13 A: Not at all. I don't know.

14 Q: Do you know if anything illegal was taken from side B?

15 A: I don't know that either.

16 Q: Okay. Now, going through the indictment for a second.

17 Mr. Gregg was charged with possession of a weapon during the

18 ---

19 MR. JEPERTINGER: Your Honor, I don't think going with
20 the indictment is proper at all. It's a charging paper. I
21 don't think this detective can testify about the indictment.

22 THE COURT: Y'all come up here, please?

23 MR. SUGGS: Well, I'll rephrase it, Judge.

24 THE COURT: All right. Rephrase it. Let's see what you
25 ask him. Go ahead.

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1 BY MR. SUGGS:

2 Q: When you entered 805-A, did Mr. Gregg, was he in physical
3 possession of any sort of handgun or weapon?

4 A: No, he wasn't.

5 Q: Okay. And he did not -- he did not pick up the weapon
6 when you came in and he did not point it at you or any of the
7 other agents?

8 A: No, he didn't do that.

9 Q: And in terms of him being searched, there was nothing
10 illegal found on his actual person; is that right?

11 A: That's correct; I didn't find anything on him.

12 Q: Okay. In fact, didn't even -- you testified that he had
13 -- he said he had a key to the apartment?

14 A: That's correct.

15 Q: Did you find the key on him?

16 A: Not that I remember, I don't think so. It could've been
17 on the table or something, but I'm not for sure if it was on
18 his person or not. Nothing illegal was on his person.

19 Q: Okay. And we simply don't know about whether he was in
20 possession of any key to the apartment; is that your
21 testimony?

22 A: Yes, sir.

23 Q: All right. Now, you made a comment a while ago that Mr.
24 Gregg said something about synthetic heroin or synthetic
25 morphine, and I think you were paraphrasing the words, he was

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1 kind of all over the place; do you remember saying that?
2 A: In reference to -- yes, I do.
3 Q: Okay. Was any morphine found on the premises?
4 A: To be honest, I didn't know what it was because we didn't
5 open it. So, we took it to be what we believed it to be and
6 logged it into evidence as that and then SLED determines what
7 it is. So, I don't know if there was any morphine or not.
8 Q: All right. Well, you've been present during the trial of
9 this case; is that right?
10 A: That's correct.
11 Q: And -- and you've had access to the reports from SLED
12 testing this material; is that correct?
13 A: Yes, sir.
14 Q: And there was no morphine found, there was no morphine
15 indicated in any of the SLED tests, were they?
16 A: Not that I remember, no.
17 Q: Okay. So, being all over the place, did he act like he
18 was unsure of what was there?
19 A: He, speaking on just the heroin, he seemed -- he was
20 trying to tell us that -- lead us away from it not being
21 heroin. We said was it -- we kept asking him, was it heroin,
22 and he said, oh, it's just morphine, it's synthetic heroin.
23 So, just kind of dancing around just that particular item that
24 we located.
25 Q: All right. And these are two-bedroom apartments, right?

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1 A: Yes, sir.

2 Q: All right. And you said the marijuana was found in one of
3 the bedrooms?

4 A: Yes, sir.

5 Q: Okay. All right. And the, the -- the heroin, which I
6 believe Mr. Jepertinger referenced, it was in the photograph,
7 I think 38.

8 May I see the photographs, Your Honor?

9 All right. It was not 38. The -- the large amount of
10 heroin that was found was found where in the apartment?

11 A: It was found in the cabinet above the refrigerator in the
12 kitchen.

13 Q: In the kitchen. And when you went into the -- when you
14 breached the door, you said you weren't the first officer in,
15 because you were holding the breaching tool; is that right?

16 A: That's correct.

17 Q: But when you entered, Mr. Gregg was not in the kitchen,
18 was he?

19 A: He was in the kitchen.

20 Q: He was at the table; is that right? These are very small
21 apartments, are they not?

22 A: The kitchen is -- the table is in the kitchen.

23 Q: The table is in the kitchen. Okay. The kitchen cabinets
24 though, according the photos, appear to me to be on the other
25 side of the table; is that fair to say?

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1 A: They are -- they're on the side that the refrigerator is
2 on.
3 Q: Well, the kitchen cabinets ---
4 A: The other side, the opposite side, yeah.
5 Q: They're not above the table?
6 A: No, no, no.
7 Q: Okay. In fact, they're on the opposite wall?
8 A: That's correct.
9 Q: All right. All right. That's where the large amount of
10 heroin was found; is that right?
11 A: That's right.
12 Q: All right. And the vehicle in question, did -- did you
13 check to see who the owner of that vehicle was?
14 A: I'm pretty sure somebody ran it on scene. I'm not a
15 hundred percent who it comes back to, though.
16 Q: It didn't belong to Johnny Gregg, did it?
17 A: I can't say.
18 Q: Well, you're an investigator with the police department;
19 is that right?
20 A: I am.
21 Q: And there were illegal substances found in the vehicle; is
22 that right?
23 A: There was some illegal stuff found in there, but nothing
24 that he was charged -- no.
25 Q: You didn't think it would be a good idea to check the

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1 registration of that vehicle?

2 A: We did at some point, but I'm not for sure if it came back

3 to him or not. I'm not a hundred percent sure, so I don't

4 want to say it didn't come back to him because ---

5 Q: You don't know?

6 A: --- I don't know.

7 Q: Okay. What about ownership of the duplex itself?

8 A: Once again, I don't know. He advised us that it was his

9 girlfriend's house. I don't know if it's really his or he's

10 really on the lease or I don't know.

11 Q: All right. But we're talking about two separate housing

12 areas, I guess, A and B, right?

13 A: Yes, sir.

14 Q: All right. But all are confined within one building?

15 A: It's a duplex, but there are two apartments separated from

16 one another. One family lives in one and another family lives

17 in the other.

18 Q: Let's put it like this. It's all under the same roof?

19 A: I guess you could say that, yes.

20 Q: Okay. And did we check the tax rolls to see who owned the

21 actual building, we'll just call it 805 Commander Street A and

22 B, who owned the entire building?

23 A: No, I don't know who owns it.

24 Q: Okay. Don't know if Johnny Gregg owns it?

25 A: I don't know that.

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1 Q: And checking the leases for A and B, did you do that or
2 not do that, or you can't remember whether you did or didn't?
3 A: No, I didn't check the leases, no.
4 Q: Okay. And you didn't check the leases, so, you can't say
5 whose names were on the leases?
6 A: All I can say is that he told us that it was his
7 girlfriend's house.
8 Q: Okay.
9 A: And his girlfriend showed up at the scene.
10 Q: Aside from the letter that you testified was on the table,
11 it had Mr. Gregg's name on it, aside from that, you didn't
12 find any other personal items of any kind in the duplex that
13 -- that belonged to Mr. Gregg, did you?
14 A: No.
15 Q: And this is just one bathroom?
16 A: I think it is one bathroom.
17 Q: All right. Did y'all thoroughly search the bathroom?
18 A: Every part of the house was searched to, you know, the
19 best we could.
20 Q: Did you find any in the bathroom, feminine types of
21 hygiene products?
22 A: I'm not -- I'm sure it was, I'm not a hundred percent
23 sure, I didn't search the bathroom. I was in charge of all
24 the evidence being brought to me.
25 Q: Okay. Well, so, with the exception of State's 49, that

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1 was the only thing in the apartment that had Mr. Gregg's name
2 on it or that could be linked to him as a personal owner of?
3 A: Say that again, that could be linked to him as what?
4 Q: Other than -- other than that envelope with his name on
5 it, nothing else found in the apartment with his name on it,
6 indicated it belonged to him?
7 A: No, sir.
8 Q: And you testified there's no way to get from Apartment A
9 to Apartment B from the inside of the unit; in other words, no
10 doors or windows; is that right?
11 A: You'd have to go through the wall.
12 Q: Certainly. Is there an attic crawlspace?
13 A: There is -- I mean, it had vents, I believe.
14 Q: When y'all search, do you search the attic as well?
15 A: Yeah, we search anywhere that we can get to.
16 Q: Okay. Did you search the attic in this -- in this house
17 at 805-A Commander?
18 A: I didn't search the attic.
19 Q: You didn't search the attic?
20 A: No, I didn't.
21 Q: Okay. But you know there is one?
22 A: I'm not a hundred percent sure if there is. I didn't
23 search anything. I stayed in the kitchen where my area was to
24 document and collect evidence.
25 Q: All right. Maybe I'm not asking the question correctly.

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1 Did you see any officers searching the attic?

2 A: I'm sure agents -- if there's an attic, I'm sure the
3 agents searched the attic or the best of their ability they
4 searched the attic. I didn't search anything. I was in the
5 kitchen, so I couldn't see who everybody was and where they
6 were searching at one time.

7 Q: In executing a search warrant, if there is an attic in the
8 place where you're searching, it would not be overlooked by a
9 search -- by a search team, would it?

10 A: That's correct, we wouldn't overlook it.

11 Q: All right.

12 Just a minute, Your Honor.

13 That's all the questions I have of this witness, Your
14 Honor.

15 THE COURT: All right. Redirect?

16 MR. JEPERTINGER: No, sir.

17 THE COURT: You may step down. You have another short
18 witness before lunch?

19 MR. JEPERTINGER: I have Agent Nida.

20 THE COURT: All right.

21 CLERK: Sir, if you'll please step around and place your
22 left hand on the Bible and raise your right hand.

23 WILLIAM JOSEPH NIDA, HAVING BEEN DULY

24 SWORN TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated and state your full name for the

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1 record.

2 MR. NIDA: William Joseph Nida.

3 COURT REPORTER: Will you spell your last name, please?

4 MR. NIDA: It's N-I-D-A.

5 DIRECT EXAMINATION OF WILLIAM JOSEPH NIDA BY MR. JEPERTINGER:

6 Q: Okay. Detective Nida, can you tell the ladies and

7 gentlemen what you do with the City Police Department?

8 A: I'm a lieutenant over our Special Investigations Unit.

9 Q: Okay. Can you tell the ladies and gentlemen what your
10 involvement was, if anything, with this case of January 6th of
11 2017 at the [REDACTED] Commander Street address?

12 A: We had two search warrants. We had [REDACTED]-A and B and we
13 formulated plans to execute both search warrants at the same
14 time, and I was with the entry team on the Apartment B on the
15 initial entry on that one.

16 Q: Okay. And did you affect entry into 805-B?

17 A: Into B, yes, sir.

18 Q: Front door or back door?

19 A: We did front door on ours.

20 Q: Which would be B?

21 A: Apartment B, yes.

22 Q: Who was with you?

23 A: I know myself, the case agent was Alex Ussery, and we had
24 others that was a part of the entry team. I don't remember
25 everybody that was included on that one.

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1 Q: Okay. If you'd pull that microphone a little bit closer.
2 It might be me; I'm hard of hearing, I guess.

3 Did -- when you got into 805-B, did you find anybody
4 present there?

5 A: There was two individuals present; a female and a male
6 that who ran to the restroom and shut the door on us.

7 Q: Okay. Did you find anything of interest in terms of
8 illegal stuff?

9 A: There was some marijuana found in that one, a small
10 amount. It was a simple possession case and that individual
11 claimed it and was issued a citation for the stuff in
12 Apartment B.

13 Q: Now, did you find any passageway between 805-A and 805-B
14 that you could get in between the two locations?

15 A: Absolutely not. It's two separate apartments. It's part
16 of the same structure, but you had a front door and a rear
17 door for A and a front and rear for B, and there was no
18 adjoining or no way to access in between the two, none at all.

19 Q: Let me ask you this. How about if you went up through an
20 attic crawl space, did you check that?

21 A: We checked everywhere and I didn't see anyway of going
22 through any holes or no way of accessing.

23 Q: After you -- did you get done with 805-B?

24 A: It was simple, short, sweet. We finished it up, issued a
25 citation, and the individual was cut loose and the female

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1 stayed with the residence.

2 Q: And a citation is different than an arrest warrant?

3 A: That is correct. They have a court appearance date and
4 then they would show up on that date to take care of the
5 charge.

6 Q: Okay. Did you have an opportunity to go to 805-A after
7 you dealt with 805-B?

8 A: Yes, sir. After we finished, I went over to the other
9 apartment to check on their status and see what all they had,
10 and so I did go in and make entry on that one, too.

11 Q: Okay. What did you observe when you got there?

12 A: I went in through the back door and right there in the
13 kitchen, the table, the kitchen table if you may, and a bunch
14 of different drugs laid out on there, firearms, and they were
15 still continuing to search that apartment when I went in
16 there.

17 Q: Then what -- did you observe anything, did you, I guess,
18 participate or help in the search?

19 A: When I first come in, I observed Investigator Bannister
20 was in one of the first bedrooms close to the kitchen on the
21 right-hand side. He had found a large amount of currency that
22 was hidden in the bottom of one of the drawers. He had to
23 remove it and he found it. Was in the kitchen, amongst the
24 conversation with individuals there and then finalizing --
25 Agent Brown was finishing up the return, putting all the

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1 evidence and everything that they seized, doing all of his
2 paperwork and stuff, and I did help with finishing up right
3 there in the kitchen area and I found a box, it was a square
4 unit, I don't know, a little shelving thing that was in the
5 kitchen, but in the bottom of it, there was a box that had
6 some marijuana in it and I handed it over to Agent Brown.

7 Q: All right. And was that your only involvement in this
8 aspect at 805-A?

9 A: That would've been it, yes, sir.

10 Q: Please answer any questions that Mr. Suggs may have.

11 A: Yes, sir.

12 CROSS EXAMINATION OF WILLIAM JOSEPH NIDA BY MR. SUGGS:

13 Q: Good afternoon, Agent Nida?

14 A: Good afternoon, sir.

15 Q: How are you, sir?

16 A: Doing great.

17 Q: Good. Just a few questions. You had an opportunity to go
18 into both A and B; is that your testimony?

19 A: That is correct, yes, sir.

20 Q: All right. And we talked a little bit about this case
21 about the layout of the apartments earlier. I don't think you
22 were here. But, in terms of architectural construction or
23 layout, being a duplex, would it be fair to say that -- that
24 one is more or less a mirror image of the other the way that
25 they're laid out?

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- 1 A: It was pretty close. I'm thinking there might've been on
2 the B, another little addition. I don't know if plumbing wise
3 or what, but it pretty much the same layout, the living room,
4 bedrooms on the side, restroom, and then the kitchen towards
5 the rear of that structure or the layout in that aspect; yes,
6 sir, it's about the same.
- 7 Q: So, when the place was built, it probably was originally
8 slated or construction as a duplex?
- 9 A: I'm sure it was in this design, yes, sir. I would say it
10 was manufactured that way.
- 11 Q: Okay. All right. And on -- and your responsibility was
12 confined mainly to executing the search warrant on 805-B; is
13 that right?
- 14 A: That is correct, I was on entry on Apartment B.
- 15 Q: All right. So, you and your team going through the front
16 door of 805-B, while Agent Brown and his team going through
17 the back door of 805-A; is that fair to say?
- 18 A: That is correct. The intel we had, had Mr. Gregg
19 utilizing the back door of A. So, that's the one that team
20 made entry on. And ours was the front door, so we made entry
21 on the front on that one.
- 22 Q: Okay. You didn't have any involvement in the application
23 process of the search warrant for either A or B, did you?
- 24 A: Agent Brown had one and Agent Ussery did -- he had
25 Apartment A, Agent Ussery had Apartment B.

1 Q: You didn't file an affidavit to present to the City Court
2 to issue the search warrant for either side, did you?

3 A: No, sir, those two agents handled those.

4 Q: All right. But you've dealt with search warrants in the
5 past, where you have been the affiant and applied to a judge
6 or Magistrate or City Court for a search warrant; is that
7 right?

8 A: That is correct; yes, sir.

9 Q: Okay. But not in this case?

10 A: Not in this one, no, sir.

11 Q: And normally if you're executing a search warrant, is it
12 standard language to say something of the effect that a
13 reliable confidential informant has -- was there and
14 personally seen something within a 72-hour period or something
15 like that?

16 MR. JEPERTINGER: Your Honor, may we approach?

17 THE COURT: You may.

18 (REPORTER'S NOTE: Bench conference is held on the record in
19 the presence of but outside the hearing of the jury.)

20 MR. JEPERTINGER: Judge, I -- because the affidavit and
21 search warrant doesn't go in front of the jury, I don't think
22 any of the language that's part of these search warrants
23 should go in. I know it's cross examination, but I mean, he
24 can't get into the search warrant. You've ruled on that issue
25 that in terms of this case, the search warrant was valid. I

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1 don't see what the benefit would be of him asking about that
2 because there's going to be questions who the confidential
3 informant is and we're getting into an area where it doesn't
4 have to be ---

5 MR. SUGGS: Ordinarily, I would not, but we're talking
6 about a duplex. We're talking about one building and we have
7 two separate sides with two separate families residing. And
8 the confidential informant has said that he had seen something
9 on one side and said it -- the same on the other. But, there
10 was no substantial drugs found on the other side. I mean, I
11 think I'm entitled to ---

12 MR. JEPERTINGER: Judge, I'm not dealing with 805-B at
13 all other than the idea of being a passageway where ---

14 MR. SUGGS: I won't ask but a couple more questions.

15 THE COURT: Why don't you do that? Two?

16 MR. SUGGS: Yes, sir.

17 (REPORTER'S NOTE: End of bench conference.)

18 BY MR. SUGGS:

19 Q: On 805-B, Officer Nida, did -- you executed the return on
20 that; is that correct?

21 A: I would have to look at it to see. I'm not a hundred
22 percent sure on that one.

23 MR. SUGGS: May I approach?

24 THE COURT: You may.

25 A: That is B and that is my signature. 805-B, yes, sir.

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1 BY MR. SUGGS:

2 Q: In addition to marijuana, also confiscated from 805-B was
3 a stolen Florence Police Department tactical vest and digital
4 scales and marijuana; is that correct?

5 A: That is correct; yes, sir.

6 MR. SUGGS: Nothing further, Your Honor. Thank you.

7 THE COURT: Thank you.

8 REDIRECT EXAMINATION OF WILLIAM JOSEPH NIDA BY MR.

9 JEPERTINGER:

10 Q: Did you give him a citation for the stolen tactical vest
11 or anything?

12 A: No, sir, we just recovered it and it was logged into
13 evidence.

14 Q: All right. Thank you. That's all I have.

15 THE COURT: All right. You may step down.

16 MR. NIDA: Thank you, sir.

17 THE COURT: Anything else before lunch or ---

18 MR. JEPERTINGER: No, sir.

19 THE COURT: Members of the jury, let's take a break until
20 2 o'clock. Be back at 2 o'clock and we'll resume with this
21 trial. Do not discuss the case.

22 (REPORTER'S NOTE: Jury exits courtroom @ 12:18 P.M.)

23 RECESS - 12:18 P.M.

24 *****OFF THE RECORD*****

25 On the Record - 2:11 P.M.

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1 THE COURT: Good afternoon.

2 All right. Let's bring in the jury.

3 (REPORTER'S NOTE: Jury enters courtroom @ 2:14 P.M.)

4 THE COURT: The state's recognized for your next witness.

5 MR. JEPERTINGER: Thank you, Your Honor. I call Deputy
6 Chris Neal to the stand.

7 CLERK: Please place your left hand on the Bible and
8 raise your right hand.

9 CHRISTOPHER SKINNER NEAL, HAVING BEEN
10 SWORN TESTIFIES AS FOLLOWS:

11 CLERK: Please be seated and state your full name for the
12 record.

13 COURT REPORTER: Can you spell your last name, too,
14 please?

15 MR. NEAL: My name is Christopher Skinner Neal, N-E-A-L.

16 DIRECT EXAMINATION OF CHRISTOPHER SKINNER NEAL BY MR.
17 JEPERTINGER:

18 Q: Thank you. Deputy Neal, for whom are you employed?

19 A: I work for the Florence County Sheriff's Department.

20 Q: And how long have you worked for the sheriff's office?

21 A: It will be 26 years in June.

22 Q: All right. What are your current responsibilities to
23 Florence County Sheriff's Office?

24 A: My current duty at the Florence County Sheriff's Office
25 is an investigator for the detention center. Everything that

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1 occurs inside the detention center is my responsibility to
2 investigate. I'm also responsible, too, as the administrator
3 for the -- the inmate telephone system.

4 Q: Okay. And were you doing that same type of work back in
5 January of 2017?

6 A: Yes, sir; I was.

7 Q: Okay. I'm gonna ask you, if you can, explain to the jury
8 how the inmate telephone system works?

9 A: We use a system that's known as Paytel ---

10 MR. SUGGS: Your Honor?

11 THE COURT: Yes?

12 MR. SUGGS: At this time, the defense would renew its
13 objection as to this witness testifying.

14 THE COURT: All right. I understand and you are
15 protected on the record. Thank you.

16 MR. SUGGS: And contents of the testimony.

17 THE COURT: Thank you.

18 MR. SUGGS: Thank you.

19 THE COURT: All right. Continue.

20 A: We use a system that's known as Paytel. It is provided
21 by a company that's based in Greensboro, North Carolina. They
22 come in and set up inmate telephones, which are essentially
23 pay telephones without a slot on them. The -- when the
24 inmates are booked in, they are issued a pin number that is
25 unique to them and, from that point, they move to a set of

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1 telephones where they pick up the telephone, enter their pin
2 number, then they're then prompted to repeat several phrases
3 as well as their name, so that the system identifies that pin
4 number with that voice. It has voice recognition
5 capabilities. Once they are enrolled, then are allowed to use
6 the telephones in booking and the telephones in the pods. All
7 telephone calls that come out of the Florence County Sheriff's
8 Office from the inmate system are recorded digitally and they
9 are scored in the secured digital facility at the Paytel
10 office in Greensboro, North Carolina. They are accessed by
11 staff and investigators through a web based portal.

12 BY MR. JEPERTINGER:

13 Q: Are the people using -- the inmates using the telephone
14 informed that they are being recorded?

15 A: When they are booked in, as part of their booking
16 process, their property is taken for them and they sign a
17 receipt for their property. Before they get their pin number
18 and at the bottom of that receipt, there's a statement that
19 they understand that they are being allowed to use the phones
20 and that the phone calls are subject to monitoring and
21 recording. At the beginning of each call, both parties also
22 hear a recorded statement that states that both -- that all
23 calls are subject to monitoring and recording.

24 Q: Now, if a law enforcement officer wants to monitor an
25 inmates phone calls, how would he go about accessing those

1 phone calls?

2 A: Access to the Paytel system is granted by me primarily,
3 as the administrator. I will receive a request from an
4 officer. I usually ask that they do it in an email form
5 so that using their -- their government issued email so that I
6 can verify that they do work for a law enforcement agency, and
7 then I issue them a user name and password and a link to the
8 system and then provide them whatever training that they need
9 to log in to the system and search for the, the inmate that
10 they would like to listen to calls for. They can search
11 either by name or by pin number. They can be provided by the
12 booking desk.

13 Q: In this case that we're dealing with today, did someone
14 from the Florence Police Department ask you to access the
15 phone calls of Johnny Nickolas Gregg, Jr., the defendant in
16 this case?

17 A: They did not ask me specifically about that, but previous
18 to that, I had received request for access from officers with
19 the City Police Department. And once they're granted access,
20 they're granted access to listen to any -- any call at any
21 time until they're no longer employed.

22 Q: All right. So, the only issue is whether they're
23 currently employed with the Florence Police Department.

24 A: Exactly. Once they become no longer employed, they're
25 removed from the system.

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1 Q: Okay. Thank you. That's all the questions that I have
2 for this witness.

3 Please answer any questions that he may have.

4 THE COURT: All right.

5 CROSS EXAMINATION OF CHRISTOPHER SKINNER NEAL BY MR. SUGGS:

6 Q: Chris, how long has this system been in effect?

7 A: We've been using the current Paytel system for
8 approximately 10 years.

9 Q: Okay. And does it go through a private carrier that
10 charges a fee for the calls?

11 A: The fee is -- the company that manages the system is
12 Paytel and they charge a fee to the inmates and their families
13 in order to use the telephone system.

14 Q: Okay.

15 A: Their first call is free. There's -- and there's a
16 certain number of calls -- they're allowed to make free calls,
17 but the company charges, yes.

18 Q: Okay. How do they know who to charge? I mean is there
19 an account set up by the inmate or by his or a family member?

20 A: Initially, the account is set up by whatever money that
21 the inmate may have. The inmate, when they come in, if they
22 come in with money, they can put it on their books that can be
23 then used to purchase minutes on the phone.

24 Q: Okay.

25 A: If they are going to be there for any length of time,

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1 they're able to share their account details with their family,
2 who can then put money into their account that they can either
3 make calls or purchase commissary with.

4 Q: Okay. Now, when -- and you're in charge of managing that
5 system of calls between inmates and family members?

6 A: No, I don't manage it. I'm the point of contact for
7 Paytel with the Florence County Sheriff's Office. I
8 administer the system as far as the Florence County Sheriff's
9 Office is concerned.

10 Q: Now, when you mean you administer the system, explain
11 that to me?

12 A: I grant access and make sure that -- that the officers
13 that need access have access ---

14 Q: Okay.

15 A: --- to the appropriate parts of the system.

16 Q: Is that your main function with regard to that ---

17 A: Yes.

18 Q: --- particular program with Paytel is the granting or not
19 granting of access to conversations by someone?

20 A: That's correct.

21 Q: Okay. All right. So, in order for someone to have
22 access -- you have access to the system all the time; is that
23 right?

24 A: That's correct.

25 Q: All right. So, in order for you to give your permission

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- 1 to someone, it has to go through you and not anybody else at
2 the sheriff's department?
- 3 A: That's correct.
- 4 Q: All right. So, you're the responsible party; is that a
5 yes?
- 6 A: Correct.
- 7 Q: All right. When a request is made, you say it's made
8 through email most of the time?
- 9 A: Correct.
- 10 Q: Or that's the way you prefer it?
- 11 A: That's the way that I prefer because the user name that
12 we use is the email address for the officer.
- 13 Q: Gotcha. All right. So, if an officer calls you on the
14 phone and expresses a desire to have access, you tell that
15 officer to email the request to you?
- 16 A: Correct.
- 17 Q: So, you'll have his or her email address?
- 18 A: Correct.
- 19 Q: Okay. Anybody, an officer ever come up to you and say
20 here is my email address, put it in your system, and -- and
21 then we can talk later about access?
- 22 A: No, I usually don't handle requests like that, because
23 along with the user name and password, I'm also providing them
24 the link that they need to login to the system.
- 25 Q: Okay.

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1 A: So, I need to have that email ---
2 Q: Okay.
3 A: --- to pass back and forth to them.
4 Q: All right. And can -- can anybody email you for access
5 or could I email you and say I want access or I have to be law
6 enforcement?
7 A: You could email me, but you have to be in law enforcement
8 and I have to be able to verify that with supervisors or other
9 officers.
10 Q: Okay.
11 A: Obviously, the -- most of the local officers, I know who
12 they are, so I handle it that way. If I don't know who they
13 are, then I can verify it through someone else.
14 Q: Okay. Like a request from an officer maybe not in this
15 jurisdiction?
16 A: If there was an officer from Horry County or somewhere
17 like that that needed access because they -- we're housing one
18 of their inmates at our facility and he'd like to listen to
19 the phone calls, then we would handle it that way. I would
20 need to verify who he was and who he worked for, but the
21 request would still come via email.
22 Q: All right. And how many email requests did you receive
23 relating to conversations that Mr. Gregg may have had?
24 A: I did not receive a specific request. I don't grant
25 access to the officer to listen to a specific inmate. The

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1 officers are granted access to the system to listen to the
2 inmates that they need to.

3 Q: Okay. Maybe you didn't understand my question. Did
4 anybody email you in law enforcement in this county, this
5 jurisdiction for -- for permission to access the system -- no
6 officer?

7 A: Officers from the City of Florence have emailed me to
8 access the system, but not specifically for the defendant.

9 Q: Okay. So, just would they be able to access once they
10 got permission anybody's conversations?

11 A: Anyone that is currently housed or has been housed in the
12 system and has calls recorded.

13 Q: Okay. So, it's sort of a blanket authorization, isn't
14 it?

15 A: Correct.

16 Q: So, if a law enforcement officer here sends you a request
17 for authorization, that could be for any conversation made
18 from the detention center?

19 A: Any conversation that an inmate makes with an outside
20 party.

21 Q: Okay. It doesn't matter who the inmate is?

22 A: No, sir.

23 Q: Okay. No further questions.

24 THE COURT: All right. Any redirect?

25 MR. JEPERTINGER: No, sir, and I'd ask that Deputy Neal

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1 be released from his subpoena.

2 THE COURT: All right. Any objections?

3 MR. SUGGS: No objection.

4 THE COURT: Have a good day.

5 MR. NEAL: Thank you.

6 THE COURT: Call your next witness.

7 MR. JEPERTINGER: I call Alex Ussery to the stand.

8 CLERK: If you'll please come around and place your left
9 hand on the Bible and raise your right hand.

10 ALEX CHRISTOPHER USSERY, HAVING BEEN
11 SWORN TESTIFIES AS FOLLOWS:

12 CLERK: Please be seated and state your full name for the
13 record.

14 MR. USSERY: Alex Christopher Ussery.

15 DIRECT EXAMINATION OF ALEX CHRISTOPHER USSERY BY MR.

16 JEPERTINGER:

17 Q: Okay. Agent Ussery, for whom do you work?

18 A: Florence Police Department.

19 Q: Okay. And how long have you worked for the Florence
20 Police Department?

21 A: Twelve years.

22 Q: Okay. You were so employed obviously back on January
23 6th, 2017; is that correct?

24 A: Yes, I was.

25 Q: All right. Did you take part in any way, shape, or form

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ALEX CHRISTOPHER USSERY - DIRECT BY JEPERTINGER

1 of an execution of search warrants at houses A and B, 805-A
2 and B?

3 A: Yes, sir.

4 Q: Okay. Can you tell the ladies and gentlemen of the jury
5 what you did specifically on that date?

6 A: All right. I was in charge of Apartment B. That was
7 gonna be my search warrant along with my team. We executed,
8 myself and Andron Brown, executed our search warrants
9 simultaneously at the same time. He entered the back door of
10 Apartment A, I entered the back door of Apartment B.

11 MR. SUGGS: Could you speak up or is the microphone not
12 on?

13 THE COURT: Pull that microphone a little closer to you
14 if you would.

15 A: Yes, sir.

16 THE COURT: Speak into it.

17 A: All right. Can you hear me now?

18 MR. SUGGS: Yes, sis, absolutely.

19 A: All right. I went to the front of Apartment B. Agent
20 Brown and his unit, his team, went to the rear of Apartment A.
21 We went, myself and my team, entered the Apartment B, executed
22 the search warrant, located a small quantity of marijuana and
23 a stolen police vest, issued citations for the -- a citation
24 for the marijuana, which I then secured inside my vehicle.
25 Myself and Lieutenant Nida went from Apartment B to Apartment

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ALEX CHRISTOPHER USSERY - DIRECT BY JEPERTINGER

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1 A to assist anyway we could over there.

2 BY MR. JEPERTINGER:

3 Q: Okay. And Agent Brown apparently did whatever he was
4 doing in Apartment A while you were doing whatever you were
5 doing in Apartment B; is that correct?

6 A: Yes, sir.

7 Q: All right. Now, subsequent to this defendant's arrest at
8 805-A Commander Street, was he taken to the Florence County
9 Detention Center?

10 A: Yes, sir.

11 Q: All right. Did you have an opportunity to request phone
12 conversations that Johnny Gregg made during that timeframe?

13 A: Yes, sir; I did.

14 Q: All right. And how many phone calls did you record from
15 that timeframe?

16 A: There were, I believe, four altogether.

17 Q: Okay. And do you remember the dates?

18 A: January 6th and January 8th.

19 Q: All right. And those phone calls were, would you say
20 lengthy or short?

21 A: They were -- some of them were lengthy.

22 Q: All right. Now, I'm going to show you what's been marked
23 as State's Exhibit 1 for identification. Have you had an
24 opportunity to listen to what's on State's Exhibit 1?

25 A: Yes, I have.

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ALEX CHRISTOPHER USSERY - DIRECT BY JEPERTINGER

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1 Q: Okay. And can you tell the jury what is on State's
2 Exhibit 1?

3 A: It's a redacted version of the phone conversations that I
4 recorded or the recorded conversations that I heard. It's
5 just ones from January 6th that was the initial setup for Mr.
6 Gregg. The second one is a phone conversation between him and
7 an unknown female.

8 Q: Okay. And the reason you edited down was for what
9 reason, sir?

10 A: There was some lengthy conversations. There was a lot of
11 other stuff that was not pertinent to the case.

12 Q: All right. And when you accessed the system, did you
13 specifically ask for Johnny Nickolas Gregg, Jr.?

14 A: Yes.

15 Q: All right.

16 MR. JEPERTINGER: At this time, Judge, I would ask to
17 move State's Exhibit 1 into evidence?

18 THE COURT: Any objections?

19 MR. SUGGS: Yes, sir, as previously ---

20 THE COURT: All right. It's overruled. State's Number 1
21 is into evidence.

22 STATE'S EXHIBIT NUMBER 1

23 ADMITTED INTO EVIDENCE

24 MR. JEPERTINGER: And if I could publish State's Exhibit
25 1 to the jury?

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ALEX CHRISTOPHER USSERY - DIRECT BY JEPERTINGER

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1 MR. SUGGS: Same objection, Judge.

2 (REPORTER'S NOTE: State's 1 published to the jury. Audio not
3 transcribed herein.)

4 BY MR. JEPERTINGER:

5 Q: Thank you. Please answer any questions that the defense
6 may have for you?

7 A: Yes, sir.

8 CROSS EXAMINATION OF ALEX CHRISTOPHER USSERY BY MR. SUGGS:

9 Q: Just a few questions, officer. Your participation in this
10 particular case, it sounds to me to be limited in comparison
11 some of the other officers who testified; is that a fair
12 statement?

13 A: Yes, sir.

14 Q: Okay. You applied for a search warrant or you executed an
15 affidavit for a search warrant and presented that affidavit to
16 Judge Jackson for her signature?

17 A: Yes, sir.

18 Q: And that was for 805-B?

19 A: Yes.

20 Q: Commander Street; is that right?

21 A: That's correct.

22 Q: Okay. And as we know, it was a duplex; there's an A and
23 there's a B, but your -- you're the one who signed the warrant
24 for, or applied for the warrant and got the search warrant for
25 side B; is that correct?

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ALEX CHRISTOPHER USSERY - CROSS BY SUGGS

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- 1 A: That's correct.
- 2 Q: How long did -- did it take you -- well, how many other
3 officers besides you went into the B side?
- 4 A: Had to be four, I believe there was four.
- 5 Q: Including you?
- 6 A: Including me.
- 7 Q: So, four altogether. Are you the one that breached the
8 door?
- 9 A: No, sir; I was the second in.
- 10 Q: What?
- 11 A: I was the second person in.
- 12 Q: Second person in. Okay. The one who breaches the door,
13 he or she does not go in first; is that right?
- 14 A: It depends upon the circumstance and if they can get out
15 of the way fast enough or what not.
- 16 Q: Yeah. Yeah. In this case, did the breacher, was that the
17 first person in?
- 18 A: To be honest with you, I can't really remember. We all
19 kind of went in right at the same time, one right behind the
20 other.
- 21 Q: Okay. Any reason why y'all didn't enter through the back
22 door?
- 23 A: We just -- the information that we had gotten was that the
24 activity was taking place at the front door of this particular
25 apartment. The activity in Apartment A was supposed to be at

1 the back door.

2 Q: Okay. So, your reasons for entering the front door of --
3 of B are because of the activity on the front door and not the
4 back door of that duplex?

5 A: Correct.

6 Q: And the reverse was true with regard to side A?

7 A: Correct.

8 Q: Okay. All right. And how long did it take you and the
9 other three officers to go through and clear that duplex; am I
10 saying that word correctly, clear it?

11 A: I understand. It's the apartment, I can say 30, 45
12 minutes possibly.

13 Q: Okay. How many people were in, in B?

14 A: There was two.

15 Q: Two people. Okay. Did someone try to run?

16 A: Yes, sir, we had one gentleman that as soon as we entered
17 the residence or entered the apartment, he ran to the bathroom
18 and shut the door. We had to force the door open and was able
19 to grab him. He had a small quantity of marijuana he was
20 trying to throw in the toilet. We detained him. There was
21 also a female there. She was quickly detained. She gave up
22 in the hallway. After that, we conducted our search and
23 located some -- another small quantity of marijuana under the
24 couch, which the male did say was his.

25 Q: Okay. Do you think that he might have flushed some before

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ALEX CHRISTOPHER USSERY - CROSS BY SUGGS

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1 y'all were able to get to him?

2 A: No, sir.

3 Q: Okay. All right. When you -- when you breach a house, do

4 you announce yourself first?

5 A: Yes, sir, we knock and announce police search warrant.

6 Q: All right. And did you do that?

7 A: Yes, sir.

8 Q: All right. You do it loudly?

9 A: Oh, absolutely.

10 Q: Okay. How long after the announcement do you give the

11 occupants to come to the door before you force it open; is

12 there a general rule?

13 A: It's one to two seconds.

14 Q: Not very long at all?

15 A: No, sir.

16 Q: So, just somebody might be trying to get up off the couch

17 to go answer the door when you're coming in is possible, isn't

18 it?

19 A: It could be a possibility.

20 Q: Okay. And after -- after y'all cleared and -- and the

21 breaches, did they occur simultaneously, in other words, y'all

22 going through -- your team going through the front door of B

23 while the other team is going through the back door of A at

24 the same time?

25 A: It was around maybe 20 or 30 second lag time. By the time

1 that they had gotten to the back door, once we were entering
2 the Apartment B, we could hear them entering Apartment A.

3 Q: So, y'all, I mean y'all would be in regular communication
4 with one another, wouldn't you?

5 A: Yes.

6 Q: Okay. So, if some trouble happened, you would know
7 immediately?

8 A: Yes, sir.

9 Q: All right. And did it take about the same time for the
10 other team to clear their side, about 30 or 40 minutes?

11 A: They were still clearing and searching once we were
12 completed on our side.

13 Q: Okay.

14 A: At that point in time, I had issued my citation to the
15 gentleman that had the small amount of marijuana and we also
16 had recovered a stolen police vest, which I secured both
17 inside my vehicle, locked the doors, we also had a perimeter
18 team outside that was monitoring the vehicles to make sure
19 nobody would touch them or bother them. Myself and Lieutenant
20 Nida went around the back to Apartment A and assisted in any
21 way we could.

22 Q: Was there just one vehicle at -- at 805 Gregg Avenue when
23 y'all completed your search?

24 A: As far as law enforcement vehicles?

25 Q: I'm sorry, no law, just personal vehicles?

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ALEX CHRISTOPHER USSERY - CROSS BY SUGGS

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1 A: Yes, sir; there was one.

2 Q: There weren't any others?

3 A: No, sir.

4 Q: Okay. Did you -- were you involved in the search of that
5 vehicle at all?

6 A: No, sir.

7 Q: Okay. Were you involved in the search of the -- of side A
8 after you finished side B?

9 A: I was present when -- inside there, I didn't really search
10 any areas, but once I came around and went inside, I saw the
11 drugs and weapons on the table, and Agent Brown was processing
12 and taking notes on. I walked through the house or walked
13 through the Apartment, I observed Agent or Officer Bannister
14 recovering some more money from outside the -- inside the
15 bedroom from underneath the dresser. At that time, I believe
16 it was Agent Spears that was speaking with Mr. Gregg.

17 Q: Okay. Was Mr. Gregg already in handcuffs when you walked
18 in from side B to side A?

19 A: I believe they had just switched them around to the front
20 at that point in time.

21 Q: I'm sorry?

22 A: I believe they had just switched them around to the front.
23 They were going over some paperwork.

24 Q: But he was already under arrest?

25 A: Yeah, he was already in custody.

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ALEX CHRISTOPHER USSERY - CROSS BY SUGGS

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1 Q: Okay. He was already in handcuffs?
2 A: Yes, sir.
3 Q: Okay. Did you hear any of the conversation between he and
4 any of the other officers?
5 A: I heard a little, yes, sir.
6 Q: Okay. All right. Did -- did you try to determine who
7 owned the -- the actual duplex?
8 A: As far as the entire ---
9 Q: Yes, sir.
10 A: --- of A and B? No, sir.
11 Q: Yes, sir.
12 A: I did not.
13 Q: Did you -- was it your understanding or do you know
14 whether or not it's owned by a person who just leases out both
15 sides or do you know?
16 A: I do not know.
17 Q: All right. Do you know whether or not Mr. Gregg leases --
18 his name is on any of the leases associated either side A or
19 side B?
20 A: That I do not know.
21 Q: And you didn't conduct any physical search of Mr. Gregg,
22 did you?
23 A: No, sir; I did not.
24 Q: Okay. All right.
25 I think that's all I have, Your Honor.

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ALEX CHRISTOPHER USSERY - CROSS BY SUGGS

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1 THE COURT: All right. Redirect?

2 MR. JEPERTINGER: No redirect, Your Honor, and I would
3 ask if Agent Ussery could be excused from his subpoena?

4 THE COURT: Any objections?

5 MR. SUGGS: No, sir.

6 THE COURT: All right. Have a good day.

7 MR. USSERY: Thank you.

8 THE COURT: Call your next witness?

9 MR. JEPERTINGER: Your Honor, that's the state's case.

10 THE COURT: All right. Come on up here real quick and
11 let me talk to both of you.

12 (REPORTER'S NOTE: Bench conference is held off the record in
13 the presence of but outside the hearing of the jury.)

14 THE COURT: Members of the jury, I'm gonna let you go at
15 this time. We're going to stay here and work. I have
16 multiple motions I have to take up, we have to go over the
17 charge, the verdict form, and other things. We're gonna try
18 to get everything ironed out so that we can streamline it and
19 move forward and finish with this case tomorrow.

20 So, if you'll be back at 9:30, we'll stay here and try to
21 get it ready for you. Thank you. Do not discuss the case.

22 (REPORTER'S NOTE: Jury exits courtroom @ 2:47 P.M. The
23 following takes place outside the presence of the jury.)

24 THE COURT: All right. Any motions from the defense?

25 MR. SUGGS: Yes, sir, Judge. Can I have just a second to

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ALEX CHRISTOPHER USSERY - CROSS BY SUGGS

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1 ---

2 THE COURT: Sure.

3 MR. SUGGS: --- get myself organized, Judge, I'm sorry.

4 THE COURT: That's all right. You want me to be going
5 over his constitutional rights while you do that?

6 MR. SUGGS: Can you do that?

7 THE COURT: Sure. All right. Let's swear in the
8 defendant. He can stay right there.

9 CLERK: Please raise your right hand.

10 JOHNNY NICKOLAS GREGG, JR., HAVING
11 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

12 THE COURT: All right. Mr. Gregg, I want you to
13 understand that this is your trial and if you'd like to come
14 over here and be sworn in and take this witness stand and
15 testify, you can. However, I want to let you know that if you
16 do testify, you may be cross examined on any and all relevant
17 issues in connection with your case. Furthermore, if you have
18 a criminal record and it involves crimes of dishonesty or
19 false statements or crimes that carry punishment of more than
20 one year and the Court determines that the probative value
21 outweighs its prejudicial effect, then your criminal record
22 will be introduced to attack your credibility. Do you
23 understand that?

24 MR. GREGG: Yes, sir.

25 THE COURT: Do you understand the risk associated with

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JOHNNY NICKOLAS GREGG, JR. - BY THE COURT

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1 testifying?

2 MR. GREGG: Yes, sir.

3 THE COURT: All right. I want you to understand also
4 that you do not have to testify, because you have the
5 constitutional right to remain silent. And if you chose to
6 exercise that right, I want you to understand that I'll tell
7 that jury they cannot use that against you in any way. I
8 would tell the jury the fact that you did not testify is to
9 have absolutely no prejudice against you and I would even go
10 so far as to tell them they cannot even talk about that fact
11 in the jury room. Do you understand your right to remain
12 silent?

13 MR. GREGG: Yes, sir.

14 THE COURT: All right. Have you talked with your lawyer
15 as to whether or not you want to testify in this case?

16 MR. GREGG: Yes, sir.

17 THE COURT: And what is your decision?

18 MR. GREGG: Well, we want to still talk a little bit
19 more.

20 THE COURT: That will be fine.

21 BY THE COURT:

22 THE COURT: You want to go ahead and talk some more with
23 him right now or do you want to let me know in the morning?

24 MR. SUGGS: Well, can I ---

25 THE COURT: Why don't you talk to him, now?

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BY THE COURT

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1 MR. SUGGS: Can we go over his prior record, Judge, and
2 make a ruling with regard to that first and then we can go --
3 take up the next level?

4 THE COURT: What do we have, Mr. Jepertinger?

5 MR. SUGGS: May I see it, Judge?

6 MR. JEPERTINGER: He has prior public disorderly conduct
7 in 2008. Granted, I will not use that public disorderly
8 conduct today.

9 THE COURT: Okay.

10 MR. JEPERTINGER: It looks like he was received into the
11 Department of Corrections back on September 24th, 2009 for
12 financial transaction card theft, three counts, YOA not to
13 exceed five years each concurrent. Four counts of breaking
14 into a motor vehicle under the YOA sentence and a grand
15 larceny \$5,000 or more, YOA not to exceed five years
16 concurrent. This crime happened in January of 2017. It's
17 within the 10 year timeframe and each of these are crimes of
18 -- I would say theft is a crime of dishonesty and each of them
19 carried more than a year. I would ask to be able to use
20 those.

21 THE COURT: All right.

22 MR. JEPERTINGER: He has, it looks like in 2011, he had a
23 PWID marijuana up here, and it also looks like in 2012 and
24 '13, he had two simple possessions of marijuana. I don't
25 think I can use either, not either, but any of those three

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BY THE COURT

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1 since he's on trial for marijuana, and I will not use those.
2 But of course, perhaps for enhancement purposes, should he be
3 convicted. However, also in 2011 it looks like he was
4 convicted of some more breaking and entering motor vehicles.
5 It says convicted three counts. I don't have the sentence on
6 that, just the three counts -- three then it cuts off, within
7 three years.

8 MR. SUGGS: That might be -- I saw that, too. It might
9 be a revocation, because I think ---

10 MR. JEPERTINGER: When he caught the marijuana, I agree.

11 MR. SUGGS: Okay. But I do -- I do agree with Mr.
12 Jepertinger that he did get a Y sentence September 24th, 2009;
13 three counts of FTCCT, four counts B&E motor vehicle, and one
14 count grand larceny \$5,000 or more not to exceed five years.
15 That is within the 10 years. I think the way that statute
16 reads, it's after -- that 10 years though is after the end of
17 any even collateral that consequences attach to a conviction
18 or a plea such as probation, supervision, things of that
19 nature.

20 MR. JEPERTINGER: You're saying I can use them?

21 MR. SUGGS: Well, I think it's up to the Court. I think
22 the Court still has to determine whether the prejudicial value
23 outweighs the probative value.

24 MR. JEPERTINGER: Judge, I would argue there's no
25 prejudice -- the drugs or weapons charges for which ---

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BY THE COURT

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1 THE COURT: Oh, I agree. I think they come in. They're
2 crimes of dishonesty.

3 MR. JEPERTINGER: And I think that's all I can use. I
4 saw another weapons charge on here, but it looked like just a
5 single weapon -- carrying a weapon for which he received a 42-
6 day sentence, that does not carry in excess of a year, Judge.

7 MR. SUGGS: I see that, too. It was January 23rd of
8 2014, unlawful weapon; 42 days is the sentence I see for that.
9 I agree with Mr. Jepertinger on that. I understand there may
10 be some issues in North Carolina, Judge, but those are
11 pending.

12 MR. JEPERTINGER: Yes, sir.

13 MR. SUGGS: And so those are not ---

14 THE COURT: That is correct.

15 MR. SUGGS: So, as I understand the Court's ruling,
16 should he testify in his own defense, the state can be able to
17 introduce -- also, I see a minor in possession of alcohol or
18 something in 2009.

19 MR. JEPERTINGER: I'm not going to use anything of that
20 nature.

21 MR. SUGGS: So, we're just looking at the Y sentence, the
22 three counts financial, four counts B&E, one count of grand
23 larceny, and that would be it?

24 THE COURT: That's it.

25 MR. JEPERTINGER: That's correct.

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BY THE COURT

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1 MR. SUGGS: All right, Judge. I'd like to talk to him a
2 little more about -- about taking the stand and certainly
3 we'll make that decision way in advance to the jury coming in
4 tomorrow at 9:30. So, it's the state's case, but I'm of the
5 opinion, Judge, that -- that I'm kind of behind the eight ball
6 a little bit on this case. I don't believe that, based on my
7 experience, Judge, that I could do any -- any greater harm to
8 this case by allowing my client to testify to that which
9 already exists as we -- as we speak now under these
10 circumstances. It's just kind of my general feel of it. Even
11 though we do expose the -- Mr. Gregg to some pretty intensive
12 cross examination from Mr. Jepertinger, and I've advised my
13 client that Mr. Jepertinger has -- this is what he does for a
14 living and he's been doing it for 30 years and he's very
15 skilled at what he does. So, if you take the stand and
16 testify, you can expect some pretty tough questions and be
17 prepared to, to answer those. But, it's really my belief,
18 Judge, that he might not have much of a choice but to allow
19 him to take the stand and tell the jury his side of the story
20 and let, you know, let the chips fall where they may.

21 THE COURT: All right.

22 MR. SUGGS: So, I think we probably, I'm 99 percent sure
23 we'll do that.

24 THE COURT: All right. You want to let me know in the
25 morning?

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BY THE COURT

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1 MR. SUGGS: Yes, sir, absolutely. I'll notify your clerk
2 at 9 o'clock tomorrow morning. Would that be okay?

3 THE COURT: That will be fine.

4 MR. SUGGS: Can we look at the charge?

5 THE COURT: How about we go ahead with motions and get
6 those out the way.

7 MR. SUGGS: Motions, okay.

8 MR. JEPERTINGER: Your Honor, before we start the
9 motions, I notice that he did not list any other witnesses in
10 preparation and I'm taking it that he's not going to present
11 any other witnesses in his case.

12 THE COURT: That would be my assumption.

13 MR. SUGGS: That is correct, Your Honor.

14 MR. JEPERTINGER: All right.

15 MOTIONS:

16 MR. SUGGS: As I understand it, Your Honor, Count 2 has
17 been dismissed in the indictment. They have not been going
18 forward with that. Judge, I -- on Count 1, just going down
19 the line. Obviously, I think 1 is going to be a jury
20 question, a jury issue. I mean, they're gonna have to
21 determine whether or not Mr. Gregg is guilty of a violent
22 offense before they can consider possession of a weapon during
23 the commission of a violent crime. I don't know how to
24 respond to that in terms of motion. I can't really make a
25 motion for a directed verdict based on that, other than to say

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MOTIONS

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1 he was not in actual possession, you know, constructive
2 possession is the law as well in this state and it was found
3 in, in his presence. So, I think that's a jury question to be
4 left to their discretion, Your Honor. So, that would take
5 care of that count.

6 Judge, I think as far as, I'm going to jump around, as
7 far as Count 5 is concerned, I think the state has put up the
8 evidence necessary for the -- for the half mile radius. I
9 think that's -- that's been satisfied.

10 The rest of it, Judge, possession with intent, all the
11 other drug counts, Judge, all I can do is, is make a motion
12 based on the insufficiency of the evidence. I can't really
13 articulate reasons specifically for my motion, Judge, because
14 I think it's just going to boil down to what the -- what the
15 jury decides. And I think the state has put up enough
16 evidence to -- in that respect, to the extent -- now, going
17 back to the exhibits now, I've tried to keep up with it as
18 best I could, there was so many, and Mr. Jepertinger did not
19 exactly put them in, in precise, chronological order, but the
20 -- maybe the record could help me, Judge, but to the extent
21 that Mr. Jepertinger did not move certain items of evidence
22 into evidence as they reflect was indicated on the indictment,
23 I would move for directed verdict based on his lack of
24 introducing those items into evidence. But again, the number
25 was so many and they weren't presented in chronological order,

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MOTIONS

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1 so it was very difficult for me to keep up with what was in
2 and what was -- what was ruled out or what was not actually
3 introduced by Mr. Jepertinger. So, to the extent that Mr.
4 Jepertinger did not introduce certain exhibits, which form the
5 foundation for any count in the indictment, I would move for a
6 directed verdict based on that. Does that make sense?

7 BY THE COURT:

8 THE COURT: All right. Motion is denied. I think
9 there's enough to send it to a jury.

10 MR. SUGGS: All right, Judge.

11 THE COURT: Anything else? If not, we can take a look at
12 the charge and the verdict form.

13 MR. SUGGS: I think that's all.

14 THE COURT: All right. Let's do that.

15 If y'all want to come on up here, we can ---

16 MR. JEPERTINGER: You want us up there?

17 THE COURT: Yeah, come on up and let's just take a look
18 at it. We can iron it out.

19 (REPORTER'S NOTE: Counsel reviews charge to jury and verdict
20 form.)

21 THE COURT: From the state? From the defense?

22 MR. SUGGS: Yes, sir; that's fine.

23 THE COURT: Well, we'll see y'all in the morning.

24 RECESS - 3:30 P.M. - END OF DAY TWO

25 *****OFF THE RECORD*****

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BY THE COURT

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1 **APRIL 18, 2018 - DAY THREE**

2 **(On the Record - 9:37 A.M.)**

3 (REPORTER'S NOTE: The following takes place outside the
4 presence of the jury.)

5 BY THE COURT:

6 THE COURT: Good morning. Everybody have a seat.

7 MR. SUGGS: Good morning, Your Honor.

8 THE COURT: Good morning. Good morning.

9 Before we begin, let me ask Mr. Gregg have you talked
10 with your lawyer about whether or not you wish to testify
11 today?

12 MR. GREGG: Yes, sir.

13 THE COURT: Has he answered all of your questions?

14 MR. GREGG: Yes, sir.

15 THE COURT: And do you wish to testify or not testify?

16 MR. GREGG: Yes, sir.

17 THE COURT: You do?

18 MR. GREGG: Yes, sir.

19 THE COURT: All right. I make a finding that you made
20 that decision freely, intelligently, and with the advice of
21 competent counsel. Thank you very much.

22 All right. And with that being said, the only record
23 that we talked about yesterday that could be used for
24 impeachment purposes would be the three counts of financial
25 transaction card theft, breaking and entering into a motor

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1 vehicle, four counts, and one count of grand larceny; is that
2 correct, Defense?

3 MR. JEPERTINGER: Correct from the state.

4 THE COURT: All right. Mr. Suggs, any problems with that
5 since we talked about it yesterday?

6 MR. SUGGS: Yes, sir, Judge, in terms of presenting that,
7 because I normally present on direct examination ---

8 THE COURT: Sure.

9 MR. SUGGS: Strategically, it takes the wind of the sails
10 a little bit, I think. I always had -- different judges have
11 different views on how that testimony should be elicited from
12 a client and whether or not certain questions if they're asked
13 the wrong way, would open the door to anything else. So ---

14 THE COURT: That's all that's coming in.

15 MR. SUGGS: Sir?

16 THE COURT: We're not opening the door to anything else
17 other than those particular charges.

18 MR. SUGGS: But, I was simply gonna ask and be honest
19 with the Court and tell him that you have a conviction of
20 this, this, and this, and leave it at that. I didn't want
21 that to backfire, that question, because I've got to ask it a
22 certain way.

23 THE COURT: Right.

24 MR. SUGGS: And I want to make certain that was okay.

25 THE COURT: Yeah, that's fine.

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1 MR. SUGGS: All right.

2 THE COURT: And for the record, I'm gonna find that the
3 probative value of admitting that in this particular case by
4 far outweighs its prejudicial effect. I want to make sure I
5 put that on the record.

6 MR. SUGGS: Let me see, I think Mr. Jepertinger had
7 mentioned something needed to come in.

8 THE COURT: Okay. Yes, sir?

9 MR. JEPERTINGER: I'm -- the state's not going forward
10 with Count 7.

11 THE COURT: All right.

12 MR. JEPERTINGER: That's the possession with the intent
13 to distribute powder cocaine.

14 THE COURT: I can assume that's okay with you, Mr. Suggs?

15 MR. SUGGS: Yes, sir.

16 THE COURT: All right. With that being said, I've
17 amended the charge and the verdict form. Do you want to look
18 at it real quick and make sure that we're on the same page?

19 MR. SUGGS: Yes, sir, Judge.

20 THE COURT: Let's do that. You can come up, too, if you
21 want to make sure we got it right.

22 (REPORTER'S NOTE: Counsel reviews charge to jury.)

23 THE COURT: The state?

24 MR. JEPERTINGER: The state has no objection to the
25 amended charge or verdict form.

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1 THE COURT: All right. How about the defense?

2 MR. SUGGS: The defense has no objection to either.

3 THE COURT: All right. So, we'll bring the jury out and
4 we'll begin with the defense's case.

5 MR. SUGGS: As I understand it, Judge, Count 2 and Counts
6 7 are being stricken from the indictment.

7 MR. JEPERTINGER: Yes, sir.

8 MR. SUGGS: Thank you.

9 THE COURT: All right. Let's go ahead and bring out the
10 jury.

11 MR. SUGGS: Judge, the foreperson, this -- right here in
12 the front?

13 THE COURT: The foreman is the very first seat on the
14 front row.

15 MR. SUGGS: Forelady?

16 THE COURT: Right.

17 (REPORTER'S NOTE: Jury enters courtroom @ 9:47 A.M.)

18 THE COURT: The defense is recognized to call your first
19 witness.

20 MR. SUGGS: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. SUGGS: Thank you, Your Honor. We would call Johnny
23 Nickolas Gregg, Jr. to the stand.

24 CLERK: If you will go around to the stand and place your
25 left hand on the Bible and raise your right hand?

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1 JOHNNY NICKOLAS GREGG, JR., HAVING BEEN
2 DULY SWORN TESTIFIES AS FOLLOWS:

3 CLERK: Please be seated and state your full name for the
4 record.

5 THE COURT: Go ahead and state your name for the record.

6 MR. GREGG: Johnny Gregg, Jr.

7 THE COURT: All right. Pull that microphone up a little
8 bit.

9 MR. SUGGS: Good morning, ladies and gentlemen.

10 DIRECT EXAMINATION OF JOHNNY GREGG, JR. BY MR. SUGGS:

11 Q: Good morning, Johnny?

12 A: Good morning.

13 Q: Can you hear me okay?

14 A: Yes, sir.

15 Q: All right. Johnny, how old are you?

16 A: Twenty-seven.

17 Q: All right. And do you live here in Florence County?

18 A: Yes, sir.

19 Q: All right. And are you married or single?

20 A: Single.

21 Q: Okay. And you have a family who also lives in Florence
22 County?

23 A: Yes, sir.

24 Q: What family members do you have here in Florence County?

25 A: All my family.

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1 Q: Okay. Your mother?
2 A: Yes, sir.
3 Q: What's her name?
4 A: Sabrina Morris.
5 Q: All right. And how about your father?
6 A: Johnny Gregg.
7 Q: Where does he live?
8 A: Florence area.
9 Q: Okay. Not much contact with your dad?
10 A: Not often.
11 Q: Okay. Do you have any children?
12 A: No, sir.
13 Q: No?
14 A: No, sir.
15 Q: And brothers and sisters?
16 A: Yes, sir.
17 Q: How many brothers and sisters?
18 A: Two brothers and one sister.
19 Q: Okay. And do they live in the Florence area?
20 A: Yes, sir.
21 Q: And what does -- does your mother work?
22 A: Yes, sir.
23 Q: What does she do for a living?
24 A: A nurse.
25 Q: I'm sorry?

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1 A: A nurse.
2 Q: A nurse. And how far did you go in school?
3 A: I graduated and a little college courses.
4 Q: Sir?
5 A: I said I graduated and a little college courses.
6 Q: All right. Where did you graduate?
7 A: South Florence High School.
8 Q: All right. What year?
9 A: 2009.
10 Q: All right. And did you -- you said you also had some
11 college education?
12 A: Yes, sir.
13 Q: What college?
14 A: Florence Darlington Tech.
15 Q: Okay. What did you take out there?
16 A: I finished my welding up and ---
17 Q: Finished what?
18 A: Welding.
19 Q: Welding. Speak up just a little. Is that microphone on?
20 A: Yeah.
21 THE COURT: He just needs to slide his chair forward and
22 speak into it.
23 MR. SUGGS: Thank you, Judge.
24 BY MR. SUGGS:
25 Q: You said welding?

1 A: Yes, sir.

2 Q: All right. And prior to this incident, were you employed?

3 A: Yes, sir.

4 Q: Where did you work?

5 A: Green's Carpentry.

6 Q: And what did you out there?

7 A: Basically, we remodeled homes, we did a little of

8 everything, like -- basically like you can do to a home or to

9 a house.

10 Q: All right. How long had you worked there?

11 A: Like two years when I got out of the hospital.

12 Q: Two years after high school?

13 A: No, after I got out of the hospital, like after 2015.

14 Q: The hospital?

15 A: Yes, sir.

16 Q: What were you in the hospital for?

17 A: I got in a car accident.

18 Q: Okay. All right. When was that?

19 A: March 2015.

20 Q: Okay. Were you hurt in that accident?

21 A: Yes, sir.

22 Q: All right. Did you receive any sort of -- was the

23 accident your fault?

24 A: No, sir; a truck pulled out and hit me on my moped.

25 Q: You were on a moped?

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- 1 A: Yes, sir.
- 2 Q: Okay. And were you injured?
- 3 A: Yes, sir.
- 4 Q: How badly?
- 5 A: My whole left side, had pins in my arm, pins in my foot.
- 6 I still got pins in my foot. They removed the pins out my arm
- 7 and bruise on my face and scraped up like and my arms ---
- 8 Q: Were you in the hospital for some period of time?
- 9 A: Like three weeks.
- 10 Q: Okay. All right. Did you have a lawyer to represent you
- 11 in that matter?
- 12 A: Yes, sir.
- 13 Q: Who was the lawyer?
- 14 A: DeBerry Law Firm.
- 15 Q: Okay. All right. And that was long before you met me,
- 16 wasn't it?
- 17 A: Yes, sir.
- 18 Q: Okay. All right. Were you able to get a settlement from
- 19 that, that accident?
- 20 A: Yes, sir.
- 21 Q: And how much money were you able to get?
- 22 A: 25,000.
- 23 Q: Okay. All right. And that was all your share?
- 24 A: Yeah, it was supposed to've been more than that, but the
- 25 insurance company -- it was like hospital and all this, so ---

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1 Q: All right. But you got some money from the settlement?
2 A: Yes, sir.
3 Q: All right. Okay. I want to -- I want you to be honest
4 with this jury ---
5 A: Yes, sir.
6 Q: That's very, very important; you understand that?
7 A: Yes, sir.
8 Q: And in terms of prior convictions, you do have some prior
9 convictions in this -- you have prior convictions; is that
10 right?
11 A: Yes, sir.
12 Q: All right. According to my information, is that in 2009,
13 you were convicted of financial transaction card theft; is
14 that right?
15 A: Yes, sir.
16 Q: And was it three counts?
17 A: Yes, sir.
18 Q: Okay. And at the same time, you were also -- and you pled
19 guilty to that, didn't you?
20 A: Yes, sir.
21 Q: You didn't have a jury trial like we're having now, did
22 you?
23 A: No, sir.
24 Q: And also, four counts breaking and entering into a motor
25 vehicle; is that right?

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- 1 A: Yes, sir.
- 2 Q: And one count of grand larceny of \$5,000 -- value of
3 \$5,000 or more; is that right?
- 4 A: Yes, sir.
- 5 Q: And as a result of that, you were sentenced to a period
6 not to exceed five years; is that right?
- 7 A: Yes, sir.
- 8 Q: Okay. And were you sentenced under the Youthful Offender
9 Act?
- 10 A: Yes, sir.
- 11 Q: Okay. Was that -- now in 2009, how old were you?
- 12 A: I turned 19 like after that sentence.
- 13 Q: Okay. 19?
- 14 A: Yes, sir.
- 15 Q: Okay. So, you were sentenced under the section for
16 youthful people?
- 17 A: Yes, sir.
- 18 Q: All right. Very good. Now, let's talk about the incident
19 itself. Do you remember -- you've been sitting through this
20 entire trial, so you've been listening to the testimony; is
21 that right?
- 22 A: Yes, sir.
- 23 Q: Okay. I want to talk about the telephone conversation,
24 first; do you remember hearing that recording?
- 25 A: Yes, sir.

1 Q: Okay. And I had some trouble understanding what was said
2 in that conversation, but maybe you can help clear that up; is
3 that okay?

4 A: Yes, sir.

5 Q: All right. You had mentioned something about a
6 refrigerator; do you remember that?

7 A: Yes, sir.

8 Q: What were you trying to say in your conversation, or what
9 were you trying to do with the refrigerator?

10 A: Oh, I was saying that I heard a noise, I was -- I was in
11 the living room. So, I heard a noise and I like, I -- I
12 walked to the back door, like, I said I could move the
13 refrigerator and hid beside the refrigerator in front of the
14 door.

15 Q: You were going to hide in the refrigerator?

16 A: No, beside the refrigerator.

17 Q: Okay. Okay. Because you're a pretty tall fellow, aren't
18 you?

19 A: Yes, sir.

20 Q: Okay. The noise you heard, what noise was that; was it
21 coming from next-door?

22 A: Yes, sir.

23 Q: Okay. Now, you heard the testimony, you think that was
24 from the raid they had next-door?

25 A: Yes, sir.

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1 Q: And that was at 805 Commander Street, Apartment B; is that
2 right?

3 A: Yes, sir.

4 Q: Okay. And you were in Apartment A; is that right?

5 A: Yes, sir.

6 Q: Okay. All right. Now, how many police officers came in
7 on, on -- on A when you were there?

8 A: It was good bit of them.

9 Q: Do you know how many?

10 A: They just kept getting out, like ---

11 Q: When they first came in, was Officer or Agent Brown
12 present?

13 A: He ain't came in first; it was a white guy. A white guy
14 came in first.

15 Q: Mr. Lockhart maybe?

16 A: No, sir.

17 Q: Okay. You don't know any of the officers?

18 A: He had like a little beard, like a little ---

19 Q: Did he testify earlier?

20 A: No, sir.

21 Q: Okay. All right. Where were you when the -- when you
22 first heard the -- that thunderous noise?

23 A: In the living room.

24 Q: Okay. And how did the police gain entry into 805-A,
25 through the front door or the back door?

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- 1 A: The back door.
- 2 Q: Okay. And did you hear anybody holler police, search
3 warrant, open up, or anything like that?
- 4 A: In A or B?
- 5 Q: Well, at any time, did you hear anybody, any police
6 officers?
- 7 A: Yeah, I heard it next door in B.
- 8 Q: You heard it in B?
- 9 A: Yes, sir.
- 10 Q: Okay. What did you hear?
- 11 A: I just head -- I heard a loud boom and I heard police
12 department, search warrant. I heard like them screaming and
13 stuff.
- 14 Q: Did you hear the search warrant -- did you hear the noise
15 boom, before or after you heard the officers speaking?
- 16 A: After I heard the boom, then I heard them stating search
17 warrant.
- 18 Q: Okay. And on the side that you were own, did you hear
19 anybody announce police, search warrant on your side?
- 20 A: No, sir.
- 21 Q: Okay. You just heard the boom?
- 22 A: Yes, sir.
- 23 Q: Did you see them come in?
- 24 A: No, sir.
- 25 Q: You weren't in that spot where you could see them?

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1 A: In the Apartment A?
2 Q: Yeah, Apartment A?
3 A: Oh, Apartment A, I was -- I heard, I was like right there
4 when they did the boom, like right there.
5 Q: Did you see them coming as they came in?
6 A: Yes, sir.
7 Q: Okay. Did you -- did you offer any resistance at all?
8 A: No, sir.
9 Q: Okay. You didn't fight with the officers or anything like
10 that?
11 A: No, sir.
12 Q: Okay. Did you do exactly as the officers instructed you
13 to do?
14 A: Yes, sir.
15 Q: And the officers, did they immediately tell you to get to
16 the ground?
17 A: Well, when they came in, I basically get on the ground
18 anyway, because he came in with the gun, I did like this.
19 Yeah, when he told me to get down on the ground, I got down on
20 the ground.
21 Q: Were the police armed when they came in, did they their
22 guns drawn?
23 A: Yes, sir.
24 Q: Okay. So, you weren't going to do anything stupid, were
25 you?

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1 A: Oh, no, sir.

2 Q: All right. So, you -- when they asked you to get down,
3 you got down?

4 A: Yes, sir.

5 Q: All right. And did anybody get on top of you?

6 A: No, sir.

7 Q: Okay. Did -- were you handcuffed while you were laying on
8 the ground?

9 A: Yes, sir.

10 Q: Okay. And how did you get up, were you helped up?

11 A: Yes, sir.

12 Q: All right. And who was -- do you remember who the
13 officers were that helped you up?

14 A: The guy who came in and like arrested me and he came -- I
15 can't recall, there was like two, the two of them. Well, he
16 helped me up, basically helped me up and one of them pat me
17 down after he helped me up. I was standing up and the other
18 one came and pat me down.

19 Q: Okay. Now, this place is a duplex; is that right?

20 A: Yes, sir.

21 Q: Okay. Do you live in either A or B?

22 A: No, sir.

23 Q: All right. Do you -- do you actually own the building
24 itself?

25 A: No, sir.

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1 Q: Do you know who does?
2 A: No, sir.
3 Q: Do you lease out -- did you sign a lease on either A or B?
4 A: No, sir.
5 Q: Okay. Do you know who did?
6 A: No, sir.
7 Q: And the vehicle that was at the scene, is -- is that your
8 vehicle?
9 A: No, sir.
10 Q: Do you know who it belongs to?
11 A: It was my cousin's car.
12 Q: Belongs to who?
13 A: My cousin.
14 Q: Whose cousin?
15 A: The owner, well, who stayed at the apartment.
16 Q: Okay. The lady that stays there?
17 A: Yes, sir.
18 Q: Okay. And what's her name?
19 A: Deandra.
20 Q: Is that Ms. Huston?
21 A: Yes, sir.
22 Q: You're not married to her?
23 A: No, sir.
24 Q: Is she a friend?
25 A: Yes, sir.

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1 Q: Is, is she -- is she your girlfriend or just a friend,
2 what exactly relationship-wise is she?
3 A: We was friends like, at the time, we like friends having
4 intercourse and all this.
5 Q: Okay, sir, all right. But, you've got other girlfriends
6 as well?
7 A: Yes, sir.
8 Q: You're not married?
9 A: No, sir.
10 Q: And never been married?
11 A: No, sir.
12 Q: Okay. All right. Did you -- did you ever own a key to
13 805-A where you could come and go as you pleased?
14 A: No, sir.
15 Q: Okay. And how often, I mean, would you -- was that the
16 first time you had been there or had you been there before?
17 A: Yes, sir.
18 Q: All right. How often would you go over there?
19 A: Like on Fridays and Saturdays.
20 Q: Okay. To meet up with the lady?
21 A: Yes, sir.
22 Q: Okay. All right. Now, when the -- when the police came
23 in, did they search the duplex?
24 A: Yes, sir.
25 Q: Okay. And when they searched the duplex, were you allowed

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1 to move around the duplex with the police or did they keep you
2 in one spot?

3 A: They kept me in one spot.

4 Q: Okay. All right. And were you able to see what the
5 police were -- were doing from where you were standing?

6 A: No, sir.

7 Q: Okay. In the bedrooms, could you see any of the officers
8 going into any of the bedrooms or not?

9 A: No, sir.

10 Q: Did you see officers bringing some stuff out from the
11 bedrooms?

12 A: Yes, sir.

13 Q: All right. There was mention of a, I think, a shotgun
14 that's in evidence; did -- did you see one of the officers
15 handling that?

16 A: Yes, sir.

17 Q: All right. And did he get that from one of the back
18 bedrooms?

19 A: Yes, sir.

20 Q: Okay. And was that your bedroom?

21 A: No, sir.

22 Q: Okay. All right. And there was some evidence that some
23 marijuana was found in one of the bedrooms; do you remember
24 that?

25 A: Yes, sir.

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1 Q: And did you see the officers bring the marijuana out and
2 put it on the table?
3 A: Yes, sir.
4 Q: All right. Was that your marijuana?
5 A: No, sir.
6 Q: Was that your bedroom?
7 A: No, sir.
8 Q: So, neither of the bedrooms was yours?
9 A: No, sir.
10 Q: Okay. Did you have any of your personal items in that
11 duplex, anything that -- that belonged to you?
12 A: No, sir.
13 Q: All right. Any bills coming to the residence addressed to
14 you?
15 A: No, sir. I had one -- I had one paper that I had let her
16 read it. I was showing like I had to go to court.
17 Q: Well, other than -- we're gonna talk about that exhibit in
18 a second. Do you remember the letter that had your name on it
19 that's in evidence?
20 A: Yes, sir.
21 Q: Okay. And that was your letter; is that right?
22 A: Yes, sir.
23 Q: Okay. All right. Was there anything else other than that
24 in the apartment that had your name on it?
25 A: No, sir.

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- 1 Q: Okay. Any personal items of yours or toothbrush,
2 aftershave, cologne, shaving equipment, shampoo, hair cream,
3 any toiletries, anything like that in the apartment that
4 belonged to you?
- 5 A: No, sir.
- 6 Q: Any, any food in the house that you purchased or belonged
7 to you?
- 8 A: No, sir, besides what I had when I came in from work.
- 9 Q: Okay. Tell us about that. What time did you get to the
10 apartment that day?
- 11 A: Right around like 1:30 or something, 1:45.
- 12 Q: Well, where were you coming from?
- 13 A: From work.
- 14 Q: Okay. And is that at the carpet place?
- 15 A: Yes, sir.
- 16 Q: Okay. And how long had you worked over there before you
17 went to the apartment?
- 18 A: Oh, we got there like 6:00 that morning until -- we had to
19 be there about 7 o'clock. I had to be there like 7 o'clock.
20 So, we're talking about eight -- eight, nine hours.
- 21 Q: Okay.
- 22 A: And it was supposed to be raining so we took a -- got off
23 work.
- 24 Q: Do you remember how long you were at the apartment before
25 the police busted the door down?

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1 A: They had just got there.
2 Q: Okay. When -- when you got there, you said you didn't
3 have a key, then how did you get in?
4 A: Her cousin.
5 Q: Her cousin?
6 A: Yes, sir.
7 Q: Okay. Well what is his name?
8 A: Like Randolph or something like that. I don't really know
9 his real name, I just call him by a nickname.
10 Q: Well, what is that?
11 A: Linky.
12 Q: Linky?
13 A: Yes, sir.
14 Q: Okay. And does he live there, too?
15 A: Yes, sir.
16 Q: All right. So, that apartment, 805-A, you don't live
17 there; Linky lives there and Ms. Houston lives there?
18 A: Yes, sir.
19 Q: And when you went over there, did you walk right in, did
20 you knock on the door?
21 A: I knocked on the door.
22 Q: Okay. And did Linky come to the door?
23 A: Yes, sir. Well, I called before I got -- I called.
24 Q: Okay. You said you were gonna come by?
25 A: Yes, sir.

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- 1 Q: All right. And after you got there, did, did Linky stay
2 very long?
- 3 A: No, sir, he said he had to go, you know, to go get a
4 bottle or something from the bootlegger.
- 5 Q: Okay. Well, don't tell us what anybody said.
- 6 A: Okay.
- 7 Q: But, did -- at some point, was he in the apartment when
8 the police busted in?
- 9 A: No, sir.
- 10 Q: Okay. Where was he?
- 11 A: He was supposed to've been outside.
- 12 Q: He was outside?
- 13 A: Yes, sir.
- 14 Q: Okay. All right. Was that his car that was parked in the
15 -- behind the duplex?
- 16 A: Yes, sir.
- 17 Q: Okay. Is that one that he uses?
- 18 A: Yes, sir.
- 19 Q: You seen him driving it?
- 20 A: Yes, sir.
- 21 Q: Okay. All right. Now, since he wasn't there, but his car
22 was there, do you have any idea what happened to him?
- 23 A: Well, I had an idea after it happened -- after the fact
24 happened.
- 25 Q: Where do you think he went?

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1 A: He told me he fled ---
2 MR. JEPERTINGER: Objection to the hearsay.
3 THE COURT: Sustained.
4 BY MR. SUGGS:
5 Q: Don't tell us what he said.
6 A: Okay.
7 Q: Or, just what you ---
8 A: I guess he ran.
9 Q: Sir?
10 A: I guess he ran.
11 Q: All right. Now, I -- I'm not really sure about the
12 geography of the duplex, but are there -- is there a fence
13 behind it or woods or something like that?
14 A: Yes, sir.
15 Q: Okay. All right. Is there also a path back there?
16 A: Yes, sir.
17 Q: Okay. All right. Did -- when he left, you say he left
18 before the police got there?
19 A: Yes, sir.
20 Q: Did he go out the back door?
21 A: Yes, sir.
22 Q: Okay. All right. Do you think maybe he skedaddled down
23 the path?
24 A: Yes, sir.
25 Q: Okay. So, the time after Linky left the apartment until

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1 the time the police came in, was a matter of how much time?

2 A: Maybe about 10 minutes.

3 Q: Ten minutes, that long?

4 A: About 10 minutes.

5 Q: Okay.

6 A: Probably not that long, about I'd say 10, 5 or 10 minutes.

7 Q: Okay. Not very long?

8 A: Yes, sir.

9 Q: All right. Now, you understand or heard the testimony
10 from the police officers about certain statements that you
11 made; is that right?

12 A: Yes, sir.

13 Q: Okay. And before we get into that, I wanted to finish the
14 phone call. Let's back up a little bit. I don't mean to
15 confuse you, but on the phone -- going back to the phone call,
16 we talked about the refrigerator, right?

17 A: Yes, sir.

18 Q: Okay. You said something about a gun or guns, too, did
19 you not?

20 A: Yes, sir.

21 Q: What -- what did you say, I couldn't really understand it?

22 A: I said, I'd been straight if I got rid of my drugs, and I
23 could just have gun charges.

24 Q: Okay. All right. And the drugs were -- were those the
25 ones in the -- in the backpack?

1 A: Yes, sir.

2 Q: Okay. Well, let's get to that for a second. The backpack
3 that was found, did that belong to you?

4 A: Yes, sir.

5 Q: Okay. All right. And -- and you admit that?

6 A: Yes, sir.

7 Q: Okay. And any of the contents of the backpack, did they
8 belong to you?

9 A: Yes, sir.

10 Q: Okay. And I believe from the testimony that there was
11 some, I think a bottle of pills, maybe 20 pills that were
12 found in the -- in the orange container; did those belong to
13 you?

14 A: Yes, sir.

15 Q: Okay. And where did you get those from?

16 A: From her cousin.

17 Q: From Linky?

18 A: Yes, sir.

19 Q: Okay. And when did you get those?

20 A: That day.

21 Q: Okay. So, earlier that day?

22 A: Yes, sir, when I first came.

23 Q: Okay. Okay. When you first came?

24 A: Yes, sir.

25 Q: Okay. Did you buy those from him?

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- 1 A: Yes, sir.
- 2 Q: Okay. And I believe the number was 20, but I'm not sure;
3 is that how many you bought?
- 4 A: Yes, sir.
- 5 Q: Now, the contents -- you say the book bag belonged to you;
6 is that right?
- 7 A: Yes, sir.
- 8 Q: Is that what you carried around with you on a regular
9 basis?
- 10 A: Yes, sir.
- 11 Q: Okay. And is that what you carried over to 805-A that
12 day?
- 13 A: Yes, sir.
- 14 Q: And did you sit that on the table when you got in?
- 15 A: Yes, sir.
- 16 Q: Okay. Now, when the police came in, what -- what was on
17 the table aside from the book bag?
- 18 A: My pistol.
- 19 Q: Okay. And which pistol was that, the .357?
- 20 A: Yes, sir.
- 21 Q: Okay. And that belonged to you?
- 22 A: Yes, sir.
- 23 Q: Okay. All right. And there was -- there was scales, I
24 believe on the table; did those belong to you?
- 25 A: No, sir.

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303

1 Q: All right. And I remember seeing a picture with some
2 drugs on top of the scales. Were drugs on top of the scales
3 when the police came in?
4 A: No, sir.
5 Q: Okay. And did -- did you see how that those drugs got on
6 the scale?
7 A: Yes, sir.
8 Q: How did that happen?
9 A: An officer put them on there.
10 Q: And officer did?
11 A: Yes, sir.
12 Q: Okay. As the officers were searching 805-A, when they --
13 when they seized something, where did that put it?
14 A: On the table.
15 Q: Okay. And how many times did you see officers do that?
16 A: A bunch of times, like a couple of times.
17 Q: All right. And what did they -- what did they put on the
18 table that was not on the table when the police came in or
19 before the police came in?
20 A: The gun, the other gun, the shotgun, the .22, the
21 marijuana, money, large amount of money, and that's all.
22 Q: Okay.
23 A: A bunch of bags.
24 Q: Did that money belong to you?
25 A: No, sir.

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1 Q: Did you know it was in the apartment?
2 A: No, sir.
3 Q: Did you know that marijuana was in the apartment?
4 A: No, sir.
5 Q: Did you know the crack cocaine was in the apartment?
6 A: Besides the little on the table.
7 Q: Well, after it was put on the table; is that right?
8 A: Yes, sir.
9 Q: But did you know prior that it was put on the table that
10 it was there?
11 A: No, sir.
12 Q: But you knew the scales were there; the scales were there,
13 weren't they?
14 A: Yes, sir.
15 Q: So, you're taking credit or responsibility for the book
16 bag; is that right?
17 A: Yes, sir.
18 Q: And the contents, right?
19 A: Yes, sir.
20 Q: And the .357?
21 A: Yes, sir.
22 Q: Anything else?
23 A: That's all, sir.
24 Q: Okay. Now, the police say that you told them where to
25 find this and that; is that true?

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1 A: No, sir.

2 Q: Okay. Did you tell the police that the big bag of pills
3 was in a certain location in the apartment?

4 A: No, sir.

5 Q: Did you tell them that the quantity -- the large quantity
6 of marijuana was somewhere in the apartment?

7 A: No, sir.

8 Q: Did you tell them that there was some quantity, large
9 quantity of heroin was in the apartment somewhere?

10 A: No, sir.

11 Q: Did you in fact know that these items were there?

12 A: No, sir.

13 Q: All right. Now, did the police make you any promises in
14 any way after they arrested you?

15 A: Yes, sir.

16 Q: What did they promise you?

17 A: Well, Mr. Spears and another guy who ain't testified,
18 Lockhart, they came -- they took me into the living room and
19 questioned me if I -- six months if I would be a confidential
20 informant for them and they'd help me out with the case.

21 Q: All right. So, the police wanted you to serve as a
22 confidential informant for their agency?

23 A: Yes, sir.

24 Q: All right. And what was your response?

25 A: No, take me to Effingham.

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- 1 Q: Okay. You didn't want to serve as a CI?
- 2 A: No, sir.
- 3 Q: Why didn't you want to serve as a CI if it would help you?
- 4 A: It's dangerous and like, I ain't no law officer. I ain't
- 5 did no -- I ain't went to school for law enforcement, so I
- 6 decided, no.
- 7 Q: What about the idea of telling on people?
- 8 A: Well, that's not right either unless you get caught red
- 9 handed or something like that.
- 10 Q: Well, I mean, technically, you were caught red handed?
- 11 A: Yes, sir.
- 12 Q: You didn't want to cooperate?
- 13 A: No, sir; I just took my charges like a man.
- 14 Q: Okay. All right. And you're telling the jury today what
- 15 you're taking responsibility for; is that right?
- 16 A: Yes, sir.
- 17 Q: You're taking responsibility for nothing else but that
- 18 which was in the backpack, right?
- 19 A: Yes, sir.
- 20 Q: Or on the table?
- 21 A: Yes, sir.
- 22 Q: All right. Now, your testimony was that the crack cocaine
- 23 was not on the table when the police came in?
- 24 A: Yes, sir.
- 25 Q: Is that correct?

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1 A: Yes, sir.

2 Q: All right. Do you know which officer put the crack
3 cocaine on the scales?

4 A: Mr. Brown, I think he was the one doing all the paperwork
5 and -- I don't -- I don't know for exactly sure what he was
6 going to do with it, but ---

7 Q: Do you know who was in charge or who seemed to be in
8 charge?

9 A: Mr. Brown.

10 Q: Okay. Agent Brown?

11 A: Yes, sir.

12 Q: All right. When you got to the duplex, was there anybody
13 else there other than the cousin?

14 A: No, sir.

15 Q: Okay. All right. And Ms. Houston, had she already gone
16 to work or was not there?

17 A: Yeah, she claimed she already at work.

18 Q: Do you know the people -- any of the people who live next
19 door in the other duplex, in 805-B?

20 A: Yes, sir.

21 Q: Do you know them?

22 A: Yes, sir.

23 Q: Okay. Now, did you ever tell the police that you had a
24 key to the apartment?

25 A: No, sir.

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1 Q: Okay. And no key was found on you when you were arrested,
2 was there?

3 A: No, sir.

4 Q: All right. Were any of the police officers wearing any
5 sort of bodycams, audio or video, what you see common these
6 days?

7 A: Not like they supposed to have on, no, they did not.

8 Q: Well, I mean, you don't know they're supposed to have
9 them, do you; do you know?

10 A: Whatever the law is now like they saying, because of this
11 crime going on, the police and shooting people.

12 Q: Okay. So, did any of the officers have -- have bodycams
13 on them?

14 A: I don't know, Your Honor -- I mean, sir.

15 Q: Well, don't call me, Your Honor.

16 A: Sorry about that.

17 Q: I'd like to be a judge one day, but ---

18 MR. JEPERTINGER: God help us all.

19 Q: But the officers that came in initially, did you see any
20 of them wearing bodycams?

21 A: When they got there, some of them had vests on. So, I
22 don't know if they was on there or not.

23 Q: The officers who were on the other side in 805-B, did some
24 of them come over at some point?

25 A: Yes, sir.

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1 Q: Any of them wearing bodycams that you could see?
2 A: I guess not.
3 Q: I think that'd be in evidence that they did.
4 A: Yes, sir.
5 Q: Okay. And did the officers, did they read your Miranda
6 warnings as they testified, you have the right to remain
7 silent and that sort of thing?
8 A: Yes, sir.
9 Q: They did. So, you admit to that?
10 A: Yes, sir.
11 Q: Okay. And you agreed to cooperate?
12 A: Cooperate by talking, yes, sir.
13 Q: Did you talk to them?
14 A: Yes, sir.
15 Q: Okay. And you did, didn't you?
16 A: Yes, sir.
17 Q: Okay. And you didn't put up any trouble with the police,
18 did you?
19 A: No, sir.
20 Q: Okay. And did they read the search warrant to you?
21 A: I kept asking where the search warrant was at. He said he
22 had it, he had it, and he gave it to me when I got in the
23 police car.
24 Q: Okay. He never read it to you?
25 A: No, sir.

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- 1 Q: But he did give it to you?
- 2 A: Yes, sir.
- 3 Q: All right. Now, did you state to the police that -- that
- 4 you were cutting up something for cocaine base; did you tell
- 5 them that?
- 6 A: No, sir.
- 7 Q: Did you tell them that you were about to meet somebody to
- 8 make a sale?
- 9 A: No, sir.
- 10 Q: Did you tell them that your -- that that Buick Lacrosse in
- 11 the parking lot or back of the duplex was yours?
- 12 A: No, sir.
- 13 Q: And did you tell them that it was yours and you left it
- 14 running because you were about to go make a sale?
- 15 A: No, sir.
- 16 Q: Now, in the backpack, did you have any -- any money in the
- 17 backpack?
- 18 A: Yes, sir.
- 19 Q: Okay. How much money did you have in the backpack?
- 20 A: I had around like 6, \$7,000.
- 21 Q: Was that from your wreck settlement?
- 22 A: Yes, sir.
- 23 Q: Well, why didn't you pay that to me?
- 24 A: My mother paid it, supposed to pay you, sir.
- 25 Q: Okay. Did any of the Ecstasy belong to you?

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1 A: Yes, sir.

2 Q: Okay. Now, the officer says that you claimed all 350 or
3 whatever number of pills that were in that bag; did you do
4 that?

5 A: No, sir.

6 Q: All right. And was that on the table when the police came
7 in?

8 A: No, sir.

9 Q: Okay. Did you see where they retrieved it from?

10 A: Yes, sir.

11 Q: Where did they retrieve it from?

12 A: Somewhere -- back in the cabinet, somewhere in cabinet on
13 top of the cabinet.

14 Q: Cabinet where?

15 A: Top cabinet.

16 Q: On the top cabinet?

17 A: Yes, sir.

18 Q: In the kitchen?

19 A: Yes, sir.

20 Q: All right. Did that belong to you?

21 A: No, sir.

22 Q: Did you know it was there?

23 A: No, sir.

24 Q: And what about the heroin; did it belong to you?

25 A: No, sir.

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1 Q: Did you know it was where it was?
2 A: No, sir.
3 Q: And the large amount of marijuana, did that belong to you?
4 A: No, sir.
5 Q: And that came from one of the back bedrooms; is that
6 right?
7 A: Yes, sir.
8 Q: And did you know it was there?
9 A: No, sir.
10 Q: Now, did you have any knowledge that, that -- that 805
11 Commander Street was near, near a church or a school?
12 A: Yes, sir.
13 Q: Okay. But you didn't know how close, did you?
14 A: Kind of, according to the way you come, you could see like
15 the church.
16 Q: Okay. Now, there was also a large amount of cash of
17 \$38,452; did that belong to you?
18 A: No, sir.
19 Q: Do you know who it belonged to?
20 A: No, sir.
21 Q: That wasn't in the backpack, was it?
22 A: No, sir.
23 Q: Were you there when the officers were photographing the
24 evidence?
25 A: Yeah, some of it.

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1 Q: Okay. So, you saw some of the photographs, some of the
2 photography?

3 A: I just seen them taking pictures. I ain't -- basically I
4 ---

5 Q: Sir?

6 A: I just seen them snapping the camera.

7 Q: You did or didn't?

8 A: I did.

9 Q: You did?

10 A: Yes, sir.

11 Q: Okay. And were they taking pictures of the kitchen table?

12 A: Yes, sir.

13 Q: Okay. All right. Were there items on the kitchen table
14 that law enforcement was taking pictures of that were not
15 there when the officers came in?

16 A: Yes, sir.

17 Q: Did the officers put all that stuff together like in one
18 spot to take pictures?

19 A: Yes, sir.

20 MR. SUGGS: Judge, I think that's all I have of this
21 witness.

22 THE COURT: All right. Cross examination?

23 CROSS EXAMINATION OF JOHNNY NICKOLAS GREGG, JR. BY MR.

24 JEPERTINGER:

25 Q: Let me get this straight, your whole, your whole family

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- 1 lives in Florence County, correct?
- 2 A: Yes, sir.
- 3 Q: And you wouldn't want anything bad to happen to your
- 4 momma, correct?
- 5 A: No, sir.
- 6 Q: You got a grandma that's still living?
- 7 A: Yes, sir.
- 8 Q: You wouldn't want anything bad to happen to her, correct?
- 9 A: No, sir.
- 10 Q: In fact, you would never think about bringing any of these
- 11 drugs that you had a Louis Vuitton bag, over to your grandma's
- 12 house or your momma's house just in case the police happened
- 13 to come there and bust in while you have drugs at their house;
- 14 isn't that correct?
- 15 A: Yes, sir.
- 16 Q: So, it would benefit you, obviously, to have your drugs at
- 17 someone else's house, where the police may not think you are,
- 18 correct?
- 19 A: Yes, sir.
- 20 Q: You wouldn't have them over at Chisholm Trail where you
- 21 received that correspondence that was mailed to you, I think
- 22 you said, from the court, on State's Exhibit 49, correct?
- 23 A: Yes, sir.
- 24 Q: You wouldn't take your drugs over there?
- 25 A: Yes, sir.

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1 Q: Is that your momma's house?

2 A: Yes, sir.

3 Q: All right. So, you're gonna take your drugs to your
4 girlfriend's house -- isn't that correct -- the one you're
5 having intercourse with on Friday and Saturday nights,
6 correct?

7 A: Yes, sir.

8 Q: All right. Now, you probably talk to your girlfriend a
9 lot about your life; isn't that correct?

10 A: Yes, sir.

11 Q: Okay. So, she would know that you caught some time in
12 jail for being a thief, correct?

13 A: Yes, sir.

14 Q: And Linky would probably know, just in conversation, that
15 you're a thief as well, correct?

16 MR. SUGGS: Objection, that's a speculative ---

17 THE COURT: Sustained.

18 BY MR. JEPERTINGER:

19 Q: Did you tell Linky that you were a thief as well?

20 A: No, sir.

21 Q: All right. But in the bedroom of the house that you spend
22 time in with your girlfriend, there's \$38,000 worth of cash,
23 and you're left alone in the house with that money and some
24 guy named Linky, you say?

25 A: Yes, sir.

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1 Q: That money, \$38,000, wouldn't be your girlfriend's, would
2 it?

3 A: I don't know whose money it was, sir.

4 Q: You didn't know whose money it was?

5 A: No, sir.

6 Q: Then why did you sign all that money over to the police
7 officer at the scene, all 38,000?

8 A: He told me I had to sign and forfeit all the money.

9 Q: They also tell you, why don't you be a CI, and you say I'm
10 gonna stand up on my own; I'm gonna be a man. So, you -- you
11 make decisions on what's profitable for you and -- isn't that
12 correct?

13 MR. SUGGS: I object. That's argumentative, Your Honor.

14 THE COURT: Overruled.

15 BY MR. JEPERTINGER:

16 Q: You make decisions, you said you're a man ---

17 A: Yes, sir.

18 Q: --- you make decisions.

19 A: Yes, sir.

20 Q: But, you signed someone's money over that didn't belong to
21 you?

22 A: I signed. They say they seized the money. I ain't signed
23 no money away; they seized it.

24 Q: You consented to that money being given to these officers,
25 correct?

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1 A: Yes, and that what seized mean, they took it until the
2 case over with.
3 Q: And you say you got a settlement for that accident you
4 were in, correct?
5 A: Yes, sir.
6 Q: Did you bring any proof of that settlement here today to
7 show to the ladies and gentlemen of the jury?
8 A: No, sir. I told my mother to get it; I don't know if she
9 got it or not.
10 Q: Uh-huh, (affirmative response). But, it's not here in
11 court today, correct?
12 A: Well, no, sir.
13 Q: So, you just walking around with \$7,000 in a bag?
14 A: Yes, sir.
15 Q: With drugs?
16 A: Yes, sir.
17 Q: And a gun?
18 A: Yes, sir.
19 Q: What were you gonna do with those drugs?
20 A: Weekend, sir.
21 Q: Weekends?
22 A: Yes, sir.
23 Q: The synthetic heroin?
24 A: Fentanyl, I take it for my pain, sir.
25 Q: Who prescribed synthetic heroin to you?

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- 1 A: The streets.
- 2 Q: The streets. Now, you walk into a house, there's a
3 digital scale, cocaine, crack, pills, all around and you don't
4 think to yourself, this isn't a good situation for me?
- 5 A: All that wasn't around, sir. It was cocaine in my book
6 bag.
- 7 Q: Well, all right. You say your cousin, Linky, or her
8 cousin -- is it her cousin or your cousin?
- 9 A: Her cousin.
- 10 Q: Her cousin, Linky, he walked to the bootleggers?
- 11 A: I don't know if he walked, drive, whatever.
- 12 Q: Yeah. And you got there between 1:30 and 1:45?
- 13 A: Yes, sir.
- 14 Q: All right. How long was Linky there?
- 15 A: Like 15 minutes.
- 16 Q: Fifteen minutes. So, it puts you at 1:45 or 2 o'clock,
17 correct?
- 18 A: Yes, sir.
- 19 Q: And the car is running at 2:20 when the police got there?
- 20 A: I guess that's the time.
- 21 Q: So, the car is running for at least a half hour, 20
22 minutes, somewhere around there?
- 23 A: I don't know, sir.
- 24 Q: So, Linky just let it run?
- 25 A: I guess so.

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1 Q: Now, is there any reason why the packaging that was in the
2 bag was identical to the packaging for other drugs found at
3 that scene?
4 A: What you mean packaging?
5 Q: The packaging in that Louis Vuitton bag?
6 A: Well, I had marijuana in the jar, sir.
7 Q: I thought that you didn't know that there was marijuana
8 there?
9 A: I had marijuana in my jar.
10 Q: Okay. The police found no rolling papers and no blunts,
11 how are you going to ingest it?
12 A: He went to the bootlegger, sir.
13 Q: You didn't go to the bootlegger?
14 A: What, sir?
15 Q: How were you gonna smoke it?
16 A: I weren't gonna smoke it at the time; I already smoke a
17 blunt when I came there.
18 Q: Uh-huh, (affirmative response). Let's get to these phone
19 calls. You're talking to the female that we hear, you say, if
20 I had gotten rid of the drugs, destroyed the drugs and it just
21 been the guns, I'd been straight?
22 A: Yeah, the drugs in my book bag, sir. That's the only way
23 I know it was in there.
24 Q: So, you're saying that Andron Brown or one of these other
25 officers, placed crack cocaine on the digital scale?

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1 A: Yes, sir. They was weighing it out to see if the scale
2 worked, sir.

3 Q: Now, when you do your heroin, how you take your heroin?

4 A: I snort it. It's thick -- it's like -- morphine. I ain't
5 knew it was fentanyl until it came back from the lab and I got
6 my Rule 5, sir.

7 Q: All this opportunity to tell the police officers about
8 Linky, you didn't mention his name to the cops when they got
9 there, correct?

10 A: I told them her cousin was there, sir.

11 Q: Well, you mentioned his name, Linky, you mentioned his
12 name McCain, and you've mentioned a lot of names here, but you
13 didn't tell the cops when it was fresh on your memory on that
14 very day, on January 6th, 2017, you didn't mention a name at
15 all?

16 A: I did mention a name, sir.

17 MR. JEPERTINGER: That's all the questions I have of this
18 guy.

19 MR. SUGGS: Just a few on redirect, Your Honor.

20 REDIRECT EXAMINATION OF JOHNNY NICKOLAS GREGG, JR. BY MR.

21 SUGGS:

22 Q: John, Linky was outside when the police arrived, wasn't
23 he?

24 A: Once again, sir?

25 Q: Sir?

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1 A: Yes, sir.

2 Q: So, he probably knew what was going on and hauled buggy,
3 didn't he?

4 A: Yes, sir.

5 Q: Okay. And the papers that Mr. Jepertinger said that you
6 signed, some forfeiture, did the police tell you what you were
7 signing or they just tell you to sign them?

8 A: They told me to sign papers confirming that they read the
9 warrant and all this stuff, like my rights and all that, sir.

10 Q: Okay. So, that's what you thought you were signing?

11 A: Yes, sir.

12 Q: All right. That's all I have. Thank you.

13 THE COURT: All right. Any recross?

14 MR. JEPERTINGER: Not on that but I have some reply
15 testimony.

16 THE COURT: All right. You may step down. Thank you.

17 First of all, does the defense have any more witnesses?

18 MR. SUGGS: No, Your Honor.

19 THE COURT: All right. Reply?

20 MR. JEPERTINGER: Recall Andron Brown to the stand.

21 CLERK: Please place your left hand on the Bible and
22 raise your right hand.

23 ANDRON BROWN, HAVING BEEN DULY SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated and state your name again for

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1 the record.

2 MR. BROWN: Andron Brown.

3 REPLY DIRECT EXAMINATION OF ANDRON BROWN BY MR. JEPERTINGER:

4 Q: Okay. Detective Brown, when you got to the scene, did you
5 see anybody on the outside walking around?

6 A: There was nobody on the outside walking.

7 Q: All right. When you got in the house, in regards to the
8 -- the heroin that was in the bag and in the cabinet, how did
9 you know about the two situations there with the heroin?

10 A: There was a small amount of heroin in the bag. Also,
11 there was a larger amount of heroin that was found in the
12 cabinet above the refrigerator. The connection between the
13 two is that they both were in, I guess a foil-type wrapping,
14 something like that, so, we never opened that wrapping. And
15 he also, when we found it, we believed it to be heroin and he
16 told us, well, no, it's this synthetic morphine, and then he
17 said, no, it's synthetic heroin and so, he tried to, I guess
18 change ---

19 Q: Even the stuff that was in the cabinet, he referred to as
20 synthetic morphine?

21 A: He replied to the stuff that was in the cabinet as
22 synthetic morphine and then he switched it to synthetic
23 heroin. He was all over the place with it.

24 Q: Okay. In terms of the digital scale, did you -- in your
25 presence, when you were in there, did anybody put, from law

1 enforcement, put crack on the digital scale?

2 A: Nobody put any crack on top of the digital scale and if --
3 from the picture there's pieces of crack. We're not going to
4 take pieces of crack out of the bag and place it on top of a
5 digital scale. We would just weigh the whole bag if that's
6 what we were trying to do. So, that's not the truth; we
7 wouldn't do that.

8 Q: In terms of -- in terms of large quantities of money, did
9 Mr. Gregg suggest at the presence of large quantity of money
10 to you?

11 A: When we found it, he claimed it. He said it was his
12 money, he signed the money over to us in cooperation.
13 Everything was explained to him, he read the form, he signed
14 the form, he's admitted that he's got a -- a high school
15 diploma and also had time in college. So, he -- he can read
16 and he can understand those forms. He read everything, he
17 signed it and relinquished the money to us, and he claimed it
18 as his own.

19 Q: In terms of the -- the pills, the Xanax pills, what did --
20 what did he tell you about those again?

21 A: This was during this time of cooperation. Like I said, he
22 was very cooperative. He told us that there was -- when we
23 asked him was there anything else in the house that we hadn't
24 located because we hadn't located the pills at that time, and
25 he told us that there's some pills on top of the cabinet,

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ANDRON BROWN - REPLY DIRECT BY JEPERTINGER

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1 which was above, it wasn't in the cabinet, it was on the very
2 top of the cabinet. So, and he said -- I said how many pills
3 are they and he said about 3 -- it was about 350 when I bought
4 it, but it's probably about 300 now.

5 Q: When you busted into the -- into the duplex, did you see
6 him running from the living room, or was he already in the
7 kitchen?

8 A: He was, from my view, he was in the kitchen running
9 toward, at an angle towards the sink or the refrigerator area
10 from the table.

11 MR. JEPERTINGER: I beg the Court's indulgence?

12 THE COURT: Yes, sir.

13 MR. JEPERTINGER: I think that's it. Thank you.

14 THE COURT: All right.

15 Mr. Suggs?

16 REPLY CROSS EXAMINATION OF ANDRON BROWN BY MR. SUGGS:

17 Q: Officer Brown, in -- you've been in law enforcement for a
18 lot of years, particularly involved with drug seizures; is
19 that correct?

20 A: That was five years in narcotics.

21 Q: Okay. And it's not uncommon, is it, for drugs of certain
22 types to be packaged in a similar fashion; is that right?

23 A: Some.

24 Q: Well, heroin for example, oftentimes is packaged in glass-
25 lined envelopes; is that right?

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ANDRON BROWN - REPLY CROSS BY SUGGS

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1 A: I've never found -- that's the first time I've saw heroin
2 packaged in foil wrapping.

3 Q: Okay. Well, normally, it -- it's packaged in slips, isn't
4 it and ---

5 A: Normally, that's how you would find it. Lately we've
6 found it in just small pieces -- just small pieces of plastic
7 tied into a knot.

8 Q: Okay. So, it wouldn't be unusually -- impossibly but
9 unusual for you to seize drugs here at 805-A Commander Street,
10 packaged in a certain way, and then next week see the
11 identical kind of drugs packaged in an identical fashion;
12 that's not impossible, is it?

13 A: Rephrase -- say that again. I'm sorry.

14 Q: The question probably was a little long. It's not
15 unusual, is it, to see drugs packaged -- say if you seized
16 drugs here in Florence last week and then -- and then this
17 week, you seize the same kind of drugs, it wouldn't be unusual
18 to find those drugs packaged in a similar manner, would it?

19 A: If it's the slips, which usually they're stamped and
20 identified by certain markings or usually, the most common
21 thing we see, is the plastic baggie, but this wasn't that.
22 This was silver wrapping. I've never seen that before.

23 Q: Okay.

24 A: In both the bag and what we found in the cabinet.

25 Q: And you worked doing this for only five years?

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ANDRON BROWN - REPLY CROSS BY SUGGS

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- 1 A: Five years, yes, sir.
- 2 Q: Okay. And y'all didn't wear any bodycams during this?
- 3 A: No, sir, no bodycam.
- 4 Q: The Florence Police Department doesn't have bodycams?
- 5 A: Some officers do, not everyone.
- 6 Q: Do you know any reason why?
- 7 A: I couldn't tell you.
- 8 Q: You think it would be for the officers' best safety to
- 9 have bodycams on a raid like this; at least to preserve
- 10 evidence and to protect the officers?
- 11 A: Sure.
- 12 Q: That would be reasonable, wouldn't it?
- 13 A: It's been going fine for us.
- 14 Q: I beg your pardon?
- 15 A: I said, we've done fine with it, with how we're doing it,
- 16 but, I mean, cameras aren't a bad thing.
- 17 Q: They would be a good thing in this case, because they
- 18 would fully substantiate everything.
- 19 A: That's correct.
- 20 Q: There would be no confusion or disagreement at all with
- 21 bodycams; is that right?
- 22 A: Well, I'm sure you made the case on your side for
- 23 something.
- 24 Q: Well, whether they're called bodycams, cameras are the
- 25 unblinking eye, right?

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ANDRON BROWN - REPLY CROSS BY SUGGS

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1 A: That's right.

2 Q: And that's usually your best witness, isn't it?

3 A: Yes, sir.

4 MR. SUGGS: That's all I have, Your Honor. Thank you.

5 THE COURT: Redirect?

6 MR. JEPERTINGER: Nothing further for this witness.

7 I'll call Joe Nida to the stand.

8 THE COURT: All right. You may step down.

9 CLERK: Please place your left hand on the Bible and
10 raise your right hand?

11 WILLIAM JOSEPH NIDA, HAVING BEEN DULY

12 SWORN TESTIFIES AS FOLLOWS:

13 CLERK: Please be seated and state your name again for
14 the record.

15 MR. NIDA: William Joseph Nida.

16 REPLY DIRECT EXAMINATION OF WILLIAM JOSEPH NIDA BY MR.

17 JEPERTINGER:

18 Q: Okay. Lieutenant Nida, since you one of the heads of the
19 Special Investigative Unit, the Narcotics Unit, what is your
20 policy in that you didn't -- in regards to the body cameras,
21 since that was brought up by the defendant?

22 A: Not my police; it's the policy of the Florence Police
23 Department. The body-worn cameras are utilized and worn by
24 our patrol, traffic, downtown walking, the CAT Team members,
25 those that are in public contact. But, per our policy for --

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WILLIAM JOSEPH NIDA - REPLY DIRECT BY JEPERTINGER

1 while conducting special investigations, they are not
2 required. So, us in the Special Investigations Unit on
3 executing search warrants, stuff that we're doing, those type
4 of incidents or scenarios and stuff, we are not required to
5 wear the body worn cameras. We've never been issued any of
6 them.

7 Q: Very good. Thank you. Please answer any questions that
8 Mr. Suggs may have.

9 MR. SUGGS: I don't have any for Investigator Nida.
10 Thank you, Your Honor.

11 THE COURT: All right. You may step down. Any other
12 witnesses?

13 MR. JEPERTINGER: No, sir.

14 THE COURT: All right. Members of the jury, let's take a
15 short break and we'll come back and conclude this trial.

16 (REPORTER'S NOTE: Jury exits courtroom @ 10:48 A.M. The
17 following takes place outside the presence of the jury.)

18 THE COURT: All right. Why don't we go ahead and
19 entertain any motions you need to renew?

20 MOTIONS:

21 MR. SUGGS: Okay. Yes, sir. Your Honor, at this time,
22 we'd renew all the motions that we made previously and then of
23 course, as far as directed verdict is concerned, I have to
24 renew those motions at the conclusion of the defense's case,
25 if the defense does put up a case, I have to renew those.

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1 Judge, as far as Count 1 is concerned, possession of a
2 weapon during the commission of a violent crime, the only
3 violent crime that's mentioned in the indictment, I think
4 would be Count 4. I don't think any of the other counts in
5 this indictment constitutes crimes of violence.

6 And as to Count 4, trafficking in heroin, Judge, the --
7 the state amended Count 4 to allege 14 to 28 grams at the
8 beginning of the trial rather than 28 grams or more. But, the
9 state failed to amend the Code Section. So, the Code Section
10 is technically incorrect for Count 4. So, it's not sufficient
11 to place the defendant on notice of exactly what charges he's
12 facing. So, based upon the -- the mistake in the cited
13 recitation of the Code Section for Count 4, I would ask that
14 that count be dismissed, as well as, Count 1, as it would also
15 have to be dismissed if Count 4 were dismissed.

16 THE COURT: All right. I'm going to deny the motion. I
17 think he's had sufficient notice.

18 Any other motions?

19 MR. SUGGS: Yes, sir, Judge. Count -- based upon my
20 client's testimony with regard to -- to Count 3, which I think
21 is the crack, we would ask ---

22 THE COURT: That's not crack. Count 3 is Xanax, Schedule
23 I through V.

24 MR. SUGGS: Oh, yes, I'm sorry. Yes, sir. Yes, sir.
25 Based on my client's testimony with regard to the -- to the

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1 Xanax, I think he testified that he had -- he was confessing
2 ownership of a small portion of the Xanax, which was in his
3 book bag. I think it was about 20 tablets. It was not -- he
4 did not take responsibility for possession of the larger
5 quantity of Xanax and based upon that testimony, I would ask
6 that Count 3 be dismissed.

7 THE COURT: In that regard, I think there's a factual
8 question for the jury to decide.

9 MR. SUGGS: Yes, sir, Judge.

10 THE COURT: That is denied.

11 MR. SUGGS: Yes, sir, Judge. In terms of -- of Count --
12 Count 5, I'm also not sure about the amount. I know that my
13 client admitted, I think, to some ownership, but to the extent
14 that that amount is not sufficient to satisfy the elements
15 contained within Count 5, I would ask that count be dismissed
16 for lack of evidence?

17 THE COURT: All right. That is denied.

18 MR. SUGGS: Yes, sir, Judge. And, as I understand it,
19 Count 7 has been -- has already been dismissed. Count 6 and
20 Count 8, I make the same argument. Based upon my client's
21 testimony, there would be an insufficiency of the evidence to
22 present those counts, on Count 6 and Count 8 to the jury for
23 consideration.

24 THE COURT: All right. I would deny that motion. I
25 think there's a factual question for the jury.

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1 MR. SUGGS: Yes, sir, Judge. And that's all the motions
2 I have.

3 THE COURT: All right. When we come back, we will have
4 the state open in full. The defense, close in full -- the
5 defense will close and you'll reply.

6 MR. JEPERTINGER: Yes, sir.

7 THE COURT: And then I'll charge.

8 All right. Let's take a short break and then we'll come
9 back roll.

10 **RECESS - 10:54 A.M.**

11 *******OFF THE RECORD*******

12 **(On the Record - 11:14 A.M.)**

13 THE COURT: Let's go ahead and bring the jury in.

14 (REPORTER'S NOTE: Jury enters courtroom @ 11:16 A.M.)

15 THE COURT: All right. The state is recognized for your
16 closing statement.

17 MR. JEPERTINGER: Thank you. If it please the Court?

18 THE COURT: Yes, sir.

19 MR. JEPERTINGER: And counsel?

20 MR. SUGGS: Yes, sir.

21 **CLOSING BY JEPERTINGER:**

22 MR. JEPERTINGER: At the beginning of this trial, I told
23 you that a man's work defines the man. And certainly, in this
24 case, unfortunately, and I'll be honest with you, I've
25 struggled with this because I see a man the age of my son, my

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CLOSING BY JEPERTINGER

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1 oldest son, and he's thrown his life away. For what; for
2 drugs. As we judge Christopher Wren's architecture beautiful,
3 we have to judge his work today as something horrific and
4 hurtful to him personally, because he's the one that's
5 suffering. And I suppose his family suffers because of this.
6 And I don't get any pleasure in what I'm doing today and what
7 I've done through this week. I don't get a rush. I know, I
8 often hear that some attorneys love the courtroom setting and
9 love trial work. But after 30 years of doing this, I'm
10 frankly tired of this, seeing young people just like this
11 young man throw his life away. For what?

12 But here's the catcher, as much sympathy as I can muster
13 for this young man has to end with what he did. Because I
14 have a greater obligation to the truth and you folks have a
15 greater obligation to the truth of what happened on January
16 6th, 2017 than any human compassion that we have naturally for
17 another human being. You know, we don't see a monster there,
18 the devil of hell; we see a human being, but he's made
19 terrible decisions.

20 I told you also in opening statement, when I began, about
21 the Saint Paul's Cathedral. Well, I went to Harrods
22 Department Store on that same trip. I went with that oldest
23 son that I just referenced. It's the most famous department
24 store in the world. One thing I was grateful is I took my
25 oldest son, not my wife. And there motto there -- and believe

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1 me, they've got everything for everyone everywhere. And I
2 couldn't help but think of this young man having everything
3 for everyone everywhere.

4 When the Judge charges you the law, he's going to ask you
5 to consider the credibility or the believability of the
6 witnesses. Folks, I -- I just think, what he told you from
7 that stand was a convenience. It was convenient for him to
8 claim what was in the Louis Vuitton bag, but I don't know
9 anything else. I'm a man; I'm going to man up to what I did.
10 It isn't my money but I'm gonna sign it over. Boy, it's
11 unusual that in that bag, I got a bag full of heroin and
12 there's a bag up there above the cabinet packaged the same way
13 with heroin in it. He didn't know anything about it. I
14 didn't know about the greater quantity; I'll claim the little
15 quantity. Maybe these folks are gullible and they will
16 believe this hook, line, and sinker, if I just say I'm a
17 little bit guilty.

18 In this case, the state has charged him with trafficking
19 in heroin; possession with the intent to distribute heroin
20 within proximity of a school; possession with the intent to
21 distribute crack cocaine; possession with the intent to
22 distribute marijuana; possession with the intent to distribute
23 Xanax, a schedule IV drug; and possession of a weapon during
24 the commission of a violent crime. And His Honor is going to
25 tell you that trafficking heroin is a violent crime.

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1 Now, this is where I have to be professor for a little
2 bit because it's a drug statute and you're gonna say where in
3 the world did you get trafficking, where did you get all these
4 intent to distributes? Why isn't it just possession or
5 something in that range?

6 Well, the first thing, let's talk about the Xanax because
7 the weight of the Xanax is not critical. However, think about
8 the volume that we were dealing with there, 378 pills in
9 total. He said, I'm not -- I just don't -- I don't think that
10 the rubber meets the road on that one. You remember what he
11 told, under Miranda, to this officer, I'm about to make a drug
12 sale -- I think it was crack cocaine. That's why his car was
13 running. Oh, by the way, we'll get -- we'll talk about it
14 right now. A man leaves a car running to walk to a
15 bootlegger. Why doesn't he drive, why doesn't he drive the
16 car, why did he leave it running? There's no question, well
17 why didn't -- it just doesn't make sense. It was just
18 convenient for him to say that about Linky.

19 But it's the quantity, 378 pills. And think about the
20 surrounding circumstances. There were no rolling papers for
21 marijuana that he was going to smoke. Well, I was get them
22 later. There were no pipes for the crack. There were no
23 hypodermic needles. Well, I was gonna snort the heroin. They
24 also shoot it. There's none of that. He was in the business
25 of selling drugs. The quantity will dictate here in terms of

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CLOSING BY JEPERTINGER

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1 the Xanax and what you're dealing with.

2 Now, the heroin, if you look at State's Exhibit 72, which
3 you are gonna have back in the jury room, you will be able to
4 add up the quantities of all the heroin in this case,
5 including the last little bit, because it's a combination, but
6 His Honor will tell you that you can consider a combination as
7 well as if it was a complete drug, which was the heroin and
8 the furanylfentanyl that was that stuff that's so poisonous
9 that Lynn Black who testified said, that stuff is poison.
10 It's .59. If you add everything up, folks, in terms of the
11 heroin, it comes up to be 26.38 grams of heroin. And I think,
12 if you'll look at your screens, providing that -- I got Mr.
13 Holt there; it's not just some ghost doing it. Okay? It is
14 26.38 grams; why is that critical? His Honor is gonna tell
15 you, if you have more than four grams, more than four grams,
16 we're talking about six times that quantity, that is
17 considered trafficking in the State of South Carolina. More
18 than four grams of heroin is trafficking. That's why you have
19 that.

20 Now, move on up to that weapons charge here. It makes
21 sense. We have three handguns and a shotgun. If you
22 consider, based on all the evidence and he -- his own evidence
23 that I had a handgun in that Louis Vuitton bag, while he was
24 trafficking heroin, he was in possession of a weapon during
25 the commission of a violent crime. His Honor will tell, as I

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1 said, that trafficking heroin is a violent crime.

2 Okay. Now, he's also charged with possession with the
3 intent to distribute within the proximity of a school. That
4 is a completely separate and distinct offense from the
5 trafficking. In fact, under the law, it says it is a separate
6 offense. What you have to show is that he had more than two
7 grains, which would constitute the crime of possession with
8 the intent to distribute heroin and you can see this on this
9 report here, which is State's Exhibit 72. We'll just use this
10 example here. Heroin, 372 grains. The word grain is
11 important there. That would make it anything more than 2 and
12 it's 300 -- I can't even do the math how many times that is --
13 within a half a mile radius of a park or a school.

14 Now radius means exactly what it means; it's as the crow
15 flies. Since we're not crows, I had Andron Brown ride it and
16 in both situations that we see on State's Exhibit 2 --
17 remember how I had Spears mark it -- right here, to North
18 Vista, where he Xd it. Either way, either .2 miles or .4
19 miles, less than half a mile and that drive -- so, you've got
20 the 2 grains that you need for intent to distribute and the
21 half a mile radius.

22 They also found and he was charged with possession with
23 the intent to distribute cocaine base. They have to show
24 possession and here's -- and we'll talk about -- with the
25 intent to distribute there, it's based on two things,

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CLOSING BY JEPERTINGER

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1 specifically in this case. One is weight and the cocaine base
2 or crack came back as 4.01 grams and you'll have the report,
3 like I said. His Honor will tell you that anything more than
4 one gram, you can draw an inference that a person had an
5 intent to distribute. This is four times that amount.

6 But there's something else here. We know there was an
7 intent to distribute, because under Miranda, what did he tell
8 Andron Brown? I'm about -- the car's running because I was
9 about to go out to make a crack sale. From his own mouth,
10 that's what I was going to do. Based on court rulings, and
11 agreements, we're not going forward on the cocaine charge as
12 we started off earlier today or yesterday. My mistake, it was
13 Monday.

14 He's also charged with possession with the intent to
15 distribute marijuana. Once again, that's based on weight.
16 Stephen Starling -- he doesn't know this, but I call him the
17 baldheaded CSI guy and I don't have any right to speak,
18 because I'm right there with him -- from the city that does
19 the chemical analysis, he tested about 23 different samples,
20 and you'll have his report here in Exhibit 71, and he came up
21 with 696.08 grams or 24.57 ounces, that's how it translates.
22 And he will -- well, His Honor will tell you that anything
23 over 28 grams, do the math, anything over 28 grams can be
24 inferred, that there is an intent to distribute.

25 And if you look at all that marijuana, and in the

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1 pictures that you have, this is not the problem, this wasn't
2 -- and I'm showing you State's Exhibit 47, this is -- this
3 isn't how you have it for a good weekend; this is ready to go,
4 folks, it's packaged and ready to go.

5 Now, those are all the -- the criminal weights, I guess,
6 been provided, for lack of a better term, that you have for
7 these drugs. And all this evidence and all that testimony,
8 everything that is necessary to convict this young man and
9 find him guilty of these crimes charged, it's all there, if
10 you choose to see it. He made a couple of choices that day
11 and that didn't work out for him. He chose to be in that
12 house by himself. He chose to cut crack and have marijuana
13 and have a bunch of money, and sign over that money and tell
14 the cops what he did. Those were his choices.

15 You know, we're thinking about him because he's on trial.
16 But I often think, you know, he's about to make a sale to
17 someone of that crack, someone's son, someone's son, someone's
18 husband, someone's wife were gonna purchase this stuff. He
19 makes a buck -- let's not care about the, though -- the
20 purchaser.

21 I don't like this type of stuff because it, it's just
22 awful. You heard what Lynn Black said about that
23 furanylfentanyl coming from China and all that sort of
24 business, what it can do, and it's all through that -- all
25 through those drugs that she analyzed. What do you do? It's

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1 about the choices he made on that day.

2 Now, I told you I was going to talk about possession
3 because I know Mr. Suggs is gonna talk to you about
4 possession. There are -- remember, in these charges, we've
5 got the word possession with the intent to distribute, because
6 that's with intent distribute marijuana, cocaine base, heroin
7 within proximity of a school.

8 There are two types of possession in this state. There
9 is actual possession and there is what you call constructive
10 possession. For example, I got this Day-Timer in my hand
11 right now. That's actually being possessed by me; I got it
12 right here. No question about it, it's John Jepertinger's.
13 It's John Jepertinger's. It says John Jepertinger.

14 Now, I got my cell phone, which has been texting me like
15 crazy this morning sitting on that desk. It ain't on me. It
16 ain't on me. In fact, that cell phone belongs to the
17 solicitor's office, but I have the ability to exercise
18 dominion and control over that phone. That's all I have to do
19 is go over here and pick it up. I know the key code and all
20 that sort of business, right? It weren't on me.

21 When they searched the house, all that marijuana they
22 found in the back bedroom wasn't on him. That heroin in that
23 cabinet, a large quantity, wasn't on him but he had the
24 ability to exercise dominion and control. Had the police not
25 gotten there that day at that time at that moment, he could

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1 have done with it whatever he chose. He was the only one
2 there.

3 And folks, Mr. Suggs is gonna get up here and say, well,
4 he was just merely present. That poor schmo just happened to
5 go there, you know, it's a love -- love shack and he just
6 happened to be there, and doggone it, all these drugs were
7 there, whether it was his girlfriend's or whether it was Linky
8 or whoever, he just happened to be there and he didn't know
9 anything at all about this.

10 That isn't the case, folks. Think about the case -- he's
11 carrying drugs in a case already. All that stuff is strewn
12 out. The digital scales -- who left the digital scale on a
13 table ready to go with white powder on it. Oh, the police put
14 the drugs on there. Come on, just doesn't make sense. Look
15 at the table, the pictures are in here, all of them. The
16 marijuana in the -- he's carrying it in the bag. Everything
17 was in bag. The pills, it's all in here if you choose to see
18 it. He was not merely present. He wasn't the poor schmo that
19 just happened to walk up on the proverbial murder scene with,
20 you know, the smoking gun in his hand. That isn't -- that
21 isn't the deal for him, you know. He's holding the smoking
22 gun; he did the shooting. He's not a victim of circumstances,
23 he's a victim of his own creation.

24 I'm gonna ask Mr. Holt if he can play that tape from the
25 jail or the recording from the jail, better said.

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1 (REPORTER'S NOTE: State's 1 published to the jury. Audio not
2 transcribed herein.)

3 MR. JEPERTINGER: I pray that he would've never had guns,
4 I mean, drugs in this case. It would've been straight because
5 there would have been no reason to arrest him had he had no
6 drugs but he set this ball in motion. And folks, you have
7 taken an obligation to the truth, to the truth itself to try
8 this man based on the evidence presented. Not because this is
9 some sort of popularity contest or because I'm the state or
10 I'm anybody special, I'm not, neither are these police
11 officers. But, it's based on the credibility of the witnesses
12 and what was found at 805-A Commander Street. And to that
13 truth, you bear the greatest burden, and the truth is he's
14 guilty as charged. Thank you.

15 THE COURT: All right. Thank you. The defense is
16 recognized.

17 MR. SUGGS: Thank you, Your Honor.

18 CLOSING BY SUGGS:

19 MR. SUGGS: Good morning, ladies and gentlemen of the
20 jury. I appreciate all of y'all paying attention throughout
21 this trial.

22 You know, sometimes I feel like Mr. Jepertinger, John,
23 when he said in his closing argument about being tired. You
24 know, I'm tired, too. And it's not because of this case. I
25 think I'm just tired because times have changed and they've

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1 not changed for the good. I mean, every day -- I mean, I've
2 almost stopped watching the news. Really, I used to watch the
3 news all the time and, now, I think all I watch on T.V. is the
4 History Channel or Discovery or, you know, something about
5 ancient aliens. I'm just interested in the news anymore,
6 because it's all bad. There must be some correlation between
7 playing bad news and ratings as opposed to playing good news
8 and ratings. You know, if you're playing good news and your
9 ratings are terrible, then you have to quit doing it and just
10 start playing bad stuff and then your ratings go up and
11 profits go up and everything else. So, I just quit watching
12 the news.

13 I think about the Norman Rockwell times sometimes and I'm
14 not that old, I'm 56. I was born in the 60s. I was born in
15 1962, which I believe honestly in the 60s and 70s are the
16 probably the greatest decades. But the Norman Rockwell
17 painting that I think about -- and I don't know if y'all are
18 familiar with it or not -- it's a -- it's in a soda shop and
19 it's a little kid probably five years old, he's sitting in the
20 chair and there's a police officer next to him sitting in the
21 other chair. And he's looking up at the police officer like
22 this and you can see in the kid's eyes how, you know, how awed
23 he is to be in the presence of a police officer, maybe strives
24 one day to be just like him and the officer is dressed in what
25 you see on the Andy Griffith Show. You know, like what Andy

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1 would wear or Barney would wear. And then one day, I think I
2 was flipping through a magazine and there was that same Norman
3 Rockwell print but it was different; it had changed. The kid,
4 it wasn't a little -- it still was a little kid, but it wasn't
5 -- it wasn't a -- it was -- the child was different, the way
6 he looked and the way he dressed and everything and the
7 officer was different, too. He had on all this SWAT stuff.
8 He had his vest on and he had I think some kind of submachine
9 gun across his shoulder and, and just all the accoutrements
10 that you see law enforcement wearing today that raid houses
11 and stuff and just -- and, you know, the pictures, neither one
12 of them had any -- well, if they had a caption or anything, if
13 they did I don't remember, but you got the idea of what the,
14 the writer of the drawing or the artist was trying to convey
15 when you looked at one picture next to the other, you
16 understood the difference and you understood that our times
17 have changed and not necessarily for the good.

18 And I think what we have here is a young man who has, I
19 don't know, it seems like a lot of people have lost faith in
20 the system and maybe that's why I'm tired because I think
21 people have lost faith in the system.

22 And then you have a young man who -- who hasn't lost
23 faith in the system. You have a young man who thinks that the
24 system is here and will protect him and not punish him. And
25 maybe that was a mistake on his part. You know, the case is a

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1 lot about -- well, it's everything about possession. You
2 know, there's actual possession and there's constructive
3 possession as Mr. Jepertinger indicated to you. I'm in actual
4 possession of these eyeglasses, but I'm -- we're all -- all of
5 us in the courtroom are in constructive possession of those
6 items that aren't in our actual possession; but are within our
7 dominion and control. Something that we could reach out and
8 touch and we know what it is, that sort of thing. That's
9 constructive possession. And you know just the difference in
10 the two is so very, very important because every day anybody
11 can find themselves in a situation where the distinction
12 between those two things are so critically important.

13 If you take -- say you get in a car with someone, maybe a
14 friend, maybe a good friend, maybe an acquaintance, maybe a
15 co-worker, someone you know from work and you get in the car
16 with them because your car is in the shop or you need a ride.
17 And, you know, the car is stopped for whatever reason,
18 headlights out or, or improper signal or some reason the
19 police officer may give for stopping them. And then the
20 officer says well, you know, let's -- let's check and see
21 about any drugs or anything illegal in the car. And of
22 course, you get to that point where the trunk is popped or
23 whatever and there is a kilo of heroin or cocaine or something
24 in the backseat, well, maybe back in the trunk, you know. I
25 guarantee you there's more than one person going to jail.

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1 There's going to be two people going to jail. Anybody in that
2 car is going to probably be going to jail. And that's the
3 difference between actual possession and constructive
4 possession.

5 You know, in order for someone to be convicted of
6 constructive possession, the state has to prove to you beyond
7 a reasonable doubt that not only did that person exercise
8 dominion and control over that item, they also have to have
9 absolute knowledge of his presence, and that's the key in this
10 case.

11 You know, let's look at what ties John Gregg to all these
12 drugs. Okay? The mere fact that he was there in the house?
13 According to him, he doesn't own the duplex and I think that
14 was substantiated even by evidence from the state that
15 evidently no one checked to see who owned the duplex. No one
16 checked to see whose names are on the leases. There was a
17 statement made that John said he had a key to the place, but
18 there was no key to the place found on him. So, it's not like
19 he had access to the place any time he wanted. He said he was
20 coming from work and his girlfriend stayed there or a girl
21 that he dates -- he's not married, so he's free to date who he
22 wants to date -- and a cousin and they stay there. He knocked
23 on the door and his cousin let him in. The cousin went
24 outside or just, you know, about that fast, I bet you that
25 cousin saw what was going on and it probably was the cousin's

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1 car, too. Of course, they didn't check to see who owned the
2 car either. It would have been helpful. But, I bet you what
3 happened was that Linky or whoever it was, was outside for
4 whatever reason just at that exact time, that perfect storm,
5 and saw what was happening and skedaddled down the path. And,
6 as soon as he's gone, the law enforcement officers are
7 breaking in the front door of 805-B and breaking in the back
8 door of 805-A. So, Linky gets away by the skin of his teeth.

9 And, you know, Johnny said on his phone calls, what
10 probably all of us would say, was, you know, I wanted to, you
11 know, grab my bag and try to get out of there with my bag and
12 get out of there. But, you know, who would have time, you
13 know, to grab marijuana in the back room and heroin in the
14 kitchen cabinet and pills in the kitchen cabinet because
15 they're coming through the kitchen. You know, the recording
16 just doesn't match that. Nobody would have time to do all of
17 that and then get away. It would be an impossibility.

18 So, my theory is that you know, Johnny has put his faith
19 in a system that I'm not gonna say is betraying him, but has
20 not taken in all of the factors that Johnny was hoping that
21 the state would in this case. They asked him would, you know,
22 would he be willing to be a CI, a confidential informant, for
23 the police department. You know, that will help you out.
24 Well, he refused to do that and you know, and I kind of
25 respect that. I do. You know, even though the trade-off was

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1 not cooperating because, guess what, the system might not look
2 out for you like it should. The system might be altered or
3 tweaked just a bit to put you in a whole lot more trouble than
4 you have freely admitted that you're in. He admitted the
5 ownership of what was there in the bag. He did. And he's
6 done that in the past. In 2009, when he was, you know,
7 basically a kid, 18, 19 years old, he pled guilty to some
8 charges that he was guilty of. He didn't have a trial. He
9 manned up and pled because this is how the system works. If I
10 do something wrong and I get caught, then as a man, I have the
11 responsibility to live up to that. As a man, I have a
12 responsibility not to try to get other people in trouble by
13 being a confidential informant; I'm not going to do that. I'm
14 going to take responsibility for my own faults and I'm not
15 going to get other people in trouble. And I think the system
16 has let him down.

17 You know, it would've been nice if we did have bodycams.
18 You know, so many crimes now are solved by cameras. You watch
19 T.V., it's really one of the first things a law enforcement
20 officer will do, okay, is there cameras anywhere nearby that
21 can help us solve this crime. You know, 20 years ago, there
22 was not that resource that law enforcement officers have, but
23 it would be nice if they had it this time because, you know,
24 that would be the unblinking eye. It would see all and it
25 tell all. We wouldn't be in here disputing things, disputing

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1 facts because it would be on video, it'd be on audio. But,
2 you know, the law enforcement officers did not do that.

3 They obtained two search warrants for the duplexes by
4 different officers, which I still don't understand why two
5 different officers have to go to the same judge to execute two
6 separate search warrants for basically the same location.
7 That's a little confusing to me. They did not check the
8 ownership of the duplex. They did not check the names on the
9 leases. They did not check the ownership of the car. They
10 did not check the ownership of the guns. They, they made a
11 lot of mistakes or omissions. Things that could've really
12 helped out a lot in this case. But that wasn't of a concern
13 to Johnny, Johnny wasn't concerned about that. Johnny was
14 concerned with, okay, I'm caught. I've got my, my, my bag and
15 what's in it, and I'm gonna take responsibility for that.
16 There was nothing else found in the apartment that links
17 Johnny in any way to that duplex. There was a letter with his
18 name on it, but I don't know where that was, but that's it.
19 There weren't any personal items there. There was no bills or
20 magazine subscriptions, there was no personal effects that men
21 use, their toothbrushes or their hairbrushes and their shaving
22 equipment. There was none of that found that would link
23 Johnny in any way to this apartment. This apartment belonged
24 to somebody else. He was merely visiting. And I go back to
25 that perfect storm, it was a perfect storm. He just happened

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1 to be just really, absolutely in the wrong place at the wrong
2 time. If he had of gone somewhere else from work instead of
3 going to his girlfriend's house, he wouldn't be here.

4 The Judge is gonna give you a lot of charges on the law.
5 I don't like going through and explaining the law to a jury.
6 That's not really something I enjoy doing, it's very boring,
7 and I cannot do it nearly as well as the Judge can. So, I
8 usually leave that to the Judge, because he will do it better
9 than anybody else. And you have to follow the law, too.
10 He'll tell you that as well that he is trier of the law and
11 you are the trier of the facts. Whatever the law is that the
12 Judge gives you, you have to follow it whether you like it or
13 not. By the same token, you are the trier of the facts. No
14 one can tell you, not even the Judge can tell you what the
15 facts ought to be. The facts are what you have already heard
16 and what you've already seen. And so when the Judge gives you
17 the law, you have to use your common sense and apply the facts
18 as you know them to the law as the Judge gives it to you. And
19 I just want you to take into consideration, and the Judge will
20 ask you to and require you to, to take into account what
21 reasonable doubt is and he'll give you a definition. I think
22 that the Court will tell you that you have to be firmly
23 convinced, firmly convinced of the defendant's guilt in order
24 to convict. And all I ask is you leave open that possibility
25 that what John is telling you is true. That I was there to

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1 visit my girlfriend, she wasn't home; Linky was there. Linky
2 scooted out just at the right time and then here I am, the
3 police busting down the door, not just this apartment that
4 he's in but the one next-door. He hears the racket coming
5 from next-door, not really knowing what it is, and then
6 dawning on him what it is. And then he's thinking, well
7 that's okay, that's fine. I'm, I'm just gonna take
8 responsibility for what's mine and everything will be all
9 right. But it didn't turn out to be all right. He's facing a
10 lot more in consequences than he ever expected he would be
11 simply by bad luck.

12 Anyway, I don't think I get the chance to say anything
13 else to you. I believe under the rules Mr. Jepertinger may be
14 able to come back and reply to what I said, but your decision
15 has to be unanimous. All of you have to agree and, and you
16 shouldn't let one juror tell you what's right and what's
17 wrong. I think you have to decide that for yourself and once
18 you reach that decision, I want it to be one that you can live
19 with, one that you're comfortable with. Because your decision
20 has to be unanimous, all of you have to agree to the same
21 thing. And, I hope that you will accept the possibilities
22 that we've presented to you this morning. Thank you.

23 THE COURT: All right. Thank you.

24 Reply from the state?

25 REPLY CLOSING BY JEPERTINGER:

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1 MR. JEPERTINGER: Unfortunately, the only testimony we've
2 heard about Linky has been from the defendant in this case.
3 Now, if Mr. Suggs had the ability to put up the girlfriend,
4 where was she? We don't know anything about Linky. Linky
5 could be a straw man, he may not exist. How do we know?

6 Now, there's no testimony other than his own, which is
7 self-serving -- obviously, he's looking at all of these
8 criminal charges. And he's hit the big time, there's no
9 question about it. Trafficking heroin, you've hit the big
10 time. But in that conversation that he had with that female,
11 there was no mention of Linky, just -- you know, Linky, Linky
12 did me in, I'm paying Linky's price, Linky got away with it;
13 none of that. What you do get, I didn't think they were gonna
14 search the whole house. I didn't think they were gonna search
15 the whole house. Firmly convinced. You're gonna have to deal
16 with what he said when he thought no one was listening. Thank
17 you.

18 CHARGE TO JURY:

19 THE COURT: Members of the jury, it is now my duty to
20 instruct you on the law applicable to this case. It is your
21 duty as jurors to accept and apply the law as I now state it
22 to you. Furthermore, it is your exclusive duty to decide on
23 the issues of fact in this case and to determine the effect,
24 value and weight of the evidence presented. Both the state
25 and the defendant have the right to expect that you will

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1 carefully consider and evaluate the evidence and apply the law
2 of the case to it so that, in the end, both the State of South
3 Carolina and the defendant will have received a fair and
4 impartial trial.

5 I want you to understand that when I use the word,
6 defendant, I refer to Johnny Nickolas Gregg, Jr. Furthermore,
7 ladies and gentlemen of the jury, I instruct you to disregard
8 that during the jury selection process, a potential juror said
9 the word guilty when the state said present the juror. At
10 that point in time, the trial had not even begun. Thus, it
11 was in no way possible for a potential juror to determine
12 guilt or innocence without even going through the entire trial
13 process. You should not consider his comment for any purpose
14 during your deliberations. You are being instructed to ignore
15 what he said as it was improper for that potential juror to
16 make that comment.

17 The state in this case, alleges several different
18 offenses against the defendant. The charges are trafficking
19 in heroin; possession of a weapon during the commission of a
20 violent crime; possession with intent to distribute heroin
21 within the proximity of a school; possession with intent to
22 distribute controlled substances I through V, being Xanax;
23 possession with intent to distribute cocaine base; possession
24 with intent to distribute marijuana. Each charge is a
25 separate and distinct offense. You must decide each charge

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1 separately on the evidence and the law applicable to it
2 uninfluenced by your decision as to any other charge. The
3 defendant may be convicted or acquitted on any or all of the
4 offenses charged. You will be asked to write a separate
5 verdict of guilty or not guilty for each charge.

6 To these charges, the defendant has entered a plea of not
7 guilty. His plea of not guilty places the burden of proof on
8 the state to prove the defendant guilty to you beyond a
9 reasonable doubt on each charge. It is viable to understand
10 that the defendant is presumed under the law to be innocent of
11 the charges. It is a fundamental rule of our law that the
12 defendant, regardless of the seriousness of the charges
13 against him, is always presumed innocent of the crimes for
14 which he is charged unless and until his guilt has been proven
15 by evidence that satisfies you beyond a reasonable doubt. The
16 presumption of innocence is not a mere legal theory or legal
17 phrase. The presumption of innocence is very important, and
18 you need to understand that this presumption accompanies the
19 defendant from the time of his arrest and appearance in this
20 court and continues with the defendant even after you retire
21 to the jury room to deliberate. In other words, the defendant
22 receives the benefit of the presumption of innocence until the
23 very end of this trial when you, the jury, will deliberate
24 upon the evidence and decide whether the state has proven his
25 guilt on each and every charge beyond a reasonable doubt.

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1 Proof beyond a reasonable doubt is proof that leaves you
2 firmly convinced of the defendant's guilt. There are a few
3 things in this world that we know with absolute certainty.
4 So, even in criminal cases, the law does not require proof
5 that overcomes every possible doubt. However, if based on
6 your consideration of the evidence, you are firmly convinced
7 that the defendant is guilty of the crimes charged, you must
8 find him guilty. If, on the other hand, you think there's a
9 real possibility that he is not guilty, you must give him the
10 benefit of the doubt and find him not guilty. Please
11 understand that reasonable doubt may arise from evidence which
12 has been presented in this case or from the lack of evidence
13 in the case. It is your responsibility to determine whether
14 or not reasonable doubt exists as to the guilt of this
15 defendant on each and every charge. I charge you that the
16 defendant is entitled to every reasonable doubt arising in the
17 whole case. If upon any issue of fact essential to conviction
18 and a verdict of guilty, you have a reasonable doubt as to how
19 that issue would be resolved, it would be your duty to resolve
20 that reasonable doubt in favor of the defendant.

21 Thus, in summary, it's important to understand that the
22 defendant is not required to prove his innocence. Instead,
23 the state is required by law to prove every essential element
24 of the charges against the defendant by evidence, which
25 satisfies you of his guilt beyond a reasonable doubt. Only

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1 then can you convict the defendant and find him guilty.

2 During this trial, you and I have separate duties to
3 perform. As the Trial Judge, it is my responsibility to
4 preside over this trial. Therefore, I have the duty to rule
5 upon the admissibility of the evidence offered during the
6 trial. In that regard, you are to consider only the testimony
7 which has been presented from this witness stand together with
8 any exhibits admitted into the record as evidence.

9 Furthermore, I have the additional duty to charge you on the
10 law applicable to this case and in that regard, it is your
11 duty to accept and apply the law as I now state it to you.
12 If you have any preconceived ideas as to what the law is or
13 what the law ought to be and it does not agree with what I
14 tell you the law is, then you are obligated under your oath to
15 abandon these preconceptions and accept the law as I now state
16 it to you.

17 In this trial you are the sole, exclusive judge of the
18 facts and I in turn, am the judge of the law. Do not infer
19 that I have any opinion about the facts in this case from
20 anything I have said or done during the course of this trial.
21 In this regard, the law simply does not permit me to have an
22 opinion about the facts. As jurors, it is your duty alone to
23 determine the effect, value, and weight of the evidence
24 presented during the course of this trial.

25 Furthermore, it is your job that as jurors, to determine

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1 the credibility or believability of the witnesses who have
2 testified in this case. You must evaluate the evidence and
3 determine which evidence convinces you. In determining the
4 believability of witnesses who have testified in this trial,
5 you may believe one witness over many or many over one. You
6 may believe a part of the testimony of a witness and reject
7 the remaining part. You may believe the testimony of a
8 witness in its entirety or reject it in full. You may
9 consider whether the witness has an interest in the result of
10 the trial, whether the witness is prejudiced toward either
11 party, the opportunity for the witness to have seen the
12 matters and things about which the witness may testify and the
13 way the witness acts on the witness stand.

14 Evidence may be direct or circumstantial. Direct
15 evidence is testimony by a witness about what the witness
16 personally saw or heard or did. Circumstantial evidence is
17 indirect evidence. That is, it is proof of one or more facts
18 from which one can find another fact. You are to consider
19 both direct and circumstantial evidence. The law permits you
20 to give equal weight to both. But it is for you to decide how
21 much weight to give to any evidence.

22 A statement alleged to have been made by the defendant
23 has been entered into the evidence of this case. While the
24 Court has determined that the statement is admissible, I
25 instruct you that you make the ultimate decision of whether or

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1 not the defendant made the statement. If the defendant did
2 make the statement, you must determine whether the statement
3 was made by the defendant voluntarily and of his own free
4 will. This means that the statement was not caused by
5 pressure, force, fear, threats, coercion or intimidation or by
6 hope or promise of leniency or a reward of any kind.

7 In determining whether the statement was voluntary, you
8 must consider both the characteristics of the defendant and
9 the details of the questioning. Some of the factors you must
10 consider are the age of the defendant, the defendant's
11 education or the lack of education, the defendant's mental
12 ability or capacity, the defendant's IQ or intelligence, the
13 defendant's background and environment, the place and length
14 of detention, the nature of the questioning, and the advice or
15 lack thereof to the defendant of his constitutional rights
16 including, but not limited to, the right to remain silent,
17 that any statement could be used against him in a court of
18 law, the right to have a lawyer present, that if he cannot
19 afford a lawyer, a lawyer would be appointed to represent him
20 without any costs, and that he could stop making the statement
21 at any time.

22 You must carefully consider all of the surrounding
23 circumstances before you give any weight to an alleged
24 statement. The state has the burden of proving beyond a
25 reasonable doubt that the alleged statement was voluntary. If

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1 you determine it was, you may give the give the statement any
2 further consideration that you deem proper. You must decide
3 what weight, if any, should be given to the alleged statement.
4 If you determine the alleged statement was not the free and
5 voluntary statement of the defendant, you should not consider
6 the statement at all.

7 Normally, a person cannot give opinion testimony.
8 However, there is an exception when someone is qualified based
9 on education and experience. They are permitted to give their
10 opinion in certain areas if the Court qualifies them in that
11 way. You have heard from an expert witness qualified in this
12 case and that does not mean that you have to accept that
13 witness' opinion. But it is evidence for you to use in any
14 way you see fit and give the weight and credibility you
15 believe appropriate under the circumstances.

16 The defendant is charged with trafficking in heroin. The
17 state must prove -- the state must prove beyond a reasonable
18 doubt that the defendant knowingly sold, manufactured,
19 cultivated, delivered, purchased, brought into this state,
20 brought financial assistance, or otherwise aided, abetted,
21 attempted, or conspired to sell, manufacture, cultivate,
22 deliver, purchase or bring into this state, was knowingly in
23 actual or constructive possession or knowingly attempted to
24 become in actual or constructive possession of heroin and that
25 the heroin was 14 to 28 grams.

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1 If you determine the state has not proven trafficking in
2 heroin beyond a reasonable doubt, you should then consider
3 whether the state has proven beyond a reasonable doubt that
4 the defendant is guilty of possession with intent to
5 distribute heroin. Possession with intent to distribute
6 heroin contains all the elements of trafficking except the
7 amount of the heroin. In addition, the state must prove
8 beyond a reasonable doubt that the defendant had the intent to
9 distribute the heroin.

10 The defendant is charged with possession of a weapon
11 during the commission of a violent crime. The state must
12 prove beyond a reasonable doubt that the defendant was in
13 possession of a firearm or visibly displayed what appeared to
14 be a firearm during the commission of a violent crime. In
15 order to find the defendant guilty of possession of a
16 weapon during the commission of a violent crime, you must
17 first find the defendant guilty of committing a violent crime.
18 Trafficking heroin is a violent crime. The state must prove
19 beyond a reasonable doubt that the weapon further advanced or
20 helped in the commission of a crime.

21 The defendant is charged with possession with intent to
22 distribute heroin within the proximity of a school. The state
23 must prove beyond a reasonable doubt that the defendant
24 unlawfully possessed with the intent to distribute heroin
25 within, on, or within one-half mile of the grounds of a

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1 school. The defendant must have knowledge that he is, on, or
2 within one-half mile of a school.

3 The defendant is charged with possession with intent to
4 distribute Xanax. The state must prove beyond a reasonable
5 doubt that the defendant possessed Xanax with the intent to
6 distribute it. To prove possession, the state must prove
7 beyond a reasonable doubt the defendant had both the power and
8 intent to control the disposition or use of the Xanax.
9 Possession may be either actual or constructive. Actual
10 possession means that the drugs were in the actual, physical
11 custody of the defendant. Constructive possession means that
12 the defendant had dominion and control or the right to
13 exercise dominion or control over either the drug itself or
14 the property on which the drug was found.

15 Mere presence at the scene where drugs were found is not
16 enough to prove possession. The defendant's knowledge and
17 possession may be inferred when a substance is found on the
18 property under the defendant's control. However, inference is
19 simply an evidentiary fact to be taken into consideration by
20 you along with the other evidence in this case and to be given
21 the weight you decide it should have. Two or more persons may
22 have joint possession of a drug. The state must also prove
23 beyond a reasonable doubt the defendant intended to distribute
24 the Xanax. Distribute means to deliver other than not
25 administering or dispensing a drug.

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1 Intent may be shown by acts and conduct of the defendant
2 and other circumstances from which you may actually and
3 reasonably infer intent. In determining whether the defendant
4 had the intent to distribute Xanax, you may consider the
5 circumstances surrounding the defendant's alleged possession.
6 You may consider the amount of the substance alleged to have
7 been possessed, the manner in which it was allegedly
8 possessed, and other factors which you consider to be
9 important. You must find that the defendant did not intend to
10 have the Xanax solely for his own use.

11 The defendant is charged with possession with intent to
12 distribute cocaine base. The state must prove beyond a
13 reasonable doubt that the defendant possessed cocaine base
14 with the intent to distribute it. To prove possession, the
15 state must prove beyond a reasonable doubt the defendant had
16 both the power and intent to control the disposition or use of
17 the cocaine base. Possession may be either actual or
18 constructive. Actual and constructive possession have
19 previously been explained to you in this charge. The state
20 must also prove beyond a reasonable doubt that the defendant
21 intended to distribute the cocaine base. Intent to distribute
22 has also been previously explained to you in this charge.
23 Possession of one or more grams of cocaine base creates an
24 inference that the defendant possessed the cocaine base with
25 intent to distribute it. This inference does not relieve the

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CHARGE TO JURY

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1 state from proving beyond a reasonable doubt that the
2 defendant had the intent to distribute. It is simply an
3 evidentiary fact to be taken into consideration by you along
4 with the other evidence in the case and to be given the weight
5 you decide it should have.

6 The defendant is also charged with possession with intent
7 to distribute marijuana. The state must prove beyond a
8 reasonable doubt that the defendant possessed marijuana with
9 the intent to distribute it. To prove possession, the state
10 must prove beyond a reasonable doubt that the defendant had
11 both the power and the intent to control the disposition or
12 the use of the marijuana. Possession may be either actual or
13 constructive. Actual and constructive possession have already
14 been charged to you. The state must also prove beyond a
15 reasonable doubt that the defendant intended to distribute
16 marijuana. Intent to distribute has also been previously
17 charged to you in this charge. Possession of more than 28
18 grams or one ounce of marijuana creates an inference that the
19 defendant possessed the marijuana with the intent to
20 distribute it. This inference does not relieve the state from
21 proving beyond a reasonable doubt that the defendant has the
22 intent to distribute it. It is simply an evidentiary fact to
23 be taken into consideration by you, along with the other
24 evidence in the case and to be given the weight you think it
25 should have.

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CHARGE TO JURY

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1 Ladies and gentlemen, I'm now drawing near the end of my
2 charge and I want you to clearly understand that you are not
3 partisans or advocates for the state or this defendant. You
4 do not serve as jurors to reward your friends or punish your
5 enemies. In this regard, you have been selected by both the
6 state and the defendant to be fair and partial jurors. It is
7 your duty by your joint deliberations to determine the facts
8 in this case, giving the defendant the benefit of every
9 reasonable doubt on each and every issue. Then to the facts
10 which you determine to be correct you should take and apply
11 the law which has been given to you by this Court and thus
12 arrive at a verdict. Thus, when you have accomplished these
13 responsibilities, you will have satisfied your oath as jurors
14 and you will have discharged your duty to this Court.

15 Now, Ms. Bailiff, if you would hand the forelady of the
16 jury the verdict form.

17 Now, Ms. Forelady, I have handed you the verdict form.
18 When you arrive at a verdict in this case, you will write your
19 verdict on the verdict form. For the charges, if the state
20 has failed to prove the guilt of the defendant beyond a
21 reasonable doubt, your verdict would be two words, not guilty.
22 However, should the state have proved their case against the
23 defendant beyond a reasonable doubt, then your verdict would
24 be one word, guilty.

25 Ms. Forelady, once a decision has been made, just check

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CHARGE TO JURY

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1 your verdict on each and every charge. Also, please
2 understand that the verdict that you render in this case must
3 be the verdict of each and every juror. It must your
4 unanimous verdict. All twelve jurors must agree on the
5 verdict which you authorize the forelady to write for the
6 jury.

7 Ms. Forelady and members of the jury, I want you to
8 further understand that the order in which the choices the
9 verdict appear on the verdict form are not suggestive of any
10 verdict on the part of this Court. The verdict in this case
11 is to be determined by you and not the Court. Furthermore,
12 ladies and gentlemen, please understand that even though I
13 have given the verdict form to the forelady, it is not her
14 verdict alone; it is the verdict of all twelve of you and I
15 emphasize again, it must be unanimous.

16 Now, you will retire to the jury room. However, I would
17 ask that you do not begin your deliberations at this time.
18 The law requires that I consult with the attorneys further.
19 After I have done so, the bailiff will bring in the items of
20 evidence and instruct you to begin your deliberations at that
21 time. Also, should you have any questions during your
22 deliberations, you must put them in writing and send them to
23 me by way of the bailiff. The court bailiff will be placed
24 immediately outside the jury room door to provide security and
25 assistance for you during your deliberations. Once you have

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CHARGE TO JURY

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1 reached your verdict, please knock on the jury room door and
2 advise the Court that you have reached a verdict. Shortly
3 thereafter, we will return you to the courtroom and conclude
4 this trial at that time.

5 Thank you. You may retire to the jury room, but again,
6 do not begin your deliberations until told to do so.

7 (REPORTER'S NOTE: Jury exits courtroom @ 12:27 P.M. The
8 following takes place outside the presence of the jury.)

9 BY THE COURT:

10 THE COURT: Any objections to the charge as given from
11 the state?

12 MR. JEPERTINGER: No objection. I note during my
13 closing, I talked about two grains and things like that in
14 terms of possession with intent to distribute. That would be
15 the only -- only thing that I would ask.

16 THE COURT: You need us to add something to the charge?

17 MR. JEPERTINGER: Yeah, I think it's either 44-53-370 --
18 44-53-370 ---

19 THE COURT: Which charge you talking about, which one?

20 MR. JEPERTINGER: It would the lessor included offense,
21 is it not?

22 LAW CLERK: For the heroin?

23 MR. JEPERTINGER: For the heroin. Because he was
24 claiming some heroin in the bag and not the whole ---

25 THE COURT: Why don't the two of you come up here and

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BY THE COURT

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1 make your marks on the charge and I'll ---

2 MR. JEPERTINGER: It's two grains is it (d)(4) -- under
3 44-53-370(d)(4).

4 THE COURT: All right. Let's go ahead and mark it up.

5 Mr. Suggs, you come check behind him and make sure he's
6 right.

7 MR. SUGGS: 44-53-370 or 375?

8 MR. JEPERTINGER: (d)(4), 370, intent to distribute
9 heroin. I guess there's an inference to be raised of that --
10 I'll let Tamara, her writing is better. It's just the same
11 inferential, same inferential amount.

12 LAW CLERK: Distributing heroin, what 2?

13 MR. JEPERTINGER: 2 grains.

14 LAW CLERK: 2 grains.

15 MR. JEPERTINGER: Creates a permissive inference. No,
16 but I said it, so I wanted -- uh-huh, (affirmative response).

17 LAW CLERK: Just 2 grains -- I mean, is it or more?

18 MR. JEPERTINGER: But I it's the same language. It
19 creates an inference just like the crack. The crack is 1
20 gram.

21 LAW CLERK: Yeah, let me go find -- do this sentence but
22 add 2 grains. Possession of 2 grains -- defendant possessed
23 the heroin with the intent to distribute.

24 MR. JEPERTINGER: That's correct.

25 THE COURT: We'll let you look at it first.

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BY THE COURT

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1 MR. SUGGS: All right.

2 LAW CLERK: Is it more than 2 grains or just 2 grains or
3 more.

4 MR. JEPERTINGER: 2 grains of heroin.

5 MR. SUGGS: 2 grains. It says ---

6 MR. JEPERTINGER: It's like 300 and whatever grams.

7 LAW CLERK: Possession of 2 grains.

8 MR. SUGGS: Are you talking about that prima facie
9 inference?

10 MR. JEPERTINGER: Yes, put the word inference in. The --
11 I learned this after doing this many -- that there are 15.432
12 grains to gram.

13 LAW CLERK: You sound very, very smart when you say that.

14 MR. SUGGS: They're talking about really it's subsection
15 (a) of this section.

16 MR. JEPERTINGER: Yeah, subsection of the intent to
17 distribute.

18 LAW CLERK: Yeah, would you be fine with just that
19 sentence or do you want to ---

20 MR. JEPERTINGER: I think it says everything.

21 THE COURT: Mr. Suggs, you can look at it and make sure
22 we're on the right page?

23 MR. SUGGS: I, I'm familiar with the code section.

24 THE COURT: We can just read that last sentence in
25 reference to that charge?

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BY THE COURT

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1 MR. SUGGS: I don't think it says it creates an
2 inference. Let me see, I think it says prima facie guilty is
3 what it says.

4 MR. JEPERTINGER: I don't think you can have anything on
5 its face guilty. Okay? It creates an inference and you're
6 better off with that language.

7 MR. SUGGS: I'm fine with it, too, then.

8 MR. JEPERTINGER: I just don't want to -- because there's
9 nothing that says guilty right on its face. You know what I'm
10 saying?

11 THE COURT: You need me to say in reference to the
12 possession with intent to distribute heroin, I need to add one
13 more?

14 MR. JEPERTINGER: One sentence, yeah.

15 THE COURT: Possession of 2 grains -- go ahead and bring
16 them out one more time.

17 (REPORTER'S NOTE: Jury enters courtroom @ 12:34 P.M.)

18 THE COURT: All right. Members of the jury, in reference
19 to possession with intent to distribute heroin, I want to make
20 one addition to that charge. I want to charge you that
21 possession of 2 grains of heroin creates an inference that the
22 defendant possessed the heroin with the intent to distribute
23 it. This inference does not relieve the state from proving
24 beyond a reasonable doubt that the defendant has the intent to
25 distribute. It is simply an evidentiary fact to be taken into

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BY THE COURT

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1 consideration by you, along with the other evidence in the
2 case, and to be given the weight you think it should have.

3 All right. That being said, you can step back into the
4 jury room and, again, do not begin your deliberations until
5 told to do so.

6 (REPORTER'S NOTE: Jury exits courtroom @ 12:35 P.M. The
7 following takes place outside the presence of the jury.)

8 THE COURT: All right. Any objections to the entire
9 charge from the state?

10 MR. JEPERTINGER: No objection.

11 THE COURT: How about the defense?

12 MR. SUGGS: No, sir and thank you for that little bit at
13 the end too. I appreciate that.

14 THE COURT: Glad to do it. Take a look at everything and
15 make sure it's ---

16 (REPORTER'S NOTE: Counsel review and consent to exhibits to
17 be submitted jury.)

18 MR. JEPERTINGER: Everything is in evidence.

19 THE COURT: All right. Go ahead. Everything look good
20 to you, Mr. Suggs?

21 MR. SUGGS: Yes, sir. Thank you.

22 THE COURT: And you can tell them if they want to see the
23 guns and all the rest of the drugs, they're welcome to come
24 out here and do it.

25 MR. SUGGS: Or we can send them back.

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BY THE COURT

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1 CLERK: All right. Y'all tell me.

2 MR. JEPERTINGER: Just leave the -- just tell them if
3 they want to see the drugs, hear the tape or CD, hear the tape
4 or see the drugs or the gun, they're out here in the
5 courtroom.

6 THE COURT: And they're welcome to just ask. We want to
7 make sure that they can see it.

8 CLERK: Okay.

9 THE COURT: All right.

10 CLERK: And you want the TWO alternates?

11 THE COURT: Yeah, bring those back out.

12 (REPORTER'S NOTE: Exhibits and verdict form delivered to
13 jury. Deliberations commence 12:45 P.M.)

14 MR. SUGGS: Does the defendant need to be out for this?

15 THE COURT: We're dismissing the alternates.

16 MR. SUGGS: Okay.

17 THE COURT: Then we'll let him go.

18 MR. SUGGS: Okay. You're going to tell -- then you're
19 going to tell the jury they can deliberate, right?

20 THE COURT: Hopefully, she's doing that right now.

21 MR. SUGGS: Okay. I didn't know if they wanted to hear
22 that, I just ---

23 THE COURT: If you want to get him out of here, you're
24 welcome to it.

25 MR. SUGGS: If you don't think it's necessary, Judge.

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BY THE COURT

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1 (REPORTER'S NOTE: Alternates enter courtroom.)

2 THE COURT: All right. I want to let you know, you were
3 the backup quarterbacks for the week. If anybody got hurt on
4 the field, we were gonna put you in their spot. But, we have
5 all 12 people, they're good to go, so you are dismissed for
6 the day. But you need to call back after 6:00 to see if there
7 is any further instructions for you.

8 We'll be at ease until further notice.

9 **RECESS - 12:47 P.M.**

10 *****OFF THE RECORD*****

11 **(On the Record - 1:01 P.M.)**

12 THE COURT: Get the solicitor out here.

13 CLERK: You want them to come out now or ---

14 THE COURT: No. All right. We've got one question and
15 it said the judge's instruction for each charge. They want me
16 to send it back there so they can look at each charge and see
17 if the burden of proof has been met, et cetera, et cetera, is
18 my read.

19 MR. SUGGS: Your written charges?

20 THE COURT: I think so. I mean, I don't think there's
21 anything wrong with it. I've done it before many, many times.
22 Judge Russo does it every time.

23 MR. SUGGS: I think if you don't do it, they're gonna
24 probably be back there a longer time. They may come out and
25 ask questions about each individual instruction, Judge ---

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BY THE COURT

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1 THE COURT: All right.

2 MR. SUGGS: --- over and over again.

3 THE COURT: So, you think we need to do it?

4 MR. SUGGS: I don't necessarily see a problem with it.

5 THE COURT: I don't either.

6 How about the state?

7 MR. JEPERTINGER: No, no problem.

8 THE COURT: All right. We're going to get it.

9 MR. SUGGS: Does the state want a copy?

10 THE COURT: You have any objection to that? Russo sends

11 them back just one time and he's done it for 15 years

12 probably, every case.

13 You want to look at it before I send it back or not, it

14 doesn't matter to me; it's the same thing you saw before.

15 MR. SUGGS: It's the same thing?

16 THE COURT: The same thing. She just printed a clean

17 copy.

18 MR. SUGGS: Judge, I'm going to go back to my office as

19 well, but I always just give the clerk my cell number and I

20 can zip right back here.

21 THE COURT: Do you want to look at the charge before I

22 send it back?

23 MR. SUGGS: No, sir.

24 THE COURT: All right.

25 MR. SUGGS: I trust you.

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BY THE COURT

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1 THE COURT: No reason to give them anything other than
2 that.

3 If you have it ready, we can send it back.

4 You want to send that back and if they have any more
5 questions, send it out in writing. All right.

6 COURT'S EXHIBIT NUMBER 2

7 MARKED FOR IDENTIFICATION

8 **RECESS - 12:54 P.M.**

9 *****OFF THE RECORD*****

10 **(On the Record - 1:01 P.M.)**

11 THE COURT: All right. We have another question. It
12 says may we have the officer's incident report?

13 MR. JEPERTINGER: No, it's not in evidence.

14 THE COURT: All right. I just wanted to make sure that
15 that was okay with you all. I'm gonna write no, it is not in
16 evidence.

17 MR. SUGGS: Judge, you might could tell them that they
18 can't ask for anything that's not in evidence, just preventing
19 other questions, may we have something else.

20 MR. JEPERTINGER: If they want to relisten to testimony,
21 that's their business.

22 THE COURT: I'm just going to write no, it's not in
23 evidence.

24 THE COURT: Go ahead and send that on back.

25 MR. SUGGS: Sorry, Judge, I didn't mean to presume to

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BY THE COURT

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1 tell you what to do.

2 THE COURT: Oh, that's fine. That's your job. All right.
3 Let's see what happens. You might not want to go too far too
4 quick.

5 COURT'S EXHIBIT NUMBER 3

6 MARKED FOR IDENTIFICATION

7 **RECESS - 1:03 P.M.**

8 *******OFF THE RECORD*******

9 **(On the Record - 1:53 P.M.)**

10 THE COURT: All right. If you would bring in the jury.

11 (REPORTER'S NOTE: Jury enters courtroom @ 1:54 P.M.)

12 VERDICT OF JURY:

13 THE COURT: Madam Forelady, has the jury reached a
14 verdict?

15 FORELADY: Yes, we have.

16 THE COURT: If you'd be so kind as to hand it to the
17 clerk. Thank you.

18 I think there's one more charge that needs to be
19 answered.

20 FORELADY JUROR 92: Okay.

21 THE COURT: If you all would go back in there and just
22 answer Number 3?

23 FORELADY JUROR 92: Okay.

24 THE COURT: I think everything would be in order.

25 FORELADY JUROR 92: Okay.

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VERDICT OF JURY

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1 THE COURT: Thank you

2 (REPORTER'S NOTE: Jury exits courtroom @ 1:55 P.M.)

3 MR. JEPERTINGER: Judge, may we approach for just one
4 second?

5 THE COURT: You can.

6 (REPORTER'S NOTE: Bench conference is held off the record
7 outside the presence the jury.)

8 REPORTER'S NOTE: (Jury enters courtroom 1:58 P.M.).

9 THE COURT: All right. Ms. Forelady, if you will hand it
10 to the clerk.

11 Thank you. All right. I find the verdict form in order.
12 You may publish it.

13 CLERK: State of South Carolina, County of Florence, in
14 the Court of General Sessions Twelfth Judicial Circuit, Docket
15 Number 2017-GS-21-832, State of South Carolina versus Johnny
16 Nickolas Gregg, Jr. As to the charge of trafficking in
17 heroin, we, the jury, unanimously find the defendant guilty.

18 As to the charge of possession of a weapon during the
19 commission of a violent crime, we, the jury, unanimously find
20 the defendant guilty.

21 As to the charge of possession with intent to distribute
22 heroin within proximity of a school, we, the jury, unanimously
23 find the defendant guilty.

24 As to the charge of possession with intent to distribute
25 a controlled substance, Xanax, we, the jury, unanimously find

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VERDICT OF JURY

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1 the defendant guilty.

2 As to the charge of possession with intent to distribute
3 cocaine base, we, the jury, unanimously find the defendant
4 guilty.

5 As to the charge of possession with intent to distribute
6 marijuana, we, the jury, unanimously find the defendant
7 guilty.

8 Signed Theresa Moses, Foreperson, dated April the 18th,
9 2018.

10 Members of the jury if this is your verdict, please raise
11 your right hand.

12 (REPORTER'S NOTE: Jury unanimously complies.)

13 THE COURT: All right. Need for further polling from the
14 defense?

15 MR. SUGGS: No, sir, Judge.

16 BY THE COURT:

17 THE COURT: Members of the jury, I want to thank you for
18 your service. You have worked hard all week long. I'm gonna
19 excuse you for the day. I need you to call back after 6:00 to
20 see if there are any further instructions for you.

21 Thank you very much and you have a good afternoon.

22 (REPORTER'S NOTE: Jury exits courtroom @ 2:06 P.M.)

23 THE COURT: All right. Any motions from the defense?

24 MR. SUGGS: Yes, sir, Judge. Would it be all right if I
25 submit my motions in written form, a motion for a new trial

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BY THE COURT

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1 within 10 days?

2 THE COURT: Any objections to that from the state?

3 MR. JEPERTINGER: No, sir, as long as it's heard, I
4 guess, when we can next scheduled that.

5 MR. SUGGS: I like to do that, Judge, because I don't do
6 much in the way of appellant work and I think that extends out
7 my -- my time to appeal.

8 THE COURT: All right. We'll give you 10 days.

9 MR. SUGGS: Yes, sir, Judge.

10 MR. JEPERTINGER: Judge, I do have one issue in terms of
11 the marijuana and I think we kind of went over the issue when
12 we were going over Mr. Gregg's rap sheet. I pulled and had
13 pulled his previous convictions. He gets a freebee in terms
14 of one simple possession; it's my understanding. So, this
15 would constitute a 3rd marijuana offense and I show you those
16 records, which would make his sentence in terms of the
17 marijuana five to 20 and a \$20,000 fine.

18 The other thing I would like to point out in terms of the
19 possession of weapon during the commission of a violent crime,
20 since the trafficking in heroin, there's a mandatory minimum,
21 I guess, of 25 years. That five years is not mandatory under
22 16-23-490 and I got that out of Strickler's book, who just
23 passed away. But whatever you want to do with that, I'll just
24 tell you that it doesn't have to be a mandatory five years on
25 that.

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BY THE COURT

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1 THE COURT: Okay.

2 MR. JEPERTINGER: Everything else, let me just sign and
3 here's the trafficking heroin, here's the PWID cocaine base
4 1st and here is the Xanax charge. All right. Judge, the
5 state's perspective in this is this guy is a dealer. And we
6 don't punish people for going to trial. However, the state
7 would ask for a hefty, hefty sentence and that's in addition
8 to the 25 years that I know he's facing.

9 THE COURT: All right. Anything else?

10 MR. JEPERTINGER: That's it.

11 THE COURT: All right. Mr. Suggs?

12 MR. SUGGS: May it please the Court? Judge I understand
13 what Mr. Jepertinger has told the Court, but I think 25 years
14 is a hefty, hefty sentence in and of itself. It is a Class B
15 felony under our code which -- of course, it's a violent
16 offense as all trafficking in drug offenses are in South
17 Carolina. It is a violent offense. I think it is a -- it's
18 either a serious or most serious offense, Judge. So, it would
19 constitute a strike. It is a non-parolable offense, which
20 means that my client would have to serve at least 85 percent
21 of that particular sentence, Judge, which I've calculated at
22 about 21.25 years, something of that nature. So, I would ask
23 for a concurrent sentence, Judge, because of the age of my
24 client and the fact that the sentence in and of itself is --
25 is -- is fairly significant and inflexible as far as the

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BY THE COURT

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1 judiciary is concerned. The legislature has taken that
2 discretion away from the judicial branch of government and I
3 think that that is -- that is wrong, but I would ask for the
4 minimum sentence, concurrent. Thank you.

5 THE COURT: Okay. Thank you.

6 MR. SUGGS: And I'm sorry to interrupt, Judge, but as far
7 as credit for number of days, he was in and out, but I think
8 that I had calculated it to be somewhere in the neighborhood
9 of 325 days because he did have his bond revoked sometime in
10 June.

11 MR. JEPERTINGER: June 15th, 2017 is when he had his bond
12 revoked.

13 MR. SUGGS: That was the longest period of time he was in
14 jail. I think it was a week on the first time and maybe two
15 weeks on the second time and then this long stretch.

16 THE COURT: All right.

17 SENTENCE OF THE COURT:

18 THE COURT: You want to stand up?

19 The sentence of the Court in regard to the trafficking in
20 heroin is 25 years. That will run consecutive. I'm going to
21 give him 325 days credit.

22 In reference to the cocaine base, the sentence of the
23 Court is five years. I'm going to run that consecutive with
24 today.

25 In reference to the possession of a schedule drug, the

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SENTENCE OF THE COURT

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1 sentence of the Court -- well possession with intent to
2 distribute marijuana, the sentence of the Court is 10 years,
3 I'm going to run that concurrent with today.

4 In reference to the possession of a schedule drug, three
5 years, I'm gonna run it concurrent.

6 In reference to possession of a weapon, four years and
7 I'm going to run it concurrent.

8 So, only two were consecutive and all the rest were
9 concurrent.

10 MR. JEPERTINGER: The school, PWID in terms of the
11 school, Judge?

12 MR. SUGGS: Is that 10?

13 MR. JEPERTINGER: Yes.

14 MR. SUGGS: Zero to 10?

15 THE COURT: I don't even have it yet. He didn't give me
16 a sentencing sheet I don't believe. But it will be
17 concurrent.

18 MR. SUGGS: Thank you, Judge.

19 MR. JEPERTINGER: Excuse me about that. Let me just sign
20 it, I'm sorry. I'm sorry, Judge.

21 THE COURT: Okay. And in reference to the possession
22 with intent to distribute heroin within the proximity, the
23 sentence of the Court is eight years and I'll run it
24 concurrent as well.

25 MR. SUGGS: Your Honor, just so the record is clear, is

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SENTENCE OF THE COURT

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1 it my understanding that the defendant was sentenced to a 30-
2 year sentence?

3 THE COURT: Correct.

4 MR. SUGGS: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 MR. SUGGS: Thank you, Your Honor.

7 COURT IN RECESS

8 **END OF DAY THREE**

9 **ADJOURNED - 2:16 P.M.**

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C E R T I F I C A T E

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CERTIFICATE OF COURT REPORTER

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I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Johnny Nickolas Gregg, Jr., held in the Court of General Sessions for Florence County, Florence County Courthouse, Florence, South Carolina, on April 16-18, 2018.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Kay H. Richardson
Official Court Reporter

May 23, 2019.

FORM 5

20 19 CP 21 750

STATE OF SOUTH CAROLINA)

COUNTY OF)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing, legibly handwritten or typewritten, signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Correctional Institution
2. Name and location of Court which imposed sentence Florence County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-GS-21-00832 Poss. Weapon during violent (d) 2017-GS-21-00832 Trafficking Heroin
 - (b) 2017-GS-21-00832 P.W.I.D. Heroin near School (e) 2017-GS-21-00832 P.W.I.D. cocaine base
 - (c) 2017-GS-21-00832 Poss. of Sch. II drugs (f) 2017-GS-21-00832 P.W.I.D. Marijuana
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 18, 2018; 4 years (d) April 18, 2018; 25 years
 - (b) April 18, 2018; 8 years (e) April 18, 2018; 5 years

Revised 3/2003

SCANNED

FILED

2019 MAR 18 PM 3:00
CLERK OF COURT
FLORENCE COUNTY, SC

(c) April 18, 2018; 3 years (d) April 18, 2018; 10 years

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ✓
 (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. N/A
 ii. N/A
 iii. N/A

(b) the result in each such Court to which you appealed:

- i. N/A
 ii. N/A
 iii. N/A

(c) the date of each such result:

- i. N/A
 ii. N/A
 iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
 ii. N/A
 iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Counsel failed to file appeal.
 (b) _____
 (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See attachment.

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) As stated above.

(b) As stated above.

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(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? Yes

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. Motion

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Florence Co. Court of General Sessions 181 N. Irby St. Florence, S.C

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Motion was denied without hearing

ii. _____

iii. _____

10.A) Trial Counsel was ineffective when counsel failed to take notice that the trial court lack subject matter jurisdiction over case because the defendant was not properly indicted by the grand jury as require by law.

B.) Trial counsel failed to properly and reasonably check with the court on the Motion that Counsel filed to insured that the applicant 10 days appeal process does not expired.

- iv. _____
- (d) the date of each such disposition:
- i. May 10, 2018
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Motion for a New Trial was denied without hearing as to each and every ground set forth in Motion.
- 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. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
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) Issues were not properly preserved by trial counsel and are reflective of
- (b) ineffective assistance of counsel;
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
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. B. Scott Suggs ; 506 W. Evans St., Florence, S.C. 29503
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Vacate and dismissed
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, _____, 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.

[Signature]

SWORN to and subscribed before me this 14th
day of March, 2019.

[Signature]

Notary Public

(L.S.)

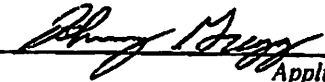
My Commission Expires: _____
BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

FILED
2019 MAR 18 PM 3:06
DOIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

**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
14th day of March, 2019.



Notary Public

My Commission Expires: _____
BETH A. MANGOLD
Notary Public, State of South Carolina
My Commission Expires 8/10/2028

FILED

2019 MAR 18 PM 3:06

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF Florence

Johnny Gregg, #337041,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
Twelfth JUDICIAL CIRCUIT

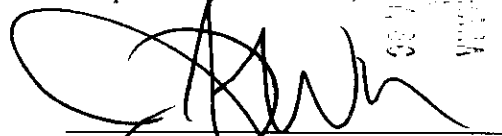
Case No. 2019-CP-21-00750

**Amendment to Application for
Post Conviction Relief**

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post-Conviction Relief filed March 18, 2019, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Scott Suggs, Esquire:
 - a. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant, thus rendering Applicant's counsel unprepared to properly defend Applicant at trial.

Respectfully submitted,



Jonathan D. Waller, Esquire
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, SC 29201
(803) 520-7278
ATTORNEY FOR THE APPLICANT

Columbia, South Carolina
December 16, 2019

FILED

2019 DEC 18 AM 11:42

CLERK OF COURT

FILEDSTATE OF SOUTH CAROLINA
COUNTY OF FLORENCE) IN THE COURT OF COMMON PLEAS
) FOR THE TWELFTH JUDICIAL CIRCUIT

2019 JUL -5 PM 1:55

Johnny N. Gregg #337041

Applicant,

DORIS POULOS CHARRA
CCCP # 03
FLORENCE COUNTY, SC

2019-CP-21-0750

v.

**RETURN AND PARTIAL MOTION
TO DISMISS**

State of South Carolina,

Respondent.

In response to the post-conviction relief (PCR) action commenced by Johnny Nickolas Gregg (Applicant) on March 14, 2019, the State makes this return:

Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2017 term of the Florence County Grand Jury for a number of crimes. Specifically, Applicant was indicted for possession of a weapon during the commission of a violent crime, possession of a stolen pistol, and possession with intent to distribute controlled substance—third offense. Applicant was also indicted for trafficking in heroin, possession with intent to distribute heroin within proximity of a school, possession with intent to distribute cocaine base, possession with intent to distribute cocaine and possession with intent to distribute marijuana. (2017-GS-21-0832). Applicant was initially represented by Rose Mary Parham, Esquire. After an order of substitution was issued, B. Scott Suggs, Esquire represented Applicant. Deputy Solicitor John C. Jeperntinger prosecuted the case. On April 18, 2018, Applicant was found guilty for seven charges as indicted. The Honorable William H. Seals, Jr. sentenced Applicant to concurrent terms of imprisonment for eight years for possession with intent to distribute heroin within proximity of a school, three years

for possession with intent to distribute controlled substance, four years for possession of a weapon, and ten years for possession with intent to distribute a controlled substance—third offense. Additionally, Applicant was sentenced to twenty-five years for trafficking in heroin and five years for possession with intent to distribute cocaine base—first offense, to be served consecutively to his other sentences. Applicant did not appeal his plea or sentence.

Applicant timely commenced this PCR action on March 14, 2019.

Facts

Applicant's charges stem from an incident that occurred on January 6, 2017. The Florence Police Department Narcotics and Gang Division executed a search warrant on a duplex, within a one-half mile radius of a school, where Applicant was living at the time of the search. Tr. 88-92. Before entering the duplex, the Police announced themselves. Tr. 93. With no response, the investigators forced entry into the apartment and apprehended Applicant. Tr. 96.

Once in custody, law enforcement conducted a search of the apartment and discovered large quantities of substances that appeared to be marijuana, cocaine, cocaine base, heroin, and Xanax. Additionally, the officers found a scale, \$38,452, and three guns. Tr. 111. Applicant admitted to owning a book bag with smaller quantities of cocaine, marijuana, synthetic heroin, another gun, and \$7,000 dollars in cash. Tr. 316. A razor and small storage bags were also found. Tr.97. Due to these findings, the Florence County Grand Jury indicted Applicant on multiple charges during the June 2017 term.

Allegations

Applicant asserts he is unlawfully in custody, alleging ineffective assistance of counsel. Applicant alleges plea counsel was ineffective for: (1) failing to recognize that the trial court lacked

subject matter jurisdiction; and (2) failing to insure that Applicant's ten day notice of appeal allotment had not expired.

Applicant requests his sentence be vacated.

For the purposes of this Return, the State incorporates the Clerk of Court records, the trial transcript, Applicant's SCDC records, and the PCR application. The State reserves the right to amend its return upon receipt of any relevant materials.

Response to Subject Matter Jurisdiction

Applicant's allegation the circuit court lacked subject matter jurisdiction is without merit. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. *State v. Wilkes*, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing *Brown v. State*, 343 S.C. 342, 540 S.E. 2d 846(2001)). Here, Applicant was indicted by the Florence County Grand Jury for multiple charges. The indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and cites the applicable statute. A presumption of regularity attaches to all proceedings in this State, and it is incumbent of the party who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E. 2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). Applicant here cannot show any irregularity, because the indictment for his charges is sufficient on its face. Therefore, the Court should summarily dismiss Applicant's allegation challenging subject matter jurisdiction.

Response to Allegations of Ineffective Assistance of Counsel

Applicant's allegation of ineffective assistance of counsel is without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell

below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). However, counsel is presumed to have adequately assisted and exercised reasonable professional judgment in making decisions in the case. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64. “[W]here counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel.” *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

Applicant alleges trial counsel failed to ensure his ability to file a notice of appeal had not expired. In the absence of an intelligent waiver by the defendant, counsel should pursue an appeal on the defendant's behalf. *White v. State*, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974).

The record does not directly disprove Applicant's allegations of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be

held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

Any Future Amendments

Applicant must specify any claims she intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to the Uniform Post-Conviction Relief Act¹ and Rule 71.1 of the South Carolina Rules of Civil Procedure. *See also* Rules 15(a)–(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

Request for an Evidentiary Hearing and Summary Dismissal

WHEREFORE, The State requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel and moves to summarily dismiss the claim that the court lacked subject matter jurisdiction because Applicant fails to make a *prima facie* showing.

¹ S.C. Code Ann. §§ 17–27–10 to –160.

Respectfully submitted,

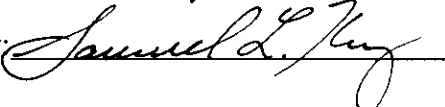
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

July 3, 2019

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE) 2019-CP-21-00750

JOHNNY N. GREGG,	)	
	)	
Applicant,	)	Transcript of Record
	)	
vs.	)	
	)	DECEMBER 19, 2019
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

B E F O R E:

Honorable Craig Brown
 Florence County Courthouse
 Florence, South Carolina

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

Jonathan Waller, Esquire
Attorney for Applicant

Samuel Key, Esquire
Attorney for State

Sallie Beth Todd
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

Johnny N. Gregg, Jr.

By Mr. Waller	5		21	

By Mr. Key		18		

Scott Suggs

By Mr. Key	22		33	

By Mr. Waller		29		

 Certificate of Court Reporter 38

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE</u>

(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

1 **THE COURT:** All right.

2 **MR. KEY:** This is Johnny Gregg versus State of South
3 Carolina, case number 2019-CP-21-0750. Mr. Gregg filed this
4 PCR action on March 14th, 2019. He is confined in the South
5 Carolina Department of Corrections pursuant to orders of
6 commitment from the Florence County Clerk of Court. He was
7 indicted at the June 2017 term of Florence County Grand Jury
8 for possession of a weapon during the commission of a violent
9 crime, possession of a stolen pistol, and possession with
10 intent to distribute controlled substance -- controlled
11 substance third offense. He was also indicted for trafficking
12 heroin, possession with intent to distribute heroin within
13 proximity of a school, possession with intent to distribute
14 cocaine base, possession with intent to distribute cocaine,
15 and possession with intent to distribute marijuana. He was
16 initially represented by Ms. Rosemary Parham and then after an
17 order of substitution he was represented by Mr. Scott Suggs.
18 Deputy Solicitor John Jepertinger prosecuted the case. On
19 April 18th, 2018 he -- he proceeded to a jury trial before the
20 Honorable William H. Seals. He was found guilty for seven
21 charges as indicted and Judge Seals sentenced him to
22 concurrent terms of imprisonment for eight years for
23 possession with intent to distribute heroin within proximity
24 of a school, three years for possession with intent to
25 distribute a controlled substance, four years for possession

1 of a weapon, and ten years for possession with intent to
2 distribute a controlled substance third offense.
3 Additionally, he was sentenced to 25 years for trafficking
4 heroine and five years for possession with intent to
5 distribute cocaine base first offense. That was to be served
6 consecutively to his other sentences. He got an aggregate 30-
7 year sentence, Your Honor.

8 He did not appeal his conviction or sentence. He did
9 timely commence this PCR action on March 14th, 2019. Mr.
10 Gregg alleges ineffective assistance of counsel for -- and
11 through PCR counsel, I believe he has amended his allegations.
12 And his amended allegation is for failure to investigate. He
13 is represented by Mr. Jonathan Waller; and Mr. Gregg and Mr.
14 Waller are present today.

15 **THE COURT:** All right. Thank you.

16 Mr. Waller.

17 **MR. WALLER:** Thank you, Your Honor. Judge, just one
18 clarification. Mr. Gregg was found guilty of the lesser
19 included offense on the trafficking in heroin. He was
20 indicted for 28 grams or more and was found guilty of 14 to 28
21 grams, so that is just one clarification, Judge.

22 At this time the applicant would call Johnny Gregg.

23 **THE COURT:** Do you have a copy of any amendments?

24 **MR. WALLER:** Your Honor, I don't have a copy back from
25 the clerk's office yet. I mailed it and have not received it

1 back yet. I apologize.

2 **THE COURT:** All right.

3 **MR. WALLER:** I only have one copy with me.

4 **THE COURT:** Mr. Gregg, if you'll come around, please.

5 **MR. WALLER:** Your Honor, the amendment that I filed
6 states that as to representation by Scott Suggs, counsel was
7 ineffective for failing to properly investigate the facts and
8 circumstances surrounding the allegations against the
9 applicant thus rendering the applicants counsel unprepared to
10 properly defend applicant at trial.

11 **THE COURT:** Go ahead.

12 **JOHNNY N. GREGG, JR., HAVING BEEN**
13 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **CLERK:** You can have a seat.

15 **DIRECT EXAMINATION OF MR. GREGG BY MR. WALLER:**

16 Q: Good afternoon, Mr. Gregg. How are you today?

17 A: Doing all right.

18 Q: All right. Mr. Gregg, you were arrested on several
19 charges; is that right?

20 A: Yes, sir.

21 Q: Okay. And who was your lawyer when you went to trial?

22 A: Scott Suggs.

23 Q: Okay. Had you had a previous lawyer before Mr. Suggs?

24 A: Yes, sir.

25 Q: Okay. Who'd you have before Mr. Suggs?

1 A: Rosemary Parham.

2 Q: Okay. Did you have anybody else?

3 A: No, sir -- Emily Crayton, she's a public defender.

4 Q: Okay. And then you went straight to Mr. Suggs?

5 A: No. From Emily Crayton to Rosemary to Mr. Suggs.

6 Q: Okay. All right. And when Mr. Suggs began to represent
7 you, what did y'all talk about?

8 A: We would just talk about what like -- what I want to
9 plead -- like what happened in the situation and what did
10 Rosemary do and all this. Basically, I hired him to get a
11 bond, like go back up for my bond because Rosemary wouldn't
12 take me up for my bond. So we was talking about that, then he
13 said he was going to take me to get in front of the Judge and
14 that's ---

15 Q: Okay. And the allegations against you were law
16 enforcement executed a search warrant, right?

17 A: Yes, sir.

18 Q: Okay. And you were in a house or duplex.

19 A: Yes, sir.

20 Q: Okay. So you were found in this house where drugs and
21 money and weapons were found.

22 A: Yes, sir.

23 Q: Okay. Did you and Mr. Suggs have a chance to talk about
24 the search warrant?

25 A: We discussed it a little -- a little bit about it.

1 Q: Okay. And what did y'all talk about?

2 A: Basically, he asked like -- he kind of asked like what
3 did they do, like how it came about, the search warrant and
4 all, like basically how they came in the house and how they
5 treated me and all this.

6 Q: Okay. Did y'all talk about how they got the search
7 warrant? What -- what evidence they used from prior ---

8 A: A little bit, I asked him like with the informant, how
9 they -- who the informant, like how did they get a search
10 warrant, like the informant said he observed some drugs with a
11 video/audio about that. Who did he see in the house? So we
12 discussed about that.

13 Q: You're talking about a confidential informant?

14 A: Yes, sir.

15 Q: Okay. And there was -- there was actually two search
16 warrants executed on side-by-side houses; is that right?

17 A: Yes, sir.

18 Q: And did y'all talk about that fact?

19 A: Yes, sir.

20 Q: Okay. The residence you were in, there was just one
21 search warrant done; is that right?

22 A: Yes, sir.

23 Q: And it was on the house in general?

24 A: Yes, sir.

25 Q: And it wasn't all -- there was a bookbag with additional

1 stuff found; is that right?

2 A: Yes, sir.

3 Q: Okay. At your trial you claimed everything that was in
4 that bookbag.

5 A: Yes, sir.

6 Q: And there was pills and marijuana and money in that
7 bookbag.

8 A: Yes, sir.

9 Q: Anything else in the bookbag?

10 A: Some cocaine.

11 Q: Okay.

12 A: Yes, sir.

13 Q: You -- one of the weapons that was found was yours; is
14 that right?

15 A: Yes, sir.

16 Q: It wasn't in the bookbag, it was right next to it.

17 A: Yes, sir.

18 Q: Okay. The other weapons you said were not yours.

19 A: Yes, sir.

20 Q: Okay. Did you -- was that your house?

21 A: No, sir.

22 Q: Okay. Did you and Mr. Suggs talk about that?

23 A: Like during -- like right before the trial we kind of
24 talked about it.

25 Q: Okay. Did y'all talk about how that might affect the

1 search warrant?

2 A: Not really. We ain't talk about that. You talking about
3 how -- me and you talked about like how would like the owner
4 had to file the search warrant, something like that?

5 Q: Did y'all talk about that you might not be able to
6 challenge the search warrant if you don't live there?

7 A: No.

8 Q: Okay.

9 A: Not to my knowledge.

10 Q: The state had a piece of mail that had -- or some sort of
11 documentation that had your name on it ---

12 A: Yes, sir.

13 Q: --- out of that house. Did y'all talk about that?

14 A: Yes, sir.

15 Q: Okay. What -- what did y'all talk about?

16 A: Well he asked like what was in the -- what was in the
17 envelope. It was something that happened from North Carolina
18 and I told him I had -- it was in my bookbag, but he said he
19 found it under the bed so. That's the only thing we talked
20 about.

21 Q: Okay. All right. Were these two houses connected, the
22 two residences connected?

23 A: Yes, sir.

24 Q: Did you and Mr. Suggs talk about that?

25 A: Yes, sir.

1 Q: Okay. What -- what did you tell him and what did he say?

2 A: I told him when it happened, the day it happened they
3 kicked the front door in of apartment B. Then they came to
4 apartment -- to the apartment that I was in, to the back door.
5 And we just talked about -- he asked who stayed there? How
6 was it -- was it problems going on there like drug dealing and
7 stuff like that. That's all we talked about, stuff like that.

8 Q: Okay. When the officers came into the house that you
9 were in, their testimony is that you were in one room and you
10 were running into the kitchen when they apprehended you; is
11 that right?

12 A: Yes, sir.

13 Q: Okay. But there were drugs found in other rooms in the
14 house other than the kitchen.

15 A: Yes, sir,

16 Q: And there were drugs found on the kitchen table, but also
17 in the bedrooms as well; is that right?

18 A: Yes, sir.

19 Q: Did you and Mr. Suggs talk about any of the bedrooms or
20 any of the other rooms in the house?

21 A: Yeah. We discussed it.

22 Q: Okay. Did you -- you already testified that you didn't
23 live there. Did you have access to all of those other rooms?

24 A: No, sir. The bedrooms had locks on the doors.

25 Q: Okay.

1 A: And the bathroom was the only thing open and the living
2 room.

3 Q: Okay. To your knowledge were those bedrooms unlocked or
4 locked?

5 A: They were locked.

6 Q: Okay. How do you know they were locked?

7 A: Because I know one of them, the owner of the house, hers
8 always locked. So I know that one was locked. The one who
9 stayed there, her cousin, that bedroom was locked because he
10 left and was supposed to go to the store and that was ---

11 Q: Okay. So a female friend of yours and her cousin, her
12 male cousin, lived there.

13 A: Yeah.

14 Q: Is that right? Okay. And you said her bedroom door is
15 always locked.

16 A: Yes, sir.

17 Q: You don't know necessarily if it was this particular day,
18 but you just know it from habit of it always being locked?

19 A: Yes, sir.

20 Q: Okay. Did you and Mr. Suggs have a chance to talk about
21 that?

22 A: No, not really about that.

23 Q: And did you tell him that?

24 A: No, I didn't tell him because when we discussed -- me and
25 him ain't really had a chance to discuss like before the trial

1 like I ain't really know like all I was like going against.
2 So during the trial he talked to me a little bit but I ain't
3 really discussed -- I ain't had all my thoughts like
4 everything put together until I got to Kirkland and then going
5 to the law library and all that stuff. Everything like in the
6 case like can go wrong and you can bring it up, I ain't really
7 never thought about that so I just brought it up to you.

8 Q: Okay. When -- when you and Mr. Suggs were getting ready
9 to go to trial, how many times did y'all meet?

10 A: Before we went to trial?

11 Q: Yes, sir.

12 A: We ain't met none before I went to trial, but we met
13 before when I first hired him we met.

14 Q: Okay. The whole time he represented you how many times
15 did y'all meet?

16 A: About three -- let me see, two times at the county, like
17 to times at the courthouse.

18 Q: Okay. You were -- you didn't bond out, you were in --
19 locked up the whole time?

20 A: Yes, sir,

21 Q: Okay. So you met two times in the county and two times
22 up here at the courthouse.

23 A: Yes, sir.

24 Q: Across the street. Did y'all have a chance to talk about
25 the weights of any of the drugs that were tested?

1 A: We discussed it one time. We discussed it one time about
2 the heroin, like what was in the bookbag and what was like in
3 the bag they found in the cabinet. Yeah, we discussed that a
4 little bit.

5 Q: Okay. You were indicted for trafficking heroin 28 grams
6 or more.

7 A: Yes, sir.

8 Q: The -- you were convicted of 14 grams to 28 grams.

9 A: Yes, sir.

10 Q: Did y'all have a chance to discuss that the report came
11 back that it was, I believe 25 grams?

12 A: Yes, sir. It was like 25 grams and change.

13 Q: And did y'all talk about the indictment at that point?

14 A: No, sir.

15 Q: Okay. Did you ask him what the -- you know, why one was
16 different than the other?

17 A: No. I never -- it never came to my decision -- I never
18 had like a whole full like motion ---

19 Q: Okay.

20 A: --- because Rosemary -- I went to lockup, they sent me to
21 lockup, and they took my paperwork. I never had received my
22 paperwork back.

23 Q: Okay. So your testimony is you've never seen the report
24 with the weight of the drugs that were actually recovered?

25 A: I seen the report with the weight from the drug analysis,

1 I seen that.

2 Q: Okay.

3 A: That was brought to my attention from the -- like the
4 weight when they found the bookbag. I told them like it came
5 back -- the one I had in my bookbag it came back nothing, it
6 came back no heroin. So that's what I claimed from the get-
7 go, but they tried to say in the incident report I claimed
8 everything in the house.

9 Q: Okay.

10 A: So we was discussing about what I had in my bookbag.

11 Q: Let me ask it a different way. You said you saw the drug
12 analysis report.

13 A: Yeah, I seen that.

14 Q: It came back with heroin 25 point something grams.

15 A: No, not -- yeah, just look through it and add my -- yeah
16 ---

17 Q: Okay. If you add it all up it was 25 grams.

18 A: Yeah. Yes, sir.

19 Q: Okay. You were indicted for 28 grams or more.

20 A: Yes, sir.

21 Q: Did you know that? At the same time did you know that
22 you were indicted for more than the report said?

23 A: No, sir.

24 Q: Did you and Mr. Suggs ever have a chance to talk about
25 that?

1 A: No, sir.

2 Q: Did you have any questions for him about that?

3 A: I just -- not really. I didn't have any questions for
4 him about the indictment.

5 Q: Okay. When y'all were getting ready for trial you said
6 you met four times, two in the county, twice at the
7 courthouse. What, if any, defenses did y'all talk about to
8 these charges?

9 A: Well the -- they was gone drop all my charges and let me
10 plead for four to 14 grams of heroin and basically we was just
11 discussing about that. So I was asking him like well what I
12 had in my bookbag, like what I had in my possession it came
13 back no heroin. So I was like can I get lesser included,
14 lesser offense than that and he was like I'm going to talk to
15 Jepertinger. He talked one day and one day we met in the
16 courtroom -- in the little conference room. I asked to talk
17 to Jepertinger. I asked Jepertinger like what's -- what's the
18 deal. He was like well ---

19 Q: Let me -- let me interrupt you right there.

20 A: Okay.

21 Q: Let me back up a little bit. The items that were -- the
22 drugs, money, other items that were found in your bookbag you
23 didn't have any offense to that, right? You claimed all of
24 that.

25 A: Yes, sir.

1 Q: Okay. So you weren't trying to say I'm not guilty of not
2 having those things?

3 A: Yes, sir.

4 Q: The remaining stuff in the house, outside of the bookbag
5 ---

6 A: Yes, sir.

7 Q: --- what did you and Mr. Suggs talk about about trying to
8 defend you from that? Not a plea or anything like that. It's
9 already going to trial, how were you all going to put up your
10 defense?

11 A: Basically, I told him like I ain't never had nothing in
12 my person. So I can't really remember like but he was
13 basically like saying it's not your house so you don't have to
14 claim none of that stuff was yours. He just said -- he never
15 told me like -- constructive possession came up in court, like
16 in the courtroom so that's basically ---

17 Q: Okay.

18 A: Yeah.

19 Q: Had y'all discussed constructive possession before -- had
20 you ever heard that before you got into court?

21 A: I'd never heard that before.

22 Q: Okay. Had y'all discussed that you could be convicted
23 for something that's not actually on, you know, on your
24 person?

25 A: No, sir.

1 Q: Okay. Did you understand that when you heard it in
2 court?

3 A: I kind of understand it, but not really. I kind of
4 understand it, but I ain't really understand it until I got
5 looking it up the definition of it and doing the research of
6 it.

7 Q: Okay. You testified a minute ago that the drugs and one
8 of the substances that was in your bookbag came back negative
9 for heroin.

10 A: Yes, sir.

11 Q: Okay. At that point did you ask Mr. Suggs how you were
12 still charged with trafficking heroin?

13 A: Yes, sir.

14 Q: Okay. What was his answer to you?

15 A: With the stuff they found in the cabinet in the house.

16 Q: Okay. Did you ask him how could they charge you with the
17 stuff that's in the house if it wasn't yours?

18 A: He was like well -- he just told me that the best deal
19 was to take the -- try to take the 10 or get the person whose
20 it was to claim it is all he just kept telling me to do.

21 Q: Okay. Did y'all discuss any potential witnesses you
22 might have?

23 A: Yes, the owner of the house.

24 Q: Okay. What did -- what did y'all talk about the owner?

25 A: Well I told him she was going to do a statement saying

1 that I ain't stay there, it's her and her cousin house and
2 that he lives there with her.

3 Q: Okay. Do you know if Mr. Suggs every tried to contact
4 her?

5 A: I know he -- during trial I told him to talk to her and
6 he said that she had -- that she would need a public defender,
7 a lawyer to testify on my behalf.

8 Q: And that was my next question. Was she ever charged in
9 this case?

10 A: No, sir.

11 Q: Okay. And do you know if she could have been charged?

12 A: No, sir.

13 Q: You don't know?

14 A: No, sir.

15 Q: Okay. All right. But y'all did talk about contacting
16 her?

17 A: Yes, sir.

18 Q: Okay. Mr. Gregg, I don't have anything further for you.
19 Please answer any questions that Mr. Key has for you.

20 A: Okay.

21 Q: Thank you.

22 **THE COURT:** Mr. Key.

23 **CROSS EXAMINATION OF MR. GREGG BY MR. KEY:**

24 Q: Mr. Gregg, good afternoon.

25 A: Good afternoon.

1 Q: When -- when the police executed the search warrant, was
2 anyone else in the house with you?

3 A: No, sir.

4 Q: Okay. Was anyone else in the house with you before they
5 executed the search warrant?

6 A: Yes, sir,

7 Q: Okay. Did you tell Mr. Suggs that?

8 A: Yes, sir.

9 Q: Okay. Now, you were originally charged with trafficking
10 in heroin over 28 grams and then eventually convicted of less
11 than that. Do you know that that changed before trial because
12 of the weight when the heroin came back? Do you know if the
13 indictment got changed to less than 28 grams?

14 A: No, sir.

15 Q: No?

16 A: No, sir.

17 Q: Okay. But you were convicted of less than 28 grams?

18 A: Yes, sir.

19 Q: Okay. Did -- did the police ever ask you to cooperate as
20 a confidential informant?

21 A: Yes, sir.

22 Q: Okay. And what was your response to that?

23 A: I would not do that.

24 Q: Okay. And did you talk to the police after that
25 conversation about you being in the house?

1 A: Yeah. We discussed some of the stuff, like he basically
2 was counting the money out and he asked me to sign the money -
3 - to verify how much the amount was, so I signed it. So when
4 we get to court he said it was like a forfeit form or
5 something. I said I ain't never -- well he read something
6 different to me so I ain't never know that.

7 Q: Okay. But you did sign some money over to the police?

8 A: Yes, sir.

9 Q: Do you recall how much money that was?

10 A: Like \$38,000 something.

11 Q: Thirty-eight thousand in cash?

12 A: Yes, sir,

13 Q: Okay. So you signed that money over to the police and
14 you claimed the drugs that were in your bookbag?

15 A: Yes, sir.

16 Q: And one of the guns?

17 A: The gun beside the bookbag.

18 Q: Okay. And you told all of this to Mr. Suggs?

19 A: Yes, sir.

20 Q: And in your original PCR application there's an
21 allegation of failure to file a notice of appeal. Did you ask
22 Mr. Suggs to appeal this case?

23 A: Yes, sir.

24 Q: You did? Okay.

25 **MR. KEY:** No further questions, Your Honor.

1 **THE COURT:** All right.

2 **MR. WALLER:** Very briefly.

3 **REDIRECT EXAMINATION OF MR. GREGG BY MR. WALLER:**

4 Q: Mr. Gregg, did you and Mr. Suggs discuss the appeal
5 process?

6 A: No. Like in the trial he said he was going to file a
7 motion for a retrial. So I was like -- or somebody was
8 telling me at the county okay you can file -- if you lose you
9 can file for a direct appeal, so at the moment we was talking
10 and he was like he was going to get my mother. So I called my
11 mother in the county, when they got me to the county. She was
12 like yeah she talked to him, he said he was going to do that,
13 so that was the situation right there.

14 Q: Okay. You didn't ever tell him you didn't want an appeal
15 or sign any waiver?

16 A: No, sir.

17 Q: Okay. The money that you just testified was signed over,
18 was that your money?

19 A: No, sir. They put all the money together from out the
20 house, from out the room, from out both of the bedrooms, my
21 bookbag, and my pocket. They put all of the money together,
22 so he told me to sign to verify the amount of the money.

23 Q: Okay.

24 A: Not claiming the money.

25 Q: So some of it was from the bookbag?

1 A: Yes, sir.

2 Q: But most of it was from around the house?

3 A: Yes, sir.

4 Q: And that wasn't your money?

5 A: No, sir.

6 Q: Okay. Nothing further. Thank you, Mr. Gregg.

7 **THE COURT:** Mr. Key, anything else?

8 **MR. KEY:** No, Your Honor.

9 **THE COURT:** Sir, you may step down. Thank you.

10 **MR. WALLER:** Nothing further from the applicant, Your
11 Honor.

12 **THE COURT:** All right.

13 Mr. Key.

14 **MR. KEY:** The state would call Scott Suggs.

15 **SCOTT SUGGS, HAVING BEEN**

16 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

17 **DIRECT EXAMINATION OF MR. SUGGS BY MR. KEY:**

18 Q: Good afternoon, Mr. Suggs.

19 A: Hello.

20 Q: How did you come to represent Mr. Gregg?

21 A: I was referred -- or Mr. Gregg was referred to me by John
22 Ethridge of the Gardner Law Firm based upon his previous
23 attorney's failure to visit him in the jail.

24 Q: Okay. So Mr. Gregg retained you to represent him?

25 A: Not exactly. He retained Mr. Etheridge, I think, to

1 represent him and Mr. Etheridge associated me to do that trial
2 work.

3 Q: Okay. Did you -- do you recall how many times you met
4 with Mr. Gregg?

5 A: Exactly, no, but I think Mr. Gregg's testimony is
6 probably accurate. A few times in the jail and a few times at
7 the courthouse, and I think maybe one time -- well it would
8 have had to have been one time or more here because Mr.
9 Gregg's case was actually the first criminal trial that was
10 tried in this new courthouse.

11 Q: Were there ever any plea offers?

12 A: Yes.

13 Q: Okay. What -- what was the final plea offer?

14 A: Ten years concurrent on everything plus he had some
15 additional charges that were quite similar to the ones that he
16 had been indicted on which would be included in that offer or
17 would be dismissed.

18 Q: Did you advise Mr. Gregg of that plea ---

19 A: I did.

20 Q: --- of that plea offer?

21 A: Yes, sir. I did.

22 Q: And explain to him that the offer also included some of
23 his other charges being dropped?

24 A: No. I advised him that it included all of his other
25 charges being dropped.

1 Q: Right. Okay. Did he want to accept that plea offer?

2 A: No, he did not.

3 Q: And I believe it was brought up during trial, the state
4 reextended that plea offer or at least placed that offer on
5 the record.

6 A: You mean in terms of an arraignment?

7 Q: No, just Mr. Jepertinger at trial put on the record that
8 the state had extended a ten-year plea offer to Mr. Gregg.

9 A: Prior to the jury being selected?

10 Q: Yes.

11 A: Well, I would consider that an arraignment and if -- if
12 that -- and I'm pretty sure that did occur.

13 Q: Okay. And Mr. Gregg still wanted to go forward with his
14 trial?

15 A: That is correct.

16 Q: Okay.

17 A: And I can tell you why.

18 Q: Okay. Why did Mr. Gregg want to go forward with this
19 trial?

20 A: Mr. Gregg had a problem with the case being considered a
21 violent offense. I told him that all drug trafficking cases
22 in South Carolina are considered violent. Most people don't
23 understand that, they think violent means rape, robbery, some
24 sort of murder or similar offense. But -- and I can
25 understand that confusion, but drug trafficking is violent in

1 South Carolina. He didn't want that on his record.

2 Q: So he was most concerned about the trafficking heroin
3 charge against him?

4 A: I can't read his -- I couldn't read his mind, he didn't
5 expressly say that, but he was concerned about having a
6 violent offense on his record.

7 Q: Did the state ever offer anything other than a violent
8 offense?

9 A: Not that I recall. No, sir.

10 Q: Do you recall the state's -- did you review the discovery
11 with Mr. Gregg in this case?

12 A: Yes, sir.

13 Q: Okay. Do you recall what the state -- what the discovery
14 showed? What the state was going to prove at trial?

15 A: Yes.

16 Q: Could you give us a brief summary of that?

17 A: Well there was -- there was information about a
18 confidential informant that had observed drugs in this duplex
19 or apartment within 72-hours or whatever it was, and a search
20 warrant was executed based upon that. And I know you'll ask
21 me about the search warrant address, we'll get to that shortly
22 I'm sure, but the police executed the search warrant. They
23 found Mr. Gregg in the duplex. He was alone. I believe the
24 testimony was that he was sitting or standing near the table -
25 - we're talking about a very small square footage duplex --

1 where most of the evidence, if not a substantial portion was
2 found and there was no one else there.

3 Q: Did Mr. Gregg ever tell you that he didn't have access to
4 the bedrooms, that they were locked?

5 A: I can't -- I can't remember that specifically. No, sir.
6 I don't remember that.

7 Q: Did you see any problems with the -- the police search
8 warrant in this case?

9 A: Yes, I did, and I think I raised that at trial.

10 Q: So there was a search warrant for Apartment A and a
11 search warrant for Apartment B of the same duplex; is that
12 correct?

13 A: I think that's right.

14 Q: And they were executed almost simultaneously?

15 A: I think that's right.

16 Q: And Mr. Gregg was in side A?

17 A: He was -- yes, he was in the side that I think the police
18 were less interest in according to the information that I
19 recall.

20 Q: Okay.

21 A: But they -- they did execute on both. And I do think
22 that I challenged the search warrant because of the address
23 being A or B, or 1 or 2, I don't remember. Judge Seals tried
24 the case, I think. He didn't see a problem with that, so he
25 did not suppress the search warrant.

1 Q: Did you discuss with Mr. Gregg his trafficking indictment
2 that it was -- he was indicted for more than 28 grams?

3 A: I -- I don't know. Whatever the indictment was for,
4 whatever the amount indicated is what I discussed with him and
5 as well as the weight indicated in the -- in the drug report
6 if I had it in my possession. If the amounts had been
7 different to the extent it would have changed the penalty
8 level, I would have told him that.

9 Q: Do you recall if it did change the amount level or if it
10 was reduced to less than 28 grams?

11 A: I don't personally recall but listening to the testimony
12 on direct I'm assuming that it was.

13 Q: Did -- did you explain to Mr. Gregg constructive
14 possession and how he didn't have to be actually in possession
15 of the drugs to be found guilty of possessing them?

16 A: Specifically, no, but I do explain that difference to
17 everyone who is charged with a drug offense. I do explain the
18 difference between actual and constructive. I always use
19 something that I have in my pocket at the time, whether it's
20 an ink pin or whether it's my cell phone or whether it's a can
21 of Pepsi. I always say I'm holding this this is actual and if
22 I put it down I say if anyone has -- exercises dominion and
23 control over this items that's in this room, that's
24 constructive.

25 Q: So it's your common practice to explain that to all of

1 your clients?

2 A: Always.

3 Q: Did Mr. Gregg ask you to file an appeal in this case?

4 A: I don't think that he did. His mother may have, but I
5 told her that I do not do any appellate work.

6 Q: Okay. So you did not file an appeal?

7 A: I did not, no.

8 Q: Okay.

9 A: And -- and I told her that I -- and I think I told her
10 long before that the facts of this case were very bad, and
11 that the chances of conviction were high, and that they
12 probably needed to go ahead and get in place someone to take
13 care of that matter for them should this -- should he be
14 convicted.

15 Q: Did -- on direct Mr. Gregg testified he asked you to look
16 into the -- the woman who stayed in that house. Did you
17 invest -- or look into interviewing her or investigating her?

18 A: I -- I don't remember that part, but obviously if she
19 owned the place and he didn't, or if her name were on the
20 lease and his wasn't, then I probably -- if I didn't bring it
21 up in trial I probably should have. But my understanding
22 unless the law has changed, I don't know that he'd have a
23 right to challenge the search warrant of a residence that he
24 did not own.

25 Q: Did you explain that to him that he wouldn't have

1 standing to challenge the search warrant?

2 A: Sir, I don't -- I may have. I don't know. I may have.

3 Q: Okay.

4 **MR. KEY:** No further questions, Your Honor.

5 **THE COURT:** Mr. Waller.

6 **MR. WALLER:** Thank you, Your Honor.

7 **CROSS EXAMINATION OF MR. SUGGS BY MR. WALLER:**

8 Q: Mr. Suggs, were you provided discovery and jail phone
9 calls in this case?

10 A: I'm sorry, was I what?

11 Q: Were you provided in discovery the jail phone calls in
12 the case?

13 A: You know, I don't think so. I think -- no, sir. I don't
14 think I was. I could have been. I turned that file over to
15 his mother when she requested it and that would have included
16 any disks which would have contained any telephone calls. But
17 my remembrance on that was that these telephone calls were
18 made fairly close to trial. But I'm sorry if I've not
19 answered your question completely, sir.

20 Q: No, I'm just trying to -- I'm trying to gather if
21 discovery was turned over to you, if you had -- if it was 100
22 hours of jail calls turned over to you the day before the
23 trial if it would have been physically possible for you to
24 review that?

25 A: No. I -- I don't think I knew about the telephone calls

1 until right at the last minute. But in my contracts I'm not
2 required to, but I do always add -- I'm always adding
3 addendums to my contract unless the law changes ethically and
4 then I have to redo my contracts: criminal, personal injury,
5 or whatever. But if they don't substantially change, I'll add
6 an addendum for the benefit of the client, and it might say
7 don't talk to anyone in the jail about your case. Some people
8 talk about guilt, I killed somebody when they really didn't
9 just to make other people leave them alone. Or they might
10 make telephone calls, which I tell them not too because those
11 telephone calls are monitored and they tell you that at the
12 beginning of a telephone conversation there's a recording that
13 says, this is being recorded. Now, whether or not I was
14 provided with that a day before trial or 30 days before trial,
15 I don't remember.

16 Q: Okay. Did you -- I believe you testified earlier that
17 you were associated by the Gardner Law Firm on this case.

18 A: Yes, sir. They -- they asked me to try the case. Yes,
19 sir.

20 Q: Did you have a separate contract with Mr. Gregg or with
21 them for that matter?

22 A: I think I had a separate contract with Mr. Gregg and --
23 but I would have to beg the Court's indulgence to allow me to
24 supplement the file if that's necessary. It's towards the end
25 of the year and at this time of the year I usually take two

1 weeks off in December and I give all of my staff two weeks off
2 so that I can index files and it -- I may have something in
3 the file about that, it just hasn't been indexed yet. I just
4 haven't been able to locate the remnants of this file.

5 Q: Okay. You testified earlier that you turned over his
6 file to his mother, was that the complete copy or just you
7 made her a copy?

8 A: No. I turned over the entire -- all the originals except
9 for maybe some personal notes that I made.

10 Q: Okay.

11 A: I kept those.

12 Q: Okay. So -- but you haven't retained a copy? You
13 provided all of that to the client?

14 A: Everything. All of the originals.

15 Q: Okay.

16 A: Which I think I'm required to do.

17 Q: In reviewing the search warrant, and I know you did make
18 a motion to suppress the search warrant, were you ever
19 provided with the identity of the confidential informant?

20 A: I don't -- I don't remember. I'm sure I asked for it,
21 but if I didn't, I apologize. It would have been in the
22 transcript if I did.

23 Q: Okay. You testified earlier that you thought Mr. Key was
24 going to ask you about the search warrant address.

25 A: Who?

1 Q: Mr. Key. You testified that you thought he should ask
2 you about the search warrant address. What did you mean by
3 that?

4 A: Well I meant because it was a duplex and I think the
5 police had the sides confused.

6 Q: Okay.

7 A: And I still think that.

8 Q: All right. You used the example earlier about
9 constructive possession versus actual possession. You talked
10 about a can of Pepsi and you put it on the table, anybody in
11 the room that has dominion and control, or exercises dominion
12 and control is in constructive possession. When you're using
13 that example with Mr. Gregg or any of your other clients, how
14 does that -- how does your explanation extend to other rooms?

15 A: Well it -- it doesn't. It just means if you see it there
16 and you know what it is, and obviously Pepsi is not illegal,
17 but maybe Coke was at one time, but -- I'm sorry I didn't mean
18 to be flippant. But if it's there and you see it, if it's
19 illegal and you're there and you see it even though you don't
20 -- it's not in your hand then that would be constructive
21 possession. If you recognize what it is, and you are able to
22 reach out and grab it I suppose.

23 Q: Okay.

24 A: Not to other rooms though, no.

25 Q: Your -- is it safe to say your strategy at trial was

1 claiming the items that Mr. Gregg acknowledged were his and
2 then disclaiming the others?

3 A: That was not my strategy, that was his. I've always
4 taken the position that taking credit for something that's
5 illegal because it carries less of a penalty is just not a
6 very good defense, but that's all he had.

7 Q: Okay.

8 A: In fact, that was mentioned to me by one of the jurors.

9 Q: But that is the strategy that you used in your closing
10 argument and throughout the trial; is that not correct?

11 A: Yes, sir, because that's really what he wanted me to do
12 and that's all that we really had.

13 Q: Okay.

14 **MR. WALLER:** I beg the Court's indulgence, please.

15 **BY MR. WALLER:**

16 Q: Thank you, Mr. Suggs. Nothing further.

17 A: Yes, thank you.

18 **THE COURT:** Mr. Key.

19 **REDIRECT EXAMINATION OF MR. SUGGS BY MR. KEY:**

20 Q: Mr. Suggs, very briefly.

21 A: Yes, sir.

22 Q: So Mr. Gregg wanted you to argue that he was taking
23 credit for some of the drugs but not all of them?

24 A: That's -- that's correct.

25 Q: But law enforcement -- did law enforcement ever -- did it

1 come out at trial that he made a statement to law enforcement
2 taking all of the drugs?

3 A: I think so. I think there was an on-scene confession,
4 which was I think was also challenged about him taking credit
5 for something but I don't recall exactly whether he took
6 credit for everything in the bookbag and if he did -- if he
7 did of the bookbag then he would have to take credit for
8 everything that was on the table because they were there
9 together I think. So the rest of the stuff I don't remember -
10 --

11 Q: Okay.

12 A: --- because they were in different areas, I think.

13 Q: And you just testified that you think that the police had
14 the sides of the duplex confused when they were executing the
15 search warrant. Did you bring that out at trial?

16 A: Yes, sir. I did.

17 Q: Okay.

18 **MR. KEY:** Nothing further, Your Honor.

19 **THE COURT:** Anything else?

20 **MR. WALLER:** Nothing further, Your Honor.

21 **THE COURT:** Mr. Suggs, you may step down, sir.

22 **MR. SUGGS:** Thank you, Your Honor, and thank you for
23 allowing me to go first. Am I excused, Your Honor?

24 **THE COURT:** Any objection to him being excused?

25 **MR. WALLER:** No, Your Honor.

1 **MR. KEY:** No objection, Your Honor.

2 **THE COURT:** Yes, sir, you are.

3 **MR. SUGGS:** Thank you.

4 **THE COURT:** Anything else, Mr. Waller?

5 **MR. WALLER:** Your Honor, I guess just I guess a brief
6 argument, just very brief.

7 **THE COURT:** Yes.

8 **MR. WALLER:** Judge, Mr. Suggs testified that he didn't
9 retain a copy of his file, he gave it all to the client's
10 mother. I think the evidence about -- the testimony about the
11 appeal is pretty clear. Mr. Suggs may not do appellate work
12 but he certainly has a duty to file a notice of appeal absent
13 any waiver from a criminal defendant after being convicted
14 particularly at trial. So I think he'd be required to just
15 file the notice. He doesn't have to do the appeal, but he's
16 got to file the notice within 10 days.

17 Judge, as far as the search warrant goes, I don't
18 necessarily agree with Mr. Suggs explanation of constructive
19 possession. I'm not sure what was relayed, specifically how
20 it was relayed to this defendant, but his explanation of it
21 not extending to other rooms doesn't -- I don't take that as
22 accurate. Judge, I would just ask you to consider the
23 application and consider the very brief transcript and grant
24 Mr. Gregg post-conviction relief, including the ability to
25 appeal his conviction.

1 **THE COURT:** Mr. Key.

2 **MR. KEY:** Your Honor, the state will concede that Mr.
3 Gregg is entitled to a belated appeal pursuant to *White versus*
4 *State* based on the testimony from Mr. Suggs today. However,
5 his other claims of ineffective assistance of counsel the
6 state would ask for you to deny.

7 **THE COURT:** Well I'm not sure I followed your argument,
8 Mr. Waller, on the constructive possession about other rooms.
9 The law requires that you have the ability to exercise
10 dominion and control, that's what the law is and maybe I'm
11 missing something here.

12 **MR. WALLER:** Your Honor, well and -- Your Honor, I agree
13 with that. I mean if I'm in -- if I'm in an apartment and I'm
14 the only person in it and I have access to all of the rooms,
15 you know I think that would qualify. Mr. Suggs explanation
16 did not -- what he tells -- what he said he tells his clients
17 is it doesn't extend past ---

18 **THE COURT:** What does he tell his clients?

19 **MR. WALLER:** He said it's within that same room if you're
20 able to do it, but if you're in an apartment and you're the
21 only one there and you have access and the doors are unlocked.
22 I mean that was the evidence in this case was that there were
23 things found in the bedroom and things found on top of the
24 kitchen cabinets, you know, they weren't all just spread
25 around the floor in front of Mr. Gregg.

19 (COURT ADJOURNED)

C E R T I F I C A T E

I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of Johnny N. Gregg versus State of South Carolina held in the Court of Common Pleas for Florence County, Florence County Courthouse, Florence, South Carolina, on December 19, 2019.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Sallie Beth Todd, CVR

Official Reporter

January 23, 2021.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Johnny N. Gregg # 337041

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

2019-CP-21-0750

**ORDER DENYING PCR BUT
GRANTING BELATED APPEAL**

2020 NOV -2 PM 1:24
DORIS PAULOS O'HARA
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

FILED

The matter before the Court is Johnny Gregg's (Applicant) action for post-conviction relief (PCR). Applicant commenced this PCR action on March 14, 2019, alleging ineffective assistance of counsel for failing to recognize the trial court lacked subject-matter jurisdiction and failing to file an appeal. The State made its return on July 3, 2019, requesting an evidentiary hearing into the matter. Applicant, through counsel, amended his application on December 18, 2019, raising an additional claim for ineffective assistance of counsel for failure to properly investigate and prepare for trial.

An evidentiary hearing into the matter convened on December 19, 2019, at the Florence County Courthouse before the undersigned. Applicant, and B. Scott Suggs, Esquire (Counsel) testified at the hearing. Also before the Court were the Florence County Clerk of Court's records of the underlying charges, Applicant's records from the South Carolina Department of Corrections (SCDC), the trial transcript, and the records of this PCR action. After a full review of the record before the Court, and after observing the testimony presented, for the reasons discussed below, the Court finds Applicant is not entitled to relief in the form of a new trial; however, the Court finds Applicant is entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35, (1974).

CERTIFIED: A TRUE COPY
Doris Paulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

I. PROCEDURAL HISTORY

Applicant is confined in SCDC pursuant to the orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the June 2017 term of the Florence County Grand Jury in an eight count indictment for (1) possession of a weapon during the commission of a violent crime; (2) possession of a stolen pistol; (3) possession with intent to distribute (PWID) a schedule I–IV controlled substance (Xanax); (4) trafficking heroin—28 grams or more; (5) PWID heroin within proximity of a school; (6) PWID cocaine base; (7) PWID cocaine; and (8) PWID marijuana. (2017-GS-21-0832). Applicant was initially represented by Rose Mary Parham, Esquire. After an order of substitution was issued, B. Scott Suggs, Esquire (Counsel) represented Applicant. Deputy Solicitor John C. Jepertinger prosecuted the case.

On April 16–18, 2018, Applicant proceeded to a jury trial before Judge William H. Seals, Jr. The State amended Applicant's trafficking heroin—28 grams or more, charge to the lesser included offense of trafficking heroin—14 to 28 grams. Tr. 33. Additionally, the State did not go forward on possession of a stolen pistol or PWID cocaine. Tr. 33; 278. The jury convicted Applicant on all charges presented as indicted or amended: (1) the weapons charge; (2) PWID Xanax; (3) trafficking heroin—14 to 28 grams; (4) the proximity charge; (5) PWID cocaine base; and (6) PWID marijuana. Judge Seals sentenced Applicant to serve an aggregate term of thirty years imprisonment: twenty-five years for trafficking heroin—14 to 28 grams, plus five years for PWID cocaine base. Applicant received the remaining concurrent sentences: ten years for PWID marijuana; eight years for the proximity charge; four years on the weapons charge; and three years for PWID Xanax. Applicant did not appeal.

Applicant timely commenced this PCR action on March 14, 2019.

II. FACTS

Applicant's charges stem from an incident that occurred on January 6, 2017. The Florence Police Department Narcotics and Gang Division executed a search warrant on a duplex, within a one-half mile radius of a school, where Applicant was living at the time of the search. Tr. 88-92. Before entering the duplex, the Police announced themselves. Tr. 93. With no response, the investigators forced entry into the apartment and apprehended Applicant. Tr. 96.

Once in custody, law enforcement conducted a search of the apartment and discovered large quantities of substances that appeared to be marijuana, cocaine, cocaine base, heroin, and Xanax. Additionally, the officers found a scale, \$38,452, and three guns. Tr. 111. Applicant admitted to owning a book bag with smaller quantities of cocaine, marijuana, synthetic heroin, another gun, and \$7,000 dollars in cash. Tr. 316. A razor and small storage bags were also found. Tr. 97. Due to these findings, the Florence County Grand Jury indicted Applicant on multiple charges during the June 2017 term.

III. ALLEGATIONS

Applicant asserts he is unlawfully in custody, alleging ineffective assistance of counsel. Applicant alleges trial counsel was ineffective for (1) failing to recognize that the trial court lacked subject matter jurisdiction; (2) failing to properly investigate and prepare for trial; and (3) failing to insure that Applicant's ten day notice of appeal allotment had not expired. Applicant requests relief in the form of a new trial.

IV. PCR TESTIMONY

Applicant recalled he was first represented by Assistant Public Defender Emily Crayton, then Rose Mary Parham, Esquire, then Counsel. Applicant recalled discussing with Counsel going for a bond hearing because Parham would not take him back after he hired Counsel.

Applicant recalled law enforcement executed a search warrant on the house he was inside where the drugs were found. Applicant stated Counsel asked him what law enforcement did, how the search warrant came about, and how law enforcement entered the house. Applicant stated he asked Counsel about the informant. Applicant also recalled discussing how there were search warrants for each side of the duplex, and there was a search warrant for the side of the house he was in and the warrant included the book bag. Applicant recalled claiming the contents of the book bag including the drugs and one of the guns found. However, Applicant testified the other drugs and the other gun inside the house were not his and he did not live in the house. Applicant testified he and Counsel discussed this right before trial, but they did not discuss how he could challenge the search warrant if he did not live there. Applicant testified the piece of mail law enforcement discovered was actually in his book bag, but law enforcement claimed they found it under the bed.

Applicant and Counsel discussed how the houses were connected. Applicant stated he told Counsel he heard law enforcement kick in the front door of the neighboring apartment, and then law enforcement came in the back door of the apartment he was in. Applicant stated law enforcement asked him who lived in the apartment and if there were problems going on with drugs.

Applicant recalled the testimony at trial was that he was in the living room running into the kitchen when the police entered. Applicant recalled telling Counsel the living room, the bathroom, and the kitchen were the only rooms open to him because the bedrooms were locked. However, Applicant was charged with drugs found in the kitchen and in the bedrooms. Applicant claimed the resident of the house always locked her bedroom door before leaving. However, Applicant admitted he did not tell Counsel this information.

Applicant recalled meeting Counsel four times during Counsel's representation, two times in the detention center and two times at the courthouse. Applicant recalled talking about the weight

of the drugs with Counsel. Applicant stated they talked about the drugs in his book bag and the drugs from the cabinet. Applicant claimed he and Counsel never discussed the indictments and how one was different than the other because he did not have his discovery in the detention center.

Applicant recalled seeing the drug report. Applicant stated he immediately claimed the contents of his book bag, but the police report stated he claimed all the drugs in the house. Applicant claimed the drug report came back stating he had twenty-five grams of heroin, but he was indicted for more than twenty-eight grams. However, Applicant never asked Counsel about the indictment.

Applicant recalled the State offered dropping all the charges and let him plead guilty to fourteen grams of heroin. Applicant stated that what was in his book bag came back as not actually being heroin, so he wanted the State to make a lower offer. He recalled meeting with the State, with Counsel, at the courthouse to discuss plea negotiations.

Applicant explained he wanted to claim the items in the book bag; however, the remaining drugs in the house he did not want to claim. Applicant recalled Counsel telling him they possibly had a defense to the other drugs in the house because Applicant did not live there. Applicant recalled he never heard the term constructive possession until it came up during trial. However, Applicant did recall Counsel telling him he could be convicted of something not on his person but he did not fully understand it.

Applicant recalled the contents of the book bag came back negative for heroin, but he was also charged with the drugs in the cabinet. In regards to the other drugs in the house, Applicant claimed Counsel told him to get the best deal available or to get the person who actually owned those drugs to claim them. Applicant stated he asked Counsel to try and get the apartment owner to testify he did not live in the apartment during trial. However, Counsel told him she would likely

need a lawyer to testify for him at trial. Applicant stated the apartment owner was never charged in the case.

Applicant stated he was the only person in the house when the warrant was executed, but someone had just left the house prior to the search warrant. Applicant claimed he told this to Counsel. Applicant conceded he was not convicted of greater than twenty-eight grams of heroin.

Applicant recalled law enforcement attempted to get him to act as a confidential informant, but he rejected that proposition. Applicant recalled signing a form to verify how much money was confiscated, but at the time, he did not know he was claiming everything. Applicant stated he was asked to sign the form to verify the amount of money taken from the house, but he did not think that meant he claimed the money. Applicant stated he claimed the money from his book bag and his pockets, but the rest of the money from the house was not his. Finally, Applicant stated he asked Counsel to file an appeal.

Counsel recalled getting the case as a referral from the Gardner Law Firm based on Parham's failure to visit him in jail. Counsel stated he could not recall how many times he met with Applicant, and he did not disagree with how many times Applicant claimed they met.

Counsel recalled the State's best plea offer was for ten years concurrent on everything, plus the State would drop some additional charges. Counsel informed Applicant of the State's offers and that some other charges would be dropped. Counsel stated Applicant rejected the State's offer. Additionally, Counsel recalled the State put their final offer on the record, and he still wanted to go forward with his trial because he had a problem with the charges being considered a violent offense. Counsel also recalled the State never offered anything that did not include a violent offense.

Counsel recalled reviewing the discovery with Applicant. Counsel stated there was information about a confidential informant (CI) that had observed drugs in this duplex within seventy-two hours. Counsel stated the search warrant was based on the CI's information. Counsel also recalled Applicant was the only person inside the duplex when the warrant was executed, and there was testimony that Applicant was sitting or standing by the table where most of the drugs were. Counsel could not recall if Applicant ever told him the bedrooms were locked.

Counsel recalled there being problems with the search warrant and he raised those issues at trial. Counsel recalled the search warrant was for apartment A and B and the warrants were executed simultaneously. Counsel testified he raised an issue with the address on the warrant, but the trial court did not see an issue with the warrant and did not suppress the evidence.

Counsel could not recall specifically explaining constructive possession to Applicant, but he always explains the difference between actual and constructive possession to his clients in drug cases. Counsel stated he did not think Applicant asked him to file an appeal. Counsel stated Applicant's mother may have asked him to file an appeal but he told her that he does not do appellate work, and he did not file an appeal in this case.

Counsel could not remember investigating the woman who lived in the house. However, Counsel did not see how that would be helpful for Applicant because he would not have been able to challenge the search warrant if he did not live there.

Counsel could not remember there being jail phone calls in the discovery, and Counsel stated he gave Applicant's mother the defense file. Counsel did recall Applicant made jail phone calls close to trial. However, Counsel stated he was not aware of the phone calls until the last minute and he advises his clients not to talk to anyone in jail or on the phone regarding their case.

Counsel stated he challenged the search warrants because he thinks the police got the sides of the duplex confused. Counsel stated his trial strategy was to claim some of the drugs, but not all, and that was what Applicant wanted the strategy to be. Further, Counsel also recalled challenging Applicant's statement to police claiming all the drugs at trial.

V. DISCUSSION

This Court has reviewed the entire record and evidence introduced at the hearing, and the Court has also observed the witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

Applicant alleged trial counsel was constitutionally ineffective for (1) failing to recognize the trial court lacked subject-matter jurisdiction and (2) failing to file an appeal. It appears from the PCR testimony presented at the PCR hearing Applicant's jurisdiction claim regards Counsel's challenge to the search warrant and Counsel's advice regarding constructive possession.

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

For the reasons discussed below, the Court finds Counsel was not constitutionally ineffective in challenging the search warrant or explaining constructive possession. However, the Court finds Applicant is entitled to a belated appeal.

1. Search warrant

Applicant alleged Counsel was ineffective for failing to properly challenge the search warrant, and for failing to adequately explain constructive possession to Applicant. The Court disagrees.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Applicant alleged Counsel was ineffective for failing to properly challenge the search warrant. The Court disagrees. Counsel challenged the search warrant pretrial arguing the warrant was invalid because it was returned after the statutory time had run. However, the Court denied Counsel's motion. Tr. 75–76. Counsel contemporaneously objected to the search warrant at trial, and renewed his objections at the appropriate times. Counsel explained at the PCR hearing he saw issues with the search warrant and raised those issues at trial. Therefore, Counsel was not deficient in challenging the search warrant.

Applicant also alleges Counsel failed to adequately explain constructive possession. It is unclear what prejudice Applicant suffered from not understanding constructive possession. Further, Applicant testified Counsel told him he could be convicted of something not on his person. Counsel testified he had no independent recollection of whether he explained constructive possession to Applicant, but that it is his standard practice to do so with clients. It is clear that Applicant wanted to take responsibility for the drugs and gun in his back pack; however, Applicant did not want to claim the rest of the drugs in the house. The main problem with Applicant asserting

he did not understand constructive possession was that Applicant claimed all the drugs, guns, and money in the house to law enforcement, and even helped law enforcement locate some of the drugs hidden in the kitchen. Applicant has failed to specify what Counsel should have done differently regarding constructive possession, therefore, Counsel was not deficient. Further, Applicant has failed to show prejudice resulted from his misunderstanding of constructive possession. The Court also notes that Applicant confessed to all the drugs, guns, and money inside the house after he was the only person in the house when the police executed a lawful search warrant. Therefore, Counsel was not constitutionally ineffective and this allegation is denied and dismissed with prejudice.

2. Failure to investigate and prepare for trial

Applicant alleged Counsel was ineffective for failing to investigate and prepare for trial. The Court disagrees and finds Counsel reasonably investigated the case and was prepared for trial.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards*, 392 S.C. at 456, 710 S.E.2d at 64; *Walker*, 407 S.C. at 405, 756 S.E.2d at 147. “While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel’s duty to investigate: reasonableness.” *Edwards*, 392 S.C. at 457, 710 S.E.2d at 64. To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. *Glover*, 318 S.C. at 498-99, 458 S.E.2d at 540. The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

As noted above, Applicant claimed he met with Counsel four times to prepare for trial, and he told Counsel his version of events. Applicant stated he told Counsel he heard law enforcement enter the neighboring apartment front door, and shortly thereafter, law enforcement entered the apartment he was in from the back door. Applicant immediately claimed the contents of his book bag, but did not want to claim the rest of the drugs. Applicant told Counsel he was the only person inside the apartment when law enforcement entered, but someone had just left the apartment before law enforcement entered. Applicant also admitted he did not tell Counsel that the woman who lived in the apartment always locks her bedroom door when she is not there. Finally, Applicant claimed the letter was in his book bag, but law enforcement at trial claimed the letter was in the bedroom where drugs and money were found.

Counsel testified his trial strategy centered on challenging the search warrant. Counsel also testified Applicant insisted on him making the mitigating argument that Applicant took responsibility for the contents of his book bag, but the other illicit items in the house were not his.

The Court finds Applicant has failed to show Counsel's trial strategy was unreasonable. Counsel faced a difficult task in defending Applicant in this case because (1) Applicant was the only person in the house when law enforcement executed the search warrant; (2) Applicant was standing in the kitchen near most of the drugs and guns when law enforcement entered; (3) Applicant signed a form claiming all the illicit items in the house; and (4) Applicant verbally claimed all the illicit items in the house post-*Miranda*. It is clear from the trial transcript Counsel was prepared for the case and presented a reasonable trial strategy in attacking the validity of the search warrant and the voluntariness of Applicant's statement to law enforcement. Counsel attacked the validity of the search warrant arguing it was invalid because it was not returned within the statutory period. Counsel also argued to the jury that law enforcement executed the search

warrant on the wrong side of the duplex—Applicant was inside apartment-A, but law enforcement entered thinking it was apartment-B. However, law enforcement had valid search warrants for apartments A and B. Finally, Counsel argued Applicant was credible and did not claim all the drugs in the house as testified to by law enforcement. Counsel argued Applicant meant to only claim the contents of his book bag, but did not intend to claim all the illicit items in the house. The Court finds Counsel was not deficient in investigating the case and preparing for trial, as the trial transcript shows Counsel clearly had a reasonable trial strategy against the damaging State's evidence. Therefore, Applicant has failed to prove Counsel was deficient in failing to investigate and prepare for trial.

Additionally, Applicant testified that during trial, he asked Counsel to call the woman who lived in the apartment as a witness at trial to show he did not live in the apartment. Counsel testified he could not recall Applicant asking him to investigate or interview the woman, but he did not think offering her as a witness would have been helpful because Applicant could have lost his standing to challenge the search warrant if he did not live in the apartment. The Court finds Counsel's decision not to call the woman who lived in the apartment as a witness at trial reasonable for two reasons.

First, Applicant did not ask Counsel to call her as a witness until the middle of trial. During trial, it would have been too late for Counsel to interview the woman before putting her on the stand to know how she would testify. Arguably, calling the woman as a defense witnesses could have been ineffective because Counsel had not previously interviewed her. *See Ingle v. State*, 348 S.C. 467, 471, 560 S.E.2d 401, 403 (2002) (finding trial counsel for deficient for calling a defense witness without first interviewing the witness to ascertain whether she would support the theory of the defense).

Second, the Court finds reasonable Counsel's statement for why he would not have called the woman as a witness even if he had been asked to investigate her prior to trial. The crux of Counsel's trial strategy was to challenge the search warrant. If the defense had called the woman as a witness at trial and she testified Applicant did not live in the apartment, Applicant could have lost his ability to challenge the validity of the search warrant as he potentially had no reasonable expectation of privacy in the apartment he was merely visiting. *See State v. McKnight*, 291 S.C. 110, 115, 352 S.E.2d 471, 473 (1987) ("The defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate a legitimate expectation of privacy in connection with the searched premises in order to have standing to challenge the search."); *see also Edwards*, 392 S.C. at 457, 710 S.E.2d at 64–65 ("[I]t would be an absurdity to require criminal defense lawyers to interview every potential witness when they can articulate reasonable grounds not to."). Therefore, the Court finds Counsel was not deficient in failing to investigate the woman who lived in the apartment as a witness at trial.

Finally, Applicant has failed to show how Counsel could have investigated the case differently, and how a different investigation approach could have produced a valid defense strategy. For these reasons, Applicant has failed to show prejudice resulted. Further, Applicant failed to produce admissible evidence as to what the woman who lived in the apartment would have testified to. Therefore, Applicant has failed to show prejudice resulted from Counsel's alleged deficiency of failing to investigate the woman as a potential defense witness. *See Glover*, 318 S.C. at 498-99, 458 S.E.2d at 540 (stating the applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice).

Based on the forgoing, the Court finds Counsel was not constitutionally ineffective for failing to investigate and prepare the case for trial. Accordingly, the Court denies relief on this allegation and dismisses it with prejudice.

3. Failure to appeal

Applicant testified he asked Counsel to file an appeal after he was convicted. Counsel testified Applicant's mother asked him to file an appeal and he did not. The State conceded Applicant is entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35, (1974). Therefore, this Court finds Applicant is entitled to a belated appeal pursuant to *White*.

VI. CONCLUSION

Based on the forgoing, the Court finds Counsel was not constitutionally ineffective in representing Applicant at trial. Counsel had a clear trial strategy for attacking the search warrant and preserved his arguments for appeal, and Counsel adequately advised Applicant on the case. Counsel also was not constitutionally ineffective for failing to investigate and prepare the case for trial as Counsel had a clear reasonable trial strategy, and offered a reasonable explanation for not calling the woman who lived in the apartment as a witness at trial. However, the Court finds Applicant is entitled to a belated appeal pursuant to *White v. State*.

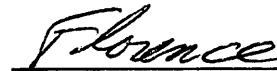
The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

THEREFORE:

1. The Court denies relief and dismisses the allegations relating to Counsel's performance before and during trial with prejudice;
2. Grants Applicant a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35, (1974); and
3. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.


D. CRAIG BROWN
 Presiding Judge
 Twelfth Judicial Circuit



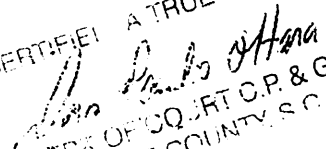
South Carolina

10-23, 2020.

FILED

2020 NOV -2 PM 1:24

DORIS POULOS O'HARA
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

WITNESSES

Andron Brown Florence Police Department

DOCKET NO. 2017-GS-21-00832

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2017

THE STATE

vs.

JOHNNY NICKOLAS GREGG JR

Indictment for

**POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME,
POSSESSION OF A STOLEN PISTOL,
AND
UNLAWFUL DRUGS**

John C Jeperfinger

ARREST WARRANT NUMBER

2017A2120200030 2017A2120200031
2017A2120200033 2017A2120200034

2017A2120200032 2017A2120200035

2017A2120200036 2017A2120200037

ACTION OF GRAND JURY

TRUE BILL

Hridi Dease
Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

FILED

2017 JUN -8 PM 12:21

DORIS POULOS OHSARA
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR
 POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME,
 POSSESSION OF A STOLEN PISTOL
 AND
 UNLAWFUL DRUGS

At a Court of General Sessions, convened on JUNE 8, 2017 the Grand Jurors of FLORENCE County present upon their oath:

**COUNT ONE- POSSESSION OF A WEAPON DURING THE
 COMMISSION OF A VIOLENT CRIME**

That Johnny Nickolas Gregg Jr did in Florence County, on or about January 6, 2017, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime to wit: trafficking in heroin, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

COUNT TWO- POSSESSION OF A STOLEN PISTOL

That Johnny Nickolas Gregg Jr did in Florence County on or about January 6, 2017, willfully and knowingly have in his possession or on his person, a pistol, which he knew, or should have known to be stolen to wit: S&W .40 caliber pistol; in violation of Section 16-23-0030(C), S. C. Code of Laws, 1976, as amended.

**COUNT THREE - POSSESSION WITH INTENT TO DISTRIBUTE
 CONTROLLED SUBSTANCE I-V**

That Johnny Nickolas Gregg Jr did in Florence County on or about January 6, 2017, knowingly and intentionally possess with intent to distribute, or did aid, abet, attempt or conspire to distribute, dispense or deliver, a quantity of Xanax, a Schedule I-V controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 2003, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(b)(3), S. C. Code of Laws, 2003, as amended.

COUNT FOUR- TRAFFICKING IN HEROIN

That Johnny Nickolas Gregg Jr did in Florence County on or about January 6, 2017, sell, deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was knowingly in actual or constructive possession of a quantity of Heroin in an amount of twenty-eight grams or more, same being a controlled substance all within the meaning of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, in violation of Section 44-53-0370(e)(3)(a)(c), S. C. Code of Laws, 1976, as amended, for the crime of Trafficking.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, POSSESSION OF A STOLEN PISTOL AND UNLAWFUL DRUGS, WITH THE AFORESAID NAMES(S) OF JOHNNY NICKOLAS GREGG JR SHOWN THEREON:

**COUNT FIVE- POSSESSION WITH INTENT TO DISTRIBUTE HEROIN
WITHIN PROXIMITY OF A SCHOOL**

That Johnny Nickolas Gregg Jr did in Florence County, on or about January 6, 2017, unlawfully possess with intent to distribute a quantity of Heroin, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, within a one-half mile radius of the grounds of a public or private school, college, or university, public playground or park, or a public vocational or trade school or technical education center to wit: North Vista Elementary School, in violation of Section 44-53-445(A), S. C. Code of Laws, 1976, as amended.

COUNT SIX- POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

That Johnny Nickolas Gregg Jr did in Florence County on or about January 6, 2017, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B)(1), S. C. Code of Laws, 1976, as amended.

COUNT SEVEN-POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

That Johnny Nickolas Gregg Jr did in Florence County, on or about January 6, 2017, knowingly and intentionally possess with intent to distribute a quantity of Cocaine, a controlled substance, such possession not having been authorized by law; in violation of Section 44-53-0370(b)(1), S. C. Code of Laws, 1976, as amended.

COUNT EIGHT-POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

That Johnny Nickolas Gregg Jr did in Florence County on or about January 6, 2017, knowingly and intentionally possess with intent to distribute a quantity of Marijuana, a controlled substance; such possession not having been authorized by law; in violation of Section 44-53-0370(b)(2), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR